



Brussels, **XXX**  
[...](2021) **XXX** draft

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on common rules for the internal market in natural gas**

(recast)

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↓ 2009/73/EC (adapted)

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**concerning  on  common rules for the internal market in natural gas and repealing  
Directive 2003/55/EC**

(recast)

**(Text with EEA relevance)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty ~~establishing the European Community~~  on the Functioning of the European Union , and in particular ~~Article 47(2) and Articles 55 and 95~~  194(2)  thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee<sup>1</sup>,

Having regard to the opinion of the Committee of the Regions<sup>2</sup>,

Acting in accordance with ~~the procedure laid down in Article 251 of the Treaty~~<sup>3</sup>  the ordinary legislative procedure ,

Whereas:

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↓ new

(1) A number of amendments are to be made to Directive 2009/73/EC of the European Parliament and of the Council<sup>4</sup>. In the interests of clarity, that Directive should be recast.

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<sup>1</sup> OJ C 211, 19.8.2008, p. 23.

<sup>2</sup> OJ C 172, 5.7.2008, p. 55.

<sup>3</sup> ~~Opinion of the European Parliament of 9 July 2008 (not yet published in the Official Journal), Council Common Position of 9 January 2009 (OJ C 70 E, 24.3.2009, p. 37) and Position of the European Parliament of 22 April 2009 (not yet published in the Official Journal). Council Decision of 25 June 2009.~~

<sup>4</sup> 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 (OJ L 211, 14.8.2009, p. 94).

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↓ 2009/72/EC Recital 1(adapted)

- (2) The internal market in natural gas, which has been progressively implemented throughout the ~~Community~~  Union  since 1999, aims to deliver real choice for all consumers of the European Union, be they citizens or businesses, new business opportunities and more cross-border trade, so as to achieve efficiency gains, competitive prices, and higher standards of service, and to contribute to security of supply and sustainability.
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↓ 2009/73/EC Recital 2  
(adapted)  
⇒ new

- (3) Directive 2003/55/EC of the European Parliament and of the Council of ~~26 June 2003 concerning common rules for the internal market in natural gas~~<sup>5</sup> and  Directive 2009/73/EC of the European Parliament and of the Council  ~~have~~ made a significant contribution towards the creation of such an internal market in natural gas.
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↓ new

- (4) The European Union aims for cutting greenhouse gas emissions, while also boosting a modern and resource-efficient economy. It includes a set of initiatives to reach this goal, including the energy system integration strategy and the hydrogen strategy published by the Commission in July 2020, which set out how to update the energy markets, including the decarbonisation of gas markets. This Directive will contribute to achieve these goals ensuring security supply and well-functioning of internal market for gases, including hydrogen market.
- (5) In order to facilitate the uptake of renewable and low carbon gases, discounts could be granted to tariffs charged at various points where these fuels enter and exit the gas system, including cross-border tariffs at interconnection points.
- (6) Low-carbon fuels (LCFs) such as low-carbon hydrogen (LCH) may play a role in the energy transition, particularly in the short and medium term to rapidly reduce emissions of existing fuels, and support the uptake of renewable fuels such as renewable hydrogen. The EU Energy System Integration strategy highlighted the need to deploy an EU-wide certification system to also cover low carbon fuels with the aim to enable Member States to compare them with other decarbonisation options and consider them in their energy mix as a viable solution. In order to ensure that LCFs would have the same decarbonisation impact as compared to other renewable alternatives it is very important that they are certified by applying a similar methodological approach based on a life cycle assessment of their total GHG emissions. This would eventually allow deploying a comprehensive EU-wide certification system, covering the whole EU energy mix. Taking into consideration that LCF and LCH are not renewable fuels, their terminology and certification could not be included in the proposal for a revision of Directive (EU) 2018/2001. Therefore, their inclusion in this Directive/ Regulation fills in this gap.

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<sup>5</sup> ~~OJL 176, 15.7.2003, p. 57~~

(7)

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↓ 2009/73/EC Recital 3

- (8) The freedoms which the Treaty guarantees the citizens of the Union — *inter alia*, the free movement of goods, the freedom of establishment and the freedom to provide services — are achievable only in a fully open market, which enables all consumers freely to choose their suppliers and all suppliers freely to deliver to their customers.
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↓ 2009/73/EC Recital 4

- (9) ~~However, at present, there are obstacles to the sale of gas on equal terms and without discrimination or disadvantages in the Community. In particular, non-discriminatory network access and an equally effective level of regulatory supervision in each Member State do not yet exist.~~
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↓ 2009/73/EC Recital 5

