

Directive 2009/73/EC of the European Parliament and of the Council of
13 July 2009 concerning common rules for the internal market in natural
gas and repealing Directive 2003/55/EC (Text with EEA relevance)

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 to 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, secure and environmentally sustainable market in natural gas, and shall not discriminate between those undertakings as regards their rights or obligations.

2 Having full regard to the relevant provisions of the Treaty, in particular Article 86 thereof, Member States may impose on undertakings operating in the gas sector, 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, energy from renewable sources and climate protection. Such obligations shall be clearly defined, transparent, non-discriminatory, verifiable and shall guarantee equality of access for natural gas undertakings of the Community to national consumers. In relation to security of supply, energy efficiency/demand-side management and for the fulfilment of environmental goals and goals for energy from renewable sources, as referred to in this paragraph, 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, and shall, in particular, ensure that there are adequate safeguards to protect vulnerable customers. In this context, each Member State shall define the concept of vulnerable customers which may refer to energy poverty and, *inter alia*, to the prohibition of disconnection of gas to such customers in critical times. Member States shall ensure that rights and obligations linked to vulnerable customers are applied. In particular, they shall take appropriate measures to protect final 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 system. They shall ensure high levels of consumer protection, particularly with respect to transparency regarding contractual terms and conditions, general information and dispute settlement mechanisms. Member States shall ensure that the eligible customer is in fact able easily to switch to a new supplier. As regards at least household customers those measures shall include those set out in Annex I.

4 Member States shall take appropriate measures, such as formulating national energy action plans, providing social security benefits to ensure the necessary gas supply to vulnerable customers, or providing for support for energy efficiency improvements, to address energy poverty where identified, including in the broader context of poverty. Such measures shall not impede the effective opening of the market set out in Article 37 and market functioning and shall be notified to the Commission, where relevant, in accordance with paragraph 11 of this Article. Such notification shall not include measures taken within the general social security system.

5 Member States shall ensure that all customers connected to the gas network are entitled to have their gas provided by a supplier, subject to the supplier's agreement, regardless of the Member State in which the supplier is registered, as long as the supplier follows the applicable trading and balancing rules and subject to security of supply requirements. In this regard, Member States shall take all measures necessary to ensure that administrative procedures do not constitute a barrier for supply undertakings already registered in another Member State.

6 Member States shall ensure that:

- a where a customer, while respecting the contractual conditions, wishes to change supplier, the change is effected by the operator(s) concerned within three weeks; and
- b customers are entitled to receive all relevant consumption data.

Member States shall ensure that the rights referred to in points (a) and (b) of the first subparagraph are granted to customers in a non-discriminatory manner as regards cost, effort or time.

7 Member States shall implement appropriate measures to achieve the objectives of social and economic cohesion and 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.

8 In order to promote energy efficiency, Member States or, where a Member State has so provided, the regulatory authority shall strongly recommend that natural gas undertakings optimise the use of gas, for example by providing energy management services, developing innovative pricing formulas or introducing intelligent metering systems or smart grids where appropriate.

9 Member States shall ensure the provision of single points of contact to provide consumers with all necessary information concerning their rights, current legislation and the means of dispute settlement available to them in the event of a dispute. Such contact points may be part of general consumer information points.

Member States shall ensure that an independent mechanism such as an energy ombudsman or a consumer body is in place in order to ensure efficient treatment of complaints and out-of-court dispute settlements.

10 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.

11 Member States shall, upon implementation of this Directive, inform the Commission of all measures adopted to fulfil 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.

12 The Commission shall establish, in consultation with relevant stakeholders, including Member States, the national regulatory authorities, consumer organisations and natural gas undertakings, a clear and concise energy consumer checklist of practical information relating to energy consumer rights. Member States shall ensure that gas suppliers or distribution system

operators, in cooperation with the regulatory authority, take the necessary steps to provide their consumers with a copy of the energy consumer checklist and ensure that it is made publicly available.

Article 4

Authorisation procedure

1 In circumstances where an authorisation (for example, 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. Member States shall ensure that authorisation procedures for facilities, pipelines and associated equipment take into account the importance of the project for the internal market in natural gas where appropriate.

3 Member States shall ensure that the reasons for any refusal to grant an authorisation are objective and non-discriminatory and that they are given to the applicant. Reasons for such refusals shall be notified 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 38, 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 delegate that task to the regulatory authorities referred to in Article 39(1). Such monitoring shall, in particular, cover the balance of supply and demand on the national market, the level of expected future demand and available supplies, envisaged additional capacity being planned or under 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, a report outlining the findings resulting from the monitoring of those issues, as well as any measures taken or envisaged to address them and shall forward that report to the Commission forthwith.

Article 6

Regional solidarity

1 In order to safeguard a secure supply on the internal market in natural gas, Member States shall cooperate in order to promote regional and bilateral solidarity.

2 Such cooperation shall cover situations resulting or likely to result in the short term in a severe disruption of supply affecting a Member State. It shall include:

- a coordination of national emergency measures referred to in Article 8 of Council Directive 2004/67/EC of 26 April 2004 concerning measures to safeguard security of natural gas supply⁽¹⁾;
- b identification and, where necessary, development or upgrading of electricity and natural gas interconnections; and
- c conditions and practical modalities for mutual assistance.

3 The Commission and the other Member States shall be kept informed of such cooperation.

4 The Commission may adopt Guidelines for regional cooperation in a spirit of solidarity. Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 51(3).

Article 7

Promotion of regional cooperation

1 Member States as well as the regulatory authorities shall cooperate with each other for the purpose of integrating their national markets at one and more regional levels, as a first step towards the creation of a fully liberalised internal market. In particular, the regulatory authorities where Member States have so provided or Member States shall promote and facilitate the cooperation of transmission system operators at a regional level, including on cross-border issues with the aim of creating a competitive internal market in natural gas, foster the consistency of their legal, regulatory and technical framework and facilitate integration of the isolated systems forming gas islands that persist in the Community. The geographical areas covered by such regional cooperation shall include cooperation in geographical areas defined in accordance with Article 12(3) of Regulation (EC) No 715/2009. Such cooperation may cover other geographical areas.

2 The Agency shall cooperate with national regulatory authorities and transmission system operators to ensure the compatibility of regulatory frameworks between the regions with the aim of creating a competitive internal market in natural gas. Where the Agency considers that binding rules on such cooperation are required, it shall make appropriate recommendations.

3 Member States shall ensure, through the implementation of this Directive, that transmission system operators have one or more integrated system(s) at regional level covering two or more Member States for capacity allocation and for checking the security of the network.

4 Where vertically integrated transmission system operators participate in a joint undertaking established for implementing such cooperation, the joint undertaking shall establish and implement a compliance programme which sets out the measures to be taken to ensure that

discriminatory and anticompetitive conduct is excluded. That compliance programme shall set out the specific obligations of employees to meet the objective of excluding discriminatory and anticompetitive conduct. It shall be subject to the approval of the Agency. Compliance with the programme shall be independently monitored by the compliance officers of the vertically integrated transmission system operators.

Article 8

Technical rules

The regulatory authorities where Member States have so provided or 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. Those technical rules shall ensure the interoperability of systems and shall be objective and non-discriminatory. The Agency may make appropriate recommendations towards achieving compatibility of those rules, where appropriate. Those rules shall be notified to the Commission in accordance with Article 8 of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services⁽²⁾.

Status: This is the original version (as it was originally adopted).

- (1) OJ L 127, 29.4.2004, p. 92.
- (2) OJ L 204, 21.7.1998, p. 37.