



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 30 April 2002

8419/02

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

NM

**ENER 91
CODEC 522**

TRANSMISSION NOTE

No. prev. doc. : 7349/02 ENER 68 CODEC 367

No. Cion prop. : 7218/01 ENER 36 CODEC 381 (COM(2001) 125 final)

Subject : 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

Further to the re-examination of the operative part of the above mentioned proposal by the Working Party on Energy on 16 April 2002, delegations will find at Annex a new revised consolidated version of the text, prepared by the Presidency in the light of comments received so far from delegations.

The changes suggested by the Presidency with respect to document 7349/02 are in *italics* and underlined, alternative suggestions and references to relevant EP amendments are recorded in footnotes, deletions are indicated by [...].

Encl.

Consolidated proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL concerning
common rules for the internal market in natural gas¹**

**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.²

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, when 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;

¹ In line with EP amendment 91

² The addition of the following wording could be envisaged, in order to be coherent with EP amendments, i.a. with amendment 118: " The rules established by this Directive for natural gas shall also apply to biogas and gas from biomass as far as such gases technically and safely can be injected into the natural gas system". See also Art. 10 (4).

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, when 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 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*³;
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 offloading, storage and re-gaseification of LNG *but does not include any part of LNG terminals used for storage*⁴;
- 11a. “LNG system operator” - [...] means a natural or legal person who carries out the function of liquefaction of natural gas, or the offloading, storage and re-gaseification of LNG and is responsible for operating a LNG facility.
12. “system” - means any transmission networks and/or distribution networks and/or LNG facilities owned and/or operated by a natural gas undertaking, including its facilities supplying ancillary services and those of related undertakings necessary for providing access to transmission and distribution⁵;
- 12a. “ancillary services” - shall mean all services necessary for the operation of transmission and/or distribution networks and/or LNG facilities including storage facilities and equivalent flexibility instruments, load balancing and blending;
- 12b. “flexibility instrument” - means any instrument, which may help balance the demand load of customers with supply and includes storage facilities, [...] flexibility in the LNG chain and linepack⁶.
13. “interconnected system” - means a number of systems which are linked with each other;
14. “direct line” - means a natural gas pipeline complementary to the interconnected system;

³ Coherent with EP amendment 119

⁴ Broadly in line with EP amendment 120

⁵ Partly coherent with EP amendment 121

⁶ In substance in line with EP amendment 124

15. “integrated natural gas undertaking” - means a vertically or horizontally integrated undertaking;
16. “vertically integrated undertaking” - means a natural gas undertaking or a group of undertakings whose mutual relationships are defined in Art 3(3) of Council Regulation 4064/89 (EEC) and where companies concerned are performing jointly at least one of the tasks of transmission and distribution, and one of the tasks of production, supply or storage of natural gas;
17. “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;
18. “related undertaking” - means affiliated undertakings, within the meaning of Article 41 of the Seventh Council Directive, 83/349/EEC, of 13 June 1983 based on Article 54(3)(g) of the Treaty on consolidated accounts⁷, and/or associated undertakings, within the meaning of Article 33(1) thereof, and/or undertakings which belong to the same shareholders;
19. “system user” - means any natural or legal person supplying to, or being supplied by, the system;
20. “customers” - means wholesale and final customers of natural gas [...];
- 20a. "household customer" - means a customer purchasing natural gas for his/her own household consumption;
- 20b. "non-household customer" - means a customer purchasing natural gas which is not for his/her own household use;
21. “final customer” - means a customer purchasing natural gas for his own use;
- 21a. “eligible customer” - means a customer who is free to purchase gas from the supplier of his or her choice, in the meaning of Article 18.
22. “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;
23. “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;
24. “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;
25. “security” - means [...] security of supply of natural gas, and technical safety⁸;

⁷ OJ L 193, 18.7.1983, p. 1. Directive as last amended by the 1994 Act of Accession.

⁸ Coherent with EP amendment 123

26. "energy imbalance" - means the difference between the quantity of gas notified to the transmission/distribution system operator for injection or withdrawal at one or more given locations over a given time period and the metered quantity of gas injected or withdrawn at one or more given locations over the same time period.

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 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 climate protection and energy efficiency).⁹ Such obligations shall be clearly defined, transparent, non-discriminatory and verifiable. In relation to security of supply, Member States which so wish 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 and to ensure high levels of consumer protection, particularly with respect to transparency regarding contractual terms and conditions, general information and dispute settlement mechanisms and the protection of vulnerable customers including those in remote areas where connected to the gas system. Such measures may differ according to households and small and medium enterprises. These measures may¹⁰ include, in particular, those set out in the Annex. Member States shall ensure that the eligible customer is able to effectively switch to a new supplier.¹¹
4. Member States shall implement appropriate measures to achieve the objectives of social and economic cohesion, environmental protection, which may include demand-side management and means to combat climate change, and security of supply, notably by providing adequate economic incentives, using, where appropriate, [...] existing national and Community tools¹²,

⁹ Takes on board the corresponding part of EP amendment 125

¹⁰ It is recalled that the Cion has a reservation and prefers the Annex to be mandatory as in its proposal

¹¹ Coherent with EP amendment 126

¹² A Recital will specify that this may include liability mechanisms to guarantee the necessary investment.

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 the Directive, notify the Commission of all measures adopted to achieve public service obligations and their possible effect on 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 the measures adopted to fulfil public service obligations, whether or not such measures require derogation from the provisions of this Directive.

Article 3a

deleted

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 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 Member States consider it appropriate, they may confer this task to the regulatory authorities referred to in Article 22.* This monitoring shall, in particular, cover the supply/demand balance on the national market, the level of expected future demand and available supplies, and the level of competition on the market, and envisaged additional *infrastructure* capacity under planning or construction. They 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 laying down a procedure for the provision of information in the field of technical standards and regulations¹³.

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 and 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:
 - a) shall operate, maintain and develop under economic conditions secure, reliable and efficient transmission, storage and/or LNG facilities, with due regard to the environment;

¹³ OJ L 204, 21.7.1998, p. 37.

- b) shall not discriminate between system users or classes of system users, particularly in favour of its related undertakings;
 - c) shall 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.
3. Rules for balancing the gas system adopted by transmission system operators 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 *in accordance with* Article 22(2)¹⁴ in a non-discriminatory *and cost-reflective* way and shall be published by the *relevant* transmission system operator *or, where appropriate, by the Member State*.

Article 7a

- 1. Member States may require transmission system operators to meet minimum levels of investment 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, which is part of a vertically integrated undertaking, the following minimum criteria shall apply:

- a) those persons responsible for the management of the transmission undertaking 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;
- b) appropriate measures must be taken to ensure that the professional interests of persons responsible for the management of the transmission undertaking 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 maintain or develop the network.
- d) the transmission system operator must establish a compliance programme, which sets out measures taken to ensure that discriminatory conduct is excluded. The programme must set out the specific obligations of employees to meet this objective. It must be drawn up and its respect monitored by a compliance officer. An annual report, setting

¹⁴ In spirit in line with EP amendment 135

out the measures taken, must be submitted by the compliance officer to the [...] regulatory authority referred to in Article 22(1) and published.

Article 7b

Transmission, distribution, storage and LNG 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 [...] access to the system.

CHAPTER IV DISTRIBUTION AND SUPPLY

Article 9

1. Member States shall designate or shall require undertakings which own distribution 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 distribution system operators and shall ensure that distribution system operators act in accordance with Articles 10 and 11.
2. Member States may impose on distribution system operators and/or supply undertakings, an obligation to deliver and/or supply to customers located in a given area or of a certain class or both. The tariff for such obligations may be regulated, for instance to ensure equal treatment of the customers concerned.

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 must 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 may take place in a manner compatible with the secure and efficient operation of the interconnected system¹⁵.
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.

In order to ensure the independence of the distribution system operator, which is part of a vertically integrated undertaking, the following minimum criteria shall apply:

- (a) those persons responsible for the management of the distribution undertaking 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;
- (b) appropriate measures must be taken to ensure that the professional interests of persons responsible for the management of the distribution undertaking 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 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. The programme must set out the specific obligations of employees to meet this objective. It must be drawn up and its respect monitored by a compliance officer. An annual report, setting out the measures taken, must be submitted by the compliance officer to the regulatory authority referred to in Article 22(1) and published.