- (10) ~~The Communication of the Commission of 10 January 2007 entitled ‘An Energy Policy for Europe’ highlighted the importance of completing the internal market in natural gas and of creating a level playing field for all natural gas undertakings established in the Community. The Communications of the Commission of 10 January 2007 entitled ‘Prospects for the internal gas and electricity market’ and ‘Inquiry pursuant to Article 17 of Regulation (EC) No 1/2003 into the European gas and electricity sectors (Final Report)’ showed that the present rules and measures do not provide the necessary framework for achieving the objective of a well-functioning internal market.~~
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↓ 2009/73/EC recital 48 (adapted)

- (11) Consumer interests should be at the heart of this Directive and quality of service should be a central responsibility of natural gas undertakings. Existing rights of consumers need to be strengthened and guaranteed, and should include greater transparency. Consumer protection should ensure that all consumers in the wider remit of the ~~Community~~  Union  benefit from a competitive market. Consumer rights should be enforced by Member States or, where a Member State has so provided, the regulatory authorities.
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↓ 2009/73/EC recital 47.1

- (12) The public service requirements and the common minimum standards that follow from them need to be further strengthened to make sure that all consumers, especially vulnerable ones, can benefit from competition and fair prices. The public service requirements should be defined at national level, taking into account national circumstances; ~~Community~~  Union  law should, however, be respected by the Member States. The citizens of the Union and, where Member States deem it to be

appropriate, small enterprises, should be able to enjoy public service obligations, in particular with regard to security of supply and reasonable tariffs.

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↓ 2009/73/EC recital 47.2

- (13) A key aspect in supplying customers is access to objective and transparent consumption data. Thus, consumers should have access to their consumption data and associated prices and services costs so that they can invite competitors to make an offer based on ~~those data~~ ⇒ that information ⇐. Consumers should also have the right to be properly informed about their energy consumption. Prepayments should ⇒ not place a disproportionate disadvantage on their users, while ⇐ ~~reflect the likely consumption of natural gas~~ and different payment systems should be non-discriminatory. Information on energy costs provided to consumers frequently enough will create incentives for energy savings because it will give customers direct feedback on the effects of investment in energy efficiency and change of behaviour.
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↓ new

- (14) Currently, different models for the management of data have been developed or are under development in Member States following deployment of smart metering systems. Independently of the data management model it is important that Member States put in place transparent rules under which data can be accessed under non-discriminatory conditions and ensure the highest level of cybersecurity and data protection as well as the impartiality of the entities which process data.
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↓ 2009/73/EC recital 49  
(adapted)

- (15) Clear and comprehensible information should be made available to consumers concerning their rights in relation to the energy sector. The Commission ~~should establish~~ ☒ has established ☒, after consulting relevant stakeholders including Member States, ~~national~~ regulatory authorities, consumer organisations and natural gas undertakings, an accessible, user-friendly energy consumer checklist providing consumers with practical information about their rights. That energy consumer checklist should be ⇒ maintained to date, ⇐ provided to all consumers and ~~should be~~ made publicly available.
- (16) Gas bills are an important means to inform and empower final customers. As well as providing data on consumption and costs, they can also convey other information that helps consumers to compare their current arrangements with other offers. Energy bills remain the most common consumer concern and source of consumer complaints, a factor which contributes to the persistently low levels of consumer satisfaction and engagement in the gas sector. Provisions for billing information in the gas sector also lag behind rights granted to consumers in the electricity sector. It is therefore necessary to align them and to set minimum requirements for bills and billing information, so that consumers have access to transparent, easy to understand information on their consumption. Bills and billing information prominently display a limited number of important items of information that are necessary to enable consumers to regulate their energy consumption, compare offers and switch supplier. Other items of information

should be made available to final customers in, with or signposted to within their bills. Such items should be displayed on the bill or be in a separate document attached to the bill, or the bill should contain a reference to where the final customer is easily able to find the information on a website, through a mobile application or by other means.

(17) The regular provision of accurate billing information based on actual gas consumption, facilitated by smart metering, is important for helping customers to control their gas consumption and costs. Nevertheless, customers, in particular household customers, should have access to flexible arrangements for the actual payment of their bills. For example, it could be possible for customers to be provided with frequent billing information, while paying only on a quarterly basis, or there could be products for which the customer pays the same amount every month, independently of the actual consumption.

(18) Energy poverty is a key concept consolidated in the legislative package entitled ‘Clean Energy for All Europeans’ and designed to facilitate a just energy transition.

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↓ 2009/73/EC recital 50 (adapted)

(19) ~~Energy poverty is a growing problem in the Community.~~ Member States which are affected ⇒ by energy poverty ⇐ and which have not yet done so should, therefore, develop national action plans or other appropriate frameworks to tackle ~~energy poverty~~ ⇒ this problem ⇐, aiming at decreasing the number of people suffering such situation. In any event, Member States should ensure the necessary energy supply for vulnerable customers. In doing so, an integrated approach, such as in the framework of social policy, could be used and measures could include social policies or energy efficiency improvements for housing. At the very least, this Directive should allow national policies in favour of vulnerable customers.

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↓ 2009/73/EC recital 51

(20) Greater consumer protection is guaranteed by the availability of effective means of dispute settlement for all consumers. Member States should introduce speedy and effective complaint handling procedures.

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↓ new

(21) Member States shall take appropriate measures, such as providing benefits by means of their social security systems to ensure the necessary supply to vulnerable customers, or providing for support for energy efficiency improvements, to address energy poverty where identified pursuant to point (d) of Article 3(3) of Regulation (EU) 2018/1999, including in the broader context of poverty. Such measures may differ according to the particular circumstances in the Member States in question and may include social or energy policy measures relating to the payment of gas bills, to investment in the energy efficiency of residential buildings, or to consumer protection such as disconnection safeguards.

(22) Energy poor households are unable to afford those energy services due to a combination of low income, high expenditure on energy and poor energy efficiency of their homes.

Member States should collect the right information to monitor the number of households in energy poverty. Accurate measurement should assist Member States in identifying households that are affected by energy poverty in order to provide targeted support. The Commission should actively support the implementation of the provisions of this Directive on energy poverty by facilitating the sharing of good practices between Member States.

- (23) Where Member States are affected by energy poverty and have not developed national action plans or other appropriate frameworks to tackle energy poverty, they should do so, with the aim of decreasing the number of energy poor customers. Low income, high expenditure on energy, and poor energy efficiency of homes are relevant factors in establishing criteria for the measurement of energy poverty. In any event, Member States should ensure the necessary supply for vulnerable and energy poor customers. In doing so, an integrated approach, such as in the framework of energy and social policy, could be used and measures could include social policies or energy efficiency improvements for housing. This Directive should enhance national policies in favour of vulnerable and energy poor customers.
- (24) Pursuant to Regulation (EU) 2018/1999 and Directive (EU) 2019/944 of the European Parliament and of the Council, the Commission provided indicative guidance in October 2020 on appropriate indicators for measuring energy poverty and defining what a ‘significant number of households in energy poverty’ is. This Directive is therefore designed to reaffirm and strengthen Member States’ requirements to take appropriate measures to address energy poverty wherever it is identified, including measures addressing the broader context of poverty. Such measures shall not impede the effective opening of the market set out or market functioning and shall be notified to the Commission, where public service obligation requirements apply. Such notifications may also include measures taken within the general social security system.
- (25) Consumers should be able to consume, to store and to sell self-generated renewable gas to the market and to participate in all natural gas markets by providing ancillary services to the system, for instance through energy storage. Member States should be able to have different provisions in their national law with respect to taxes and levies for individual and jointly-acting active customers.
- (26) This Directive aims to recognise certain categories of citizen energy initiatives in the gas market at the Union level as ‘citizen energy communities’, in order to provide them with an enabling framework, fair treatment, a level playing field and a well-defined catalogue of rights and obligations. Household customers should be allowed to participate voluntarily in community energy initiatives as well as to leave them, without losing access to the network operated by the community energy initiative or losing their rights as consumers. Access to a citizen energy community's network should be granted on fair and cost.
- (27) Membership of citizen energy communities should be open to all categories of entities. However, the decision-making powers within a citizen energy community should be limited to those members or shareholders that are not engaged in large-scale commercial activity and for which the gas sector does not constitute a primary area of economic activity. Citizen energy communities are considered to be a category of cooperation of citizens or actors that should be subject to recognition and protection under Union law. The provisions on citizen energy communities do not preclude the existence of other citizen initiatives such as those stemming from private law agreements. It should therefore be possible for Member States to provide that citizen energy communities take

any form of entity, for example that of an association, a cooperative, a partnership, a non-profit organisation or a small or medium-sized enterprise, provided that the entity is entitled to exercise rights and be subject to obligations in its own name.

(28) The provisions of this Directive on citizen energy communities provide for rights and obligations, which are possible to deduce from other, existing rights and obligations, both in this Directive and the Gas Regulation, such as the freedom of contract, the right to switch supplier, the responsibilities of the distribution system operator, the rules on network charges, and balancing responsibilities.

(29) Citizen energy communities constitute a new type of entity due to their membership structure, governance requirements and purpose. They should be allowed to operate on the market on a level playing field without distorting competition, and the rights and obligations applicable to the other gas undertakings on the market should be applied to citizen energy communities in a non-discriminatory and proportionate manner. Those rights and obligations should apply in accordance with the roles that they undertake, such as the roles of final customers, producers, suppliers or distribution system operators. Citizen energy communities should not face regulatory restrictions when they apply existing or future information and communications technologies to share renewable gas produced using generation assets within the citizen energy community among their members or shareholders based on market principles. Renewable gas sharing enables members or shareholders to be supplied with renewable gas from generating installations within the community without being in direct physical proximity to the generating installation and without being behind a single metering point. Where renewable gas is shared, the sharing should not affect the collection of network charges, tariffs and levies related to gas flows. The sharing should be facilitated in accordance with the obligations and correct timeframes for balancing, metering and settlement. The provisions of this Directive on citizen energy communities do not interfere with the competence of Member States to design and implement policies relating to the energy sector in relation to network charges and tariffs, or to design and implement energy policy financing systems and cost sharing, provided that those policies are non-discriminatory and lawful.

(30) This Directive empowers Member States to allow citizen energy communities to become distribution system operators either under the general regime or as ‘closed distribution system operators’. Once a citizen energy community is granted the status of a distribution system operator, it should be treated as, and be subject to the same obligations as, a distribution system operator. The provisions of this Directive on citizen energy communities only clarify aspects of distribution system operation that are likely to be relevant for citizen energy communities, while other aspects of distribution system operation apply in accordance with the rules relating to distribution system operators.

(31) Member States should maintain wide discretion to impose public service obligations on gas undertakings in pursuing objectives of general economic interest. Public service obligations in the form of price setting for the supply of electricity constitute a fundamentally distortive measure that often leads to the accumulation of tariff deficits, the limitation of consumer choice, poorer incentives for energy saving and energy efficiency investments, lower standards of service, lower levels of consumer engagement and satisfaction, and the restriction of competition, as well as to there being fewer innovative products and services on the market. Consequently, Member States should apply other policy tools, in particular targeted social policy measures, to safeguard the affordability of natural gas supply to their citizens. Public interventions in price setting for the supply of natural gas should be carried out only as public service



obligations and should be subject to specific conditions set out in this Directive. A fully liberalised, well-functioning retail natural gas market would stimulate price and non-price competition among existing suppliers and provide incentives to new market entrants, thereby improving consumer choice and satisfaction.

- (32) Public service obligations in the form of price setting for the supply of natural gas should be used without overriding the principle of open markets in clearly defined circumstances and beneficiaries and should be limited in duration. Such circumstances might occur for example where supply is severely constrained, causing significantly higher natural gas prices than normal, or in the event of a market failure where interventions by regulatory authorities and competition authorities have proven to be ineffective. This would disproportionately affect households and, in particular, vulnerable customers who typically expend a higher share of their disposable income on energy bills compared to high-income consumers. In order to mitigate the distortive effects of public service obligations in price setting for the supply of natural gas, Member States applying such interventions should put in place additional measures, including measures to prevent distortions of price setting in the wholesale market. Member States should ensure that all beneficiaries of regulated prices are able to benefit fully from the offers available on the competitive market when they choose to do so. To that end, they should be directly and regularly informed of the offers and savings available on the competitive market, and should be provided with assistance to respond to and benefit from market-based offers.
- (33) Public interventions in price setting for the supply of natural gas should not lead to direct cross-subsidisation between different categories of customer. According to that principle, price systems must not explicitly make certain categories of customer bear the cost of price interventions that affect other categories of customer. For example, a price system, in which the cost is borne by suppliers or other operators in a non-discriminatory manner, should not be considered to be direct cross-subsidisation.
- (34) Plain and unambiguous information should be made available to consumers concerning their rights in relation to the energy sector. The Commission has established, after consulting relevant stakeholders, including Member States, regulatory authorities, consumer organisations and electricity undertakings, an energy consumer checklist that provides consumers with practical information about their rights. That checklist should be kept up to date, provided to all consumers and made publicly available.
- (35) Several factors impede consumers from accessing, understanding and acting upon the various sources of market information available to them. It follows that the comparability of offers should be improved and barriers to switching should be minimised to the greatest practicable extent without unduly limiting consumer choice.
- (36) Smaller customers are still being charged a broad range of fees directly or indirectly as a result of switching supplier. Such fees make it more difficult to identify the best product or service and diminish the immediate financial advantage of switching. Although removing such fees might limit consumer choice by eliminating products based on rewarding consumer loyalty, restricting their use further should improve consumer welfare, consumer engagement and competition in the market.
- (37) Shorter switching times are likely to encourage consumers to search for better energy deals and switch supplier. With the increased deployment of information technology, by the year 2026, the technical switching process of registering a new supplier in a metering point at the market operator should typically be possible to complete within 24 hours on any working day. Notwithstanding other steps in the switching process that

are to be completed before the technical process of switching is initiated, ensuring that it is possible by that date for the technical process of switching to take place within 24 hours would minimise switching times, helping to increase consumer engagement and retail competition. In any event, the total duration of the switching process should not exceed three weeks from the date of the customer's request.

- (38) Independent comparison tools, including websites, are an effective means for smaller customers to assess the merits of the different energy offers that are available on the market. Such tools lower search costs as customers no longer need to collect information from individual suppliers and service providers. Such tools can provide the right balance between the need for information to be clear and concise and the need for it to be complete and comprehensive. They should aim to include the broadest possible range of available offers, and to cover the market as completely as is feasible so as to give the customer a representative overview. It is crucial that smaller customers have access to at least one comparison tool and that the information given on such tools be trustworthy, impartial and transparent. To that end, Member States could provide for a comparison tool that is operated by a national authority or a private company.
- (39) Market rules should protect and empower customers to make low carbon choices, in order for new renewable and low carbon gases to be fully embedded in the energy transition. The conditions allowing this are still to be established. Currently, retail gas markets are characterised by market concentration and low levels of new entry and innovation. This prevents customers from benefiting from competition by making low carbon choices.
- (40) The importance of gas in energy supply is vital, as household energy consumption from gas is still higher than electricity. Although electrification is a key element of the green transition, in the future there will still be a significant household gas consumption including increasing volumes of renewable gases.
- (41) As the gas sector, including the gas retail market was not part of the Clean Energy Package, the related provisions on consumer engagement and protection have not been adapted to the needs of the energy transition, which corresponds instead the situation of over a decade ago when the Third Energy package was developed.
- (42) Gas market witnesses poor customer satisfaction and engagement as well as slow uptake of new gases, which all reflect limited competition in many Member States. Unlike falling prices in wholesale markets, gas prices for household customers rose in the last decade resulting in household consumers paying two or three times more expensively for their gas consumption than industrial customers.
- (43) Alike in electricity sector, market flexibilities and adequate EU consumer rights' legal framework in the gas sector are essential to ensure that consumers can participate in the energy transition and benefit from affordable prices, good standards of service, and effective choice of offers mirroring technological developments.
- (44) The switch from fossil gas to zero-emission alternatives will concretise if renewables become an attractive, non-discriminatory choice for consumers based on truly transparent information where the transition costs are fairly distributed among different groups of consumers and market players.
- (45) To address the current gaps in the retail gas market, any legislative intervention should aim to tackle the existing competition and technical barriers to the emergence of new services, better levels of service, and lower consumer prices, whilst ensuring the protection of energy poor and vulnerable consumers

- (46) In order to ensure a high level of consumer protection and empowerment consistently across energy sectors, the legislative framework in the decarbonised gas market legislation should reflect the electricity market customer protection and where relevant its empowerment provisions. This approach is largely supported by stakeholders, as it is also the most effective to accommodate national differences in retail markets.
- (47) To be coherent and effective, this mirroring approach should be holistic, thus encompassing all consumer protection and empowerment provisions, whenever feasible and adaptable to the gas market. This range from basic contractual rights to rules for billing information, switching energy provider, have at disposal reliable comparison tools, protect vulnerable and energy poor consumers, ensure adequate data protection for smart meters and data management, and efficient alternative dispute resolution rules.
- (48) In pursuing the consistency of provisions across sectors, burdens for national administrations and businesses should be limited and proportionate by also building on the experience with the clean energy package.
- (49) The modernisation of the gas sector is expected to lead to substantial economic benefits in terms of both improved retail competition and customer empowerment, including better available information on consumption and energy sources leading to greener choices. Energy communities-of-interest would contribute to the uptake of biomethane and low-carbon gases.

↓ 2009/73/EC recital 52 (adapted)

- (50) ⇒ When it comes to deciding at national level on the deployment of [natural] gas smart metering systems ⇐, **it should be possible to base** ⇐ this decision ⇐ **the introduction of intelligent metering systems** on an economic assessment. ⇐ That economic assessment should take into account the long-term benefits of the deployment of smart metering systems to consumers and the whole value chain. ⇐ Should that assessment conclude that the introduction of such metering systems is economically reasonable and cost-effective only for consumers with a certain amount of ⇐ [natural] ⇐ gas consumption, Member States should be able to take this into account when ~~implementing~~ ⇐ proceeding with deployment ⇐ . ⇐ However, such assessments should be reviewed regularly in response to significant changes in the underlying assumptions, or at least every four years, given the fast pace of technological developments. ⇐

↓ new

- (51) In order to assist final customers' active participation in the market, the smart metering systems to be deployed should have due regard to the use of relevant available standards, including those enabling interoperability on the level of the data model and the application layer, to best practices and the importance of the development of data exchange, to future and innovative energy services. Moreover, the smart metering systems that are deployed should not represent a barrier to switching supplier in the case of [natural] gas consumers, and should be equipped with fit-for-purpose functionalities that allow final customers to have timely access to their consumption data, to modulate their energy behaviour, be rewarded for it, and obtain savings in their bills.

(52) Member States that do not systematically deploy smart metering in the [natural] gas system should allow consumers to benefit from the installation of a smart meter, upon request and under fair and reasonable conditions, and should provide them with all the relevant information. Where consumers do not have smart meters, they should be entitled to meters that fulfil the minimum requirements necessary to provide them with the billing information specified in this Directive.

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↓ new

(53) Grandfathering of authorisations (such as licences, permissions, concessions or approvals) granted under national law for the construction and operation of existing natural gas pipelines and other network assets is needed once the transported gaseous energy carrier in a gas pipeline changes from natural gas to (pure) hydrogen. This should prevent undue delay in repurposing existing natural gas pipelines and other networks assets for hydrogen transport. It should be avoided that conditions for granting authorisations for hydrogen system infrastructure are materially different on non-substantive grounds. Technical-safety considerations may justify a differentiated approach in grandfathering existing or issuing new authorisations.

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↓ 2009/73/EC Recital 6

(54) Without effective separation of networks from activities of production and supply (effective unbundling), there is a risk of discrimination not only in the operation of the network but also in the incentives for vertically integrated undertakings to invest adequately in their networks.

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↓ 2009/73/EC Recital 7

~~(55) The rules on legal and functional unbundling as provided for in Directive 2003/55/EC have not, however, led to effective unbundling of the transmission system operators. At its meeting on 8 and 9 March 2007, the European Council therefore invited the Commission to develop legislative proposals for the ‘effective separation of supply and production activities from network operations’.~~

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↓ 2009/73/EC Recital 8 (adapted)

(56) Only the removal of the incentive for vertically integrated undertakings to discriminate against competitors as regards network access and investment can ensure effective unbundling. Ownership unbundling, which implies the appointment of the network owner as the system operator and its independence from any supply and production interests, is clearly an effective and stable way to solve the inherent conflict of interests and to ensure security of supply. For that reason, the European Parliament, in its resolution of 10 July 2007 on prospects for the internal gas and electricity market<sup>6</sup> referred to ownership unbundling at transmission level as the most effective tool ~~by~~

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<sup>6</sup> OJ C 175 E, 10.7.2008, p. 206.

which to promote investments in infrastructure in a non-discriminatory way, fair access to the network for new entrants and transparency in the market. Under ownership unbundling, Member States should therefore be required to ensure that the same person or persons are not entitled to exercise control over a production or supply undertaking and, at the same time, exercise control or any right over a transmission system operator or transmission system. Conversely, control over a transmission system or transmission system operator should preclude the possibility of exercising control or any right over a production or supply undertaking. Within those limits, a production or supply undertaking should be able to have a minority shareholding in a transmission system operator or transmission system.

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↓ 2009/73/EC Recital 9

- (57) Any system for unbundling should be effective in removing any conflict of interests between producers, suppliers and transmission system operators, in order to create incentives for the necessary investments and guarantee the access of new market entrants under a transparent and efficient regulatory regime and should not create an overly onerous regulatory regime for national regulatory authorities.
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↓ 2009/73/EC Recital 10

- (58) ~~The definition of the term ‘control’ is taken from Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation)<sup>7</sup>.~~
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↓ 2009/73/EC Recital 11

- (59) Since ownership unbundling requires, in some instances, the restructuring of undertakings, Member States that decide to implement ownership unbundling should be granted additional time to apply the relevant provisions. In view of the vertical links between the electricity and gas sectors, the unbundling provisions should apply across the two sectors.
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↓ new

- (60) In contrast, **with regard to the hydrogen sector,** the appearance of vertically integrated companies can be avoided in the first place by setting clear up-front rules. This is preferable over costly and ex-post unbundling requirements that will take time to implement.

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<sup>7</sup> OJL 24, 29.1.2004, p. 1

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↓ 2009/73/EC Recital 12

- (61) Under ownership unbundling, to ensure full independence of network operation from supply and production interests and to prevent exchanges of any confidential information, the same person should not be a member of the managing boards of both a transmission system operator or a transmission system and an undertaking performing any of the functions of production or supply. For the same reason, the same person should not be entitled to appoint members of the managing boards of a transmission system operator or a transmission system and to exercise control or any right over a production or supply undertaking.

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↓ 2009/73/EC Recital 13

- (62) The setting up of a system operator or a transmission operator that is independent from supply and production interests should enable a vertically integrated undertaking to maintain its ownership of network assets whilst ensuring an effective separation of interests, provided that such independent system operator or such independent transmission operator performs all the functions of a system operator and detailed regulation and extensive regulatory control mechanisms are put in place.

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↓ 2009/73/EC Recital 14  
(adapted)

- (63) Where, on 3 September 2009, an undertaking owning a transmission system ~~is~~  was  part of a vertically integrated undertaking, Member States should therefore be given a choice between ownership unbundling and setting up a system operator or transmission operator which is independent from supply and production interests.

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↓ 2009/73/EC Recital 15

- (64) To preserve fully the interests of the shareholders of vertically integrated undertakings, Member States should have the choice of implementing ownership unbundling either by direct divestiture or by splitting the shares of the integrated undertaking into shares of the network undertaking and shares of the remaining supply and production undertaking, provided that the requirements resulting from ownership unbundling are complied with.

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↓ 2009/73/EC Recital 16  
(adapted)

- (65) The full effectiveness of the independent system operator or independent transmission operator solutions should be ensured by way of specific additional rules. The rules on the independent transmission operator provide an appropriate regulatory framework to guarantee fair competition, sufficient investment, access for new market entrants and

the integration of gas markets. Effective unbundling through the independent transmission operator provisions should be based on a pillar of organisational measures and measures relating to the governance of transmission system operators and on a pillar of measures relating to investment, connecting new production capacities to the network and market integration through regional cooperation. The independence of the transmission operator should also, *inter alia*, be ensured through certain ‘cooling-off’ periods during which no management or other relevant activity giving access to the same information as could have been obtained in a managerial position is exercised in the vertically integrated undertaking. ~~The independent transmission operator model of effective unbundling is in line with the requirements laid down by the European Council at its meeting on 8 and 9 March 2007.~~

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↓ 2009/73/EC Recital 17  
⇒ new

- (66) In order to develop competition in the internal market in gas, large non-household customers ⇒, engaged in large-scale commercial activities, ⇐ should be able to choose their suppliers and enter into contracts with several suppliers to secure their gas requirements. Such customers should be protected against exclusivity clauses, the effect of which is to exclude competing or complementary offers.
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↓ 2009/73/EC recital 18

- (67) A Member State has the right to opt for full ownership unbundling in its territory. Where a Member State has exercised that right, an undertaking does not have the right to set up an independent system operator or an independent transmission operator. Furthermore, an undertaking performing any of the functions of production or supply cannot directly or indirectly exercise control or any right over a transmission system operator from a Member State that has opted for full ownership unbundling.
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↓ 2009/73/EC recital 19(adapted)

- (68) ~~Under this Directive d~~Different types of market organisation will exist in the internal market in natural gas. The measures that Member States could take in order to ensure a level playing field should be based on overriding requirements of general interest. The Commission should be consulted on the compatibility of the measures with the Treaty and ~~Community~~ ⊗ Union ⊗ law.
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↓ 2009/73/EC recital 20

- (69) The implementation of effective unbundling should respect the principle of non-discrimination between the public and private sectors. To that end, the same person should not be able to exercise control or any right, in violation of the rules of ownership unbundling or the independent system operator option, solely or jointly, over the composition, voting or decision of the bodies of both the transmission system operators or the transmission systems and the production or supply undertakings. With regard to

ownership unbundling and the independent system operator solution, provided that the Member State in question is able to demonstrate that the requirement is complied with, two separate public bodies should be able to control production and supply activities on the one hand and transmission activities on the other.

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↓ 2009/73/EC recital 21(adapted)  
(adapted)

- (70) Fully effective separation of network activities from supply and production activities should apply throughout the ~~Community~~ ☒ Union ☒ to both ~~Community~~ ☒ Union ☒ and ~~non-Community~~ ☒ Union ☒ undertakings. To ensure that network activities and supply and production activities throughout the ~~Community~~ ☒ Union ☒ remain independent from each other, regulatory authorities should be empowered to refuse certification to transmission system operators that do not comply with the unbundling rules. To ensure the consistent application of those rules across the ~~Community~~ ☒ Union ☒, the regulatory authorities should take utmost account of the Commission's opinion when the former take decisions on certification. To ensure, in addition, respect for the international obligations of the ~~Community~~ ☒ Union ☒ and solidarity and energy security within the ~~Community~~ ☒ Union ☒, the Commission should have the right to give an opinion on certification in relation to a transmission system owner or a transmission system operator which is controlled by a person or persons from a third country or third countries.
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↓ new

- (71) Today, hydrogen networks that belong to a vertically integrated undertaking and that are operated based on long-term commitments by both investors and their customers already exist in some Member States. This Directive aims, amongst others, to address the risk that the natural monopoly character of hydrogen infrastructure gives rise to non-competitive market outcomes. The current absence of competition between sellers and buyers of hydrogen to get access to these existing networks might justify exemptions to regulatory principles set out in this Directive but, at the same time, the risk of regulatory divergence hampering market integration and a level playing field between all market participants might emerge, once a more integrated hydrogen network interconnects previously isolated hydrogen cluster develops.
- (72) Pipeline networks for hydrogen will constitute an important means of efficient and sustainable transport for hydrogen. As a result of the high capital expenditure required for their construction, hydrogen pipeline networks can constitute natural monopolies. Experience with the regulation of natural gas markets has shown the importance of ensuring open and non-discriminatory access to pipeline networks with a view to safeguarding competition on commodity markets. The operation of hydrogen networks should be separated from the activities of energy production and supply in order to avoid the risk of conflicts of interest on behalf of the network operators. The structural separation of ownership of hydrogen networks and participations in energy production and supplies guarantees the absence of such conflicts of interest. Member States should be able to rely on the alternative unbundling model of integrated hydrogen network operator until 2030 to provide a transitional period for existing vertically integrated



hydrogen networks. Member States should also be able to offer the use of an independent hydrogen network operator to allow vertically integrated owners of hydrogen networks to retain ownership of their networks while ensuring the non-discriminatory operation of such networks after 2030.

- (73) Existing vertically integrated hydrogen networks should be integrated into the regulatory framework following a transition period.
- (74) Localised hydrogen clusters will be an important building block of the European hydrogen economy. Such clusters could benefit from simplified regulatory requirements during the ramp-up phase of the hydrogen market. However, their regulatory integration should be required once they are connected to a wider network or where necessary to ensure a level playing field between competing producers.
- (75) To ensure the efficient operation of the European hydrogen networks, hydrogen network operators should be responsible for the operation, maintenance and development of the hydrogen transport network in close cooperation with other hydrogen network operators as well as with other system operators their networks are connected with, including to facilitate energy system integration.
- (76) This Directive tasks hydrogen system operators with building sufficient cross-border capacity for the transportation of hydrogen accommodating all economically reasonable and technically feasible demands for such capacity, thereby enabling market integration.

↓ (EU) 2019/692 recital 3  
⇒ new

- (77) This Directive seeks ⇒ also ⇐ to address obstacles to the completion of the internal market in natural gas which result from the non-application of Union market rules to gas transmission lines to and from third countries. The ~~amendments introduced by~~ ⇒ provisions of ⇐ this Directive are intended to ensure that the rules applicable to gas transmission lines connecting two or more Member States are also applicable, within the Union, to gas transmission lines to and from third countries. This will establish consistency of the legal framework within the Union while avoiding distortion of competition in the internal energy market in the Union and negative impacts on the security of supply. It will also enhance transparency and provide legal certainty to market participants, in particular investors in gas infrastructure and system users, as regards the applicable legal regime.

↓ (EU) 2019/692 recital 5

- (78) Pipelines connecting a third-country oil or gas production project to a processing plant or to a final coastal landing terminal within a Member State should be considered to be upstream pipeline networks. Pipelines connecting an oil or gas production project in a Member State to a processing plant or to a final coastal landing terminal within a third country should not be considered to be upstream pipeline networks for the purpose of this Directive, since such pipelines are unlikely to have a significant impact on the internal energy market.

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↓ (EU) 2019/692 recital 6

- (79) Transmission system operators should be free to conclude technical agreements with transmission system operators or other entities in third countries on issues concerning the operation and interconnection of transmission systems, provided that the content of such agreements is compatible with Union law.
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↓ (EU) 2019/692 recital 7

- (80) Technical agreements regarding the operation of transmission lines between transmission system operators or other entities should remain in force provided that they comply with Union law and the relevant decisions of the ~~national~~ regulatory authority.
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↓ (EU) 2019/692 recital 8

- (81) When such technical agreements are in place, the conclusion of an international agreement between a Member State and a third country or of an agreement between the Union and a third country regarding the operation of the gas transmission line concerned is not required by this Directive.
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↓ (EU) 2019/692 recital 9

⇒ new

- (82) The applicability of ~~Directive 2009/73/EC~~ ⇒ this Directive ⇐ to gas transmission lines to and from third countries remains confined to the territory of the Member States. As regards offshore gas transmission lines, ~~Directive 2009/73/EC~~ ⇒ this Directive ⇐ should be applicable in the territorial sