

Commission Regulation (EU) 2017/460 of 16 March 2017 establishing a network code on harmonised transmission tariff structures for gas (Text with EEA relevance)

CHAPTER X

FINAL AND TRANSITIONAL PROVISIONS

Article 37

Power to grant derogations

1 National regulatory authorities may, at the request of an entity which operates an interconnector that has benefited from an exemption from Article 41(6), (8) and (10) of Directive 2009/73/EC in accordance with Article 36 of that Directive or a similar exemption, jointly grant such entity a derogation from the application of one or more Articles of this Regulation in accordance with paragraphs 2 to 6 of this Article where the application of those Articles to such entity would have one or several of the following negative consequences. It would:

- a not facilitate efficient gas trade and competition;
- b not provide incentives for investment for new capacity or to maintain existing levels of capacity;
- c unreasonably distort cross-border trade;
- d distort competition with other infrastructure operators that offer services of a similar nature to those of the interconnector;
- e not be implementable when taking into account the specific nature of interconnectors.

2 The entity requesting a derogation under paragraph 1 shall include in its request a detailed reasoning, with all supporting documents, including, where appropriate, a cost-benefit analysis, demonstrating that one or more of the conditions in paragraph 1(a) to (e) are complied with.

3 The national regulatory authorities concerned shall jointly assess the request for a derogation and deal with it in close cooperation. Where the relevant national regulatory authorities grant a derogation, they shall specify its duration in their decisions.

4 The national regulatory authorities shall notify their decisions granting such derogations to the Agency and the Commission.

5 The national regulatory authorities may revoke a derogation if the circumstances or underlying reasons, or both, no longer apply or upon a reasoned recommendation of the Agency or the Commission to revoke a derogation due to a lack of justification.

Changes to legislation:

There are outstanding changes not yet made to Commission Regulation (EU) 2017/460. Any changes that have already been made to the legislation appear in the content and are referenced with annotations.

[View outstanding changes](#)

Changes and effects yet to be applied to :

- Art. 37(1) word omitted by [S.I. 2019/531 Sch. 5 para. 17\(2\)\(c\)](#)
- Art. 37(1) words inserted by [S.I. 2019/531 Sch. 5 para. 17\(2\)\(b\)](#)
- Art. 37(1) words substituted by [S.I. 2019/531 Sch. 5 para. 17\(2\)\(a\)](#)
- Art. 37(3) substituted by [S.I. 2019/531 Sch. 5 para. 17\(3\)](#)
- Art. 37(4) omitted by [S.I. 2019/531 Sch. 5 para. 17\(4\)](#)
- Art. 37(5) substituted by [S.I. 2019/531 Sch. 5 para. 17\(5\)](#)

Changes and effects yet to be applied to the whole legislation item and associated provisions