The provisions of this paragraph shall apply from [1 January 2004]¹⁶. Member States may decide not to apply this paragraph to integrated natural gas undertakings serving less than 100 000¹⁷ customers at that date.

5. Rules adopted by distribution system operators for balancing the *local* gas system, *for which they are responsible*, 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 *in accordance with* Article 22(2) in a non-discriminatory *and cost-reflective* way [...] and shall

¹⁵ Consequently to footnote 2, it may be appropriate to add the following wording: " These rules shall also apply to biogas and gas from biomass as far as such gases technically and safely can be injected into the natural gas system", consistent with EP amendments 110 and 117.

¹⁶ To be adapted in the light of the new date of entry into force.

¹⁷ Threshold to be reviewed in the light of the benchmarking report launched by the Cion.

be published, by the relevant distribution system operator or, where appropriate, by the Member State.

Article 11

Without prejudice to Article 12 or any other legal duty to disclose information, each distribution system operator shall preserve the confidentiality of and shall not abuse 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.

[...]

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 fully independent in terms of its legal form, organisation and decision making from other activities not relating to transmission LNG, storage and distribution system operations.¹⁸

CHAPTER V

UNBUNDLING AND TRANSPARENCY OF ACCOUNTS

Article 12

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 21(2) and Article 23(3), shall have right of access to the accounts of natural gas undertakings as set out in Article 13 which they need to consult in carrying out their functions. Member States and any designated competent authority, including the independent regulatory authorities referred to in Article 22(1) and the dispute settlement authorities, shall preserve the confidentiality of commercially sensitive information. Member States may introduce exceptions to the principle of confidentiality 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 a natural gas undertaking benefits from a derogation from this provision on the basis of Article 26 of this Directive, it shall at least keep its internal accounts in accordance with the provisions of this Article.

¹⁸ This position could be complemented by adding the criteria set out in Article 7a (2), suitably adapted to the combined system operator.

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 companies¹⁹.

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. Integrated natural gas undertakings shall, in their internal accounting, keep separate accounts for their transmission, distribution, supply, 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. Concerning supply activities, separate accounts have to be kept for eligible and non-eligible customers. Revenue from ownership of the transmission system shall be specified in the accounting. 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.

CHAPTER VI ACCESS TO THE SYSTEM

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 in accordance with Article 22(2)²⁰.
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.

¹⁹ 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).

²⁰ In line with EP amendment 183

3. With a view to promoting the international construction of new gas system infrastructures, such as import and transmission pipelines, storage facilities, LNG terminals, specific and temporary exemptions may be granted in accordance with the following provisions:

- The provisions of this Directive do not prevent the conclusion of long-term contracts in so far as they comply with Community competition rules.
- The regulatory authorities referred to in Article 22 may, on a case by case basis, decide to exempt a specified proportionate part of the capacity of major new gas infrastructure projects from the provisions of paragraph 1 when such an exemption is indispensable due to the exceptional nature of the new infrastructure concerned in order to enable the undertaking to finance such infrastructures.
- Any such exemption must be limited in time, as a general rule should not exceed 10 years, and must specify the percentage of the total available capacity of the new infrastructure projects to which the exemption relates. The party requesting the exemption must provide full details for consideration of the request.
- The decision and the conditions relating to the award of an exemption shall be reasoned and published and notified without delay to the Commission, together with all the relevant information with respect to the decision.
- Within two months of its receipt of a notification, the Commission may request that the national regulatory authority concerned amend or withdraw the decision to grant an exemption. The two months period may be extended by two additional months where additional information is sought by the Commission.
- If the regulatory authority concerned does not comply with a request within a period of four weeks, a final decision shall be taken expeditiously in accordance with procedure of Article 3 of Council Decision 1999/468/EC.

Article 15²¹

1. For the organisation of access to storage and equivalent flexibility instruments 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 paragraph 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 equivalent flexibility instruments, when technically and/or economically necessary for providing efficient access to the system. The parties shall be obliged to negotiate access to storage and equivalent flexibility instruments in good faith.

Contracts for access to storage and equivalent flexibility instruments shall be negotiated with the relevant storage system operator or natural gas undertakings. Member States shall require natural gas undertakings to publish their main commercial conditions for the use of storage and equivalent flexibility instruments within the first year 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 storage and equivalent flexibility instruments, on the basis of published tariffs and/or other terms and obligations for use of that

²¹ An alternative wording for this Article could read as follows:

- "1. For the organisation of access to storage and equivalent flexibility instruments 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 shall ensure that the procedures used shall operate in accordance with objective, transparent and non-discriminatory criteria.
2. Where the provider of the storage and equivalent flexibility instruments is the transmission system operator or a related undertaking, at least the methodologies used to calculate the charges, and the terms and conditions shall be approved prior to their entry into force by the national regulatory authorities referred to in Article 22(1).
3. Where the provider of the storage and equivalent flexibility instruments is not the transmission system operator or a related undertaking, Member States may opt for a negotiated access procedure. In this case, 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 the system so as to conclude supply contracts with each other on the basis of voluntary commercial agreements. The parties shall be obliged to negotiate access to the system in good faith.

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

storage and equivalent flexibility instruments, when technically and/or economically necessary for providing efficient access to the system. This right of access for eligible customers *to storage and equivalent flexibility instruments* 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 willing to pay for them. In circumstances where Member States apply Article 4(4), Member States shall take such measures.

Article 18

The eligible customers are the customers which are free to purchase gas from the supply undertaking of their choice within the Community. Member States shall ensure that these eligible customers are:

- a) until the date referred to in Article 29, 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 at the latest, all non-household customers.
[...].

Article 19

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 involved²²;
- (b) in cases where transactions as described in subparagraph (a) are refused because the customer is eligible in only one of the two systems, the Commission may oblige, taking into account the

²² A recital could further clarify the consequences of reciprocity.

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 20

1. Member States shall take the necessary measures to enable:
 - natural gas undertakings established within their territory to supply the eligible customers through a direct line,
 - any such eligible customer with 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(8).

Article 21

1. [Member States shall designate a competent authority, which must be independent of the parties, to settle expeditiously disputes relating to the negotiations in question. In particular, this authority shall settle disputes concerning negotiations and refusal of access within the scope of this Directive. The competent authority shall present its conclusions without delay or if possible within 12 weeks of the introduction of the dispute. Recourse to this authority shall be without prejudice to the exercise of rights of appeal under Community law]²³.
2. [In the event of cross-border disputes, the dispute settlement authority shall be the dispute settlement authority covering the system of the natural gas undertaking which refuses use of, or access to, the system. Where, in cross-border disputes, more than one such authority covers the system concerned, the authorities shall consult with a view to ensuring that the provisions of this Directive are applied consistently].²⁴

²³ In coherence with the Electricity proposal, this paragraph could be deleted.

²⁴ This paragraph could be deleted as redundant with Art 22(4).

Article 22

1. Member States shall designate one or several competent bodies as regulatory authorities²⁵. These authorities shall be wholly independent of the interests of the gas industry. They shall at least have the responsibility to [...] monitor the market to ensure non-discrimination, effective competition and the efficient functioning of the market, in particular with respect to:
 - (a) the level of competition [...];
 - (b) the rules on the management and allocation of interconnection capacity, in consultation with the regulatory authority or authorities and transmission system operators of those Member States with which interconnection exists;
 - (c) any mechanisms to deal with congested capacity within the national gas system;
 - (d) the time taken by transmission and distribution system operators to make connections and repairs;
 - (e) the publication of the 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;
 - (f) the effective unbundling of accounts as referred to in Article 13(2) to ensure there are no cross-subsidies between transmission, distribution, storage, LNG and supply activities.²⁶
2. The regulatory authorities referred to in paragraph 1 shall have the [...] responsibility to fix or approve prior to their entry into force, at least the methodologies used to calculate or establish the following:
 - (a) the terms and conditions for connection and access to national networks, including transmission and distribution tariffs and terms, conditions and tariffs for access to LNG facilities;
 - (b) the terms and conditions for the provision of balancing services.
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 paragraph 2, to ensure that those are reasonable and applied in a non-discriminatory manner.
4. Any party having a complaint against a transmission, LNG or distribution system operator over terms, conditions, tariffs and methodologies referred to in paragraph 2 may refer the complaint to the regulatory authority which shall issue a decision within two months. This period may be

²⁵ A recital could clarify that "regulatory authorities act according to criteria and guidelines from the government".

²⁶ Partly coherent with EP amendments 149 and 184

extended by two additional months where additional information is sought by the regulatory authorities. This period may be extended further with the agreement of the complainant. Any appeal in relation to complaints shall not have a suspensive effect.

5. Member States shall take measures to ensure that regulatory authorities referred to in paragraph 1 are able to carry out their duties referred to in paragraph 1-4 in an efficient and expeditious manner²⁷.
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 dispute settlement authority shall be the dispute settlement authority covering the system operator which refuses use of, or access to, the system.
9. Recourse to this authority shall be without prejudice to the exercise of rights of appeal under Community law²⁸.

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 28.
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]²⁹. 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;

²⁷ Consistent with EP amendment 150

²⁸ Paragraphs 8 and 9 have been moved from para 1 and 2 of Art. 21.

²⁹ clarification of the bracketed words could be useful

- (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 *providing* 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 State concerned shall consult with a view to ensuring that the provisions of this Directive are applied consistently.

CHAPTER VII FINAL PROVISIONS

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 15 [...] 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 four 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 of Article 3 of *Council* Decision *1999/468/EC*.

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 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 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 26³⁰

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 Article 4, Article 18 and/or Article 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 Article 4, Article 18 and/or Article 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 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(1), Article 7(2), Article

³⁰ Derogations asked for by several Member States under this Article do not include derogations from the obligation of keeping at least internal accounts

7a(2), Article 9(1), Article 10(4), Article 10(5), Article 14(1), Article 18 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.

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.

Article 27

[deleted]

Article 28

1. The Commission shall monitor and review the application of this Directive and submit before the end of the first year following the entry into force of this Directive, and thereafter on an annual basis, an overall progress report to the European Parliament and the Council. The report shall at least cover the following:
- (i) the experience gained and progress made in creating a complete and fully operational internal market in natural gas and remaining obstacles in this respect including aspects of market dominance, concentration in the market, predatory or anticompetitive behaviour;³¹
 - (ii) 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;

³¹ Taking on board corresponding parts of EP amendments 149 and 184

- (iii) 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 economic, [...] social and environmental consequences of the opening of the gas market for customers;
- (iv) possible necessary harmonisation requirements which are not linked to the provisions of this Directive;
- (v) 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.³²

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]³³.

Article xxx

Directive 91/296/EEC is herewith repealed.

Directive 98/30/EC is herewith repealed, 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

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [date to be inserted] at the latest. They shall forthwith inform the Commission thereof.

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

³² Largely corresponding to EP amendment 153

³³ In line with EP amendment 128

Article 30

This Directive shall enter into force on the 20th 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

For the European Parliament
The President

For the Council
The President

ANNEX TO ANNEX¹

Without prejudice to Community rules on consumer protection, in particular Directives 97/7/EC of the European Parliament and of the Council² and Council Directive 93/13/EC³, the measures referred to in Article 3 are:

I. to ensure that household 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;
 - 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 (IIa).

*Conditions shall be fair and well-known in advance. In any case, this information should be provided prior to the conclusion of the contract. Where contracts are concluded through intermediaries, the above information shall also be provided prior to the conclusion of the contract.*⁴

- (b) shall be given adequate notice of any intention to modify contractual conditions and shall be free to withdraw from contracts if they do not accept the new conditions. *Customers shall be 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.*⁵
- (c) shall receive transparent information on applicable prices and tariffs and on standard terms and conditions, in respect of access to and use of gas services.

¹ As stated in Article 3(3), these measures are optional.

² OJ L 144, 4.6.1997, p. 19.

³ OJ L 95, 21.4.1993, p. 29.

⁴ EP amendment 158

⁵ EP amendment 159

(d) A full choice of payment methods shall be available free of charge. General terms and conditions shall be fair and transparent. They shall be given in a clear and comprehensible language. Household customers shall be protected against unfair or misleading selling methods.⁶

II. to ensure that final customers:

- (a) shall benefit from transparent, simple and inexpensive procedures being made available for dealing with household customer 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/EEC⁷.
- (b) all final customers, connected to the gas system, are informed about their rights to be supplied with natural gas of a specified quality at reasonable prices⁸.

⁶ In line with EP amendment 160

⁷ OJ L 115, 17.4.1998, p. 31.

⁸ Broadly coherent with EP amendment 129.