- Signature words omitted by [S.I. 2019/531 Sch. 5 para. 19](#)
- Art. 2(2)-(6) inserted by [S.I. 2019/531 Sch. 5 para. 2\(4\)](#)
- Art. 3(3) words substituted by [S.I. 2019/531 Sch. 5 para. 3\(3\)](#)
- Art. 3(5) words substituted by [S.I. 2019/531 Sch. 5 para. 3\(3\)](#)
- Art. 3(11) words substituted by [S.I. 2019/531 Sch. 5 para. 3\(3\)](#)
- Art. 3(17) words substituted by [S.I. 2019/531 Sch. 5 para. 3\(3\)](#)
- Art. 4(4)(b) words substituted by [S.I. 2019/531 Sch. 5 para. 4](#)
- Art. 5(3)(a) words substituted by [S.I. 2019/531 Sch. 5 para. 5\(2\)\(a\)\(i\)](#)
- Art. 5(3)(a) words substituted by [S.I. 2019/531 Sch. 5 para. 5\(2\)\(a\)\(ii\)](#)
- Art. 5(3)(b) words substituted by [S.I. 2019/531 Sch. 5 para. 5\(2\)\(b\)\(i\)](#)
- Art. 5(3)(b) words substituted by [S.I. 2019/531 Sch. 5 para. 5\(2\)\(b\)\(ii\)](#)
- Art. 5(4)(a) words substituted by [S.I. 2019/531 Sch. 5 para. 5\(3\)\(a\)\(i\)](#)
- Art. 5(4)(a) words substituted by [S.I. 2019/531 Sch. 5 para. 5\(3\)\(a\)\(ii\)](#)
- Art. 5(4)(b) words substituted by [S.I. 2019/531 Sch. 5 para. 5\(3\)\(b\)\(i\)](#)
- Art. 5(4)(b) words substituted by [S.I. 2019/531 Sch. 5 para. 5\(3\)\(b\)\(ii\)](#)
- Art. 13(1)(a) word substituted by [S.I. 2019/531, Sch. 5 para. 5D\(2\) \(as inserted\) by S.I. 2019/1393 Sch. para. 3](#)
- Art. 15(3)(d) word substituted by [S.I. 2019/531, Sch. 5 para. 5E\(2\)\(a\) \(as inserted\) by S.I. 2019/1393 Sch. para. 3](#)
- Art. 15(3)(h)(i) word substituted by [S.I. 2019/531, Sch. 5 para. 5E\(2\)\(b\) \(as inserted\) by S.I. 2019/1393 Sch. para. 3](#)
- Art. 21(4)(5) inserted by [S.I. 2019/531 Sch. 5 para. 6\(4\)](#)
- Art. 25(1)(b)(ii) words inserted by [S.I. 2019/531 Sch. 5 para. 7](#)
- Art. 25(1)(b)(ii) words substituted in earlier amending provision [S.I. 2019/531, Sch. 5 para. 7 by S.I. 2020/1016 reg. 4\(5\)](#)
- Art. 26(1)(a) words omitted by [S.I. 2019/531 Sch. 5 para. 8\(2\)\(a\)](#) (This amendment not applied to [legislation.gov.uk](#). Sch. 5 para. 8 substituted (25.10.2019) by [S.I. 2019/1393, reg. 1\(2\), Sch. para. 4](#))
- Art. 26(1)(a)(v) words substituted by [S.I. 2019/531 Sch. 5 para. 8\(2\)\(b\)\(ii\)](#) (This amendment not applied to [legislation.gov.uk](#). Sch. 5 para. 8 substituted (25.10.2019) by [S.I. 2019/1393, reg. 1\(2\), Sch. para. 4](#))
- Art. 26(1)(a)(ii) substituted by [S.I. 2019/531 Sch. 5 para. 8\(2\)\(b\)\(i\)](#) (This amendment not applied to [legislation.gov.uk](#). Sch. 5 para. 8 substituted (25.10.2019) by [S.I. 2019/1393, reg. 1\(2\), Sch. para. 4](#))
- Art. 26(1)(a)(vi) omitted by [S.I. 2019/531 Sch. 5 para. 8\(2\)\(b\)\(iii\)](#) (This amendment not applied to [legislation.gov.uk](#). Sch. 5 para. 8 substituted (25.10.2019) by [S.I. 2019/1393, reg. 1\(2\), Sch. para. 4](#))

- Art. 26(1)(c)(ii)(3) words omitted by [S.I. 2019/531 Sch. 5 para. 8\(2\)\(c\)](#) (This amendment not applied to legislation.gov.uk. Sch. 5 para. 8 substituted (25.10.2019) by [S.I. 2019/1393, reg. 1\(2\), Sch. para. 4](#))
- Art. 28(1)(b) words substituted by [S.I. 2019/531 Sch. 5 para. 10\(3\)](#) (This amendment not applied to legislation.gov.uk. Sch. 5 para. 10(3)(4) omitted (25.10.2019) by virtue of [S.I. 2019/1393, reg. 1\(2\), Sch. para. 6](#))
- Art. 28(1)(c) words substituted by [S.I. 2019/531 Sch. 5 para. 10\(4\)](#) (This amendment not applied to legislation.gov.uk. Sch. 5 para. 10(3)(4) omitted (25.10.2019) by virtue of [S.I. 2019/1393, reg. 1\(2\), Sch. para. 6](#))
- Art. 31(1)(d) omitted by [S.I. 2019/531 Sch. 5 para. 11\(2\)\(b\)](#)
- Art. 31(3)(b) omitted by [S.I. 2019/531 Sch. 5 para. 11\(4\)\(a\)](#)
- Art. 31(3)(c)(vii)(2) omitted by [S.I. 2019/531 Sch. 5 para. 11\(4\)\(b\)\(ii\)](#)
- Art. 31(3)(c)(vii) words substituted by [S.I. 2019/531 Sch. 5 para. 11\(4\)\(b\)\(i\)](#)
- Art. 32(c) words omitted by [S.I. 2019/531 Sch. 5 para. 12\(2\)\(a\)](#)
- Art. 32(c) words substituted by [S.I. 2019/531 Sch. 5 para. 12\(2\)\(b\)](#)
- Art. 32(c) words substituted by [S.I. 2019/531, Sch. 5 para. 12\(as substituted\) by S.I. 2019/1393 Sch. para. 7](#)
- Art. 33(6)(7) inserted by [S.I. 2019/531 Sch. 5 para. 13\(5\)](#)
- Art. 37(6) inserted by [S.I. 2019/531 Sch. 5 para. 17\(6\)](#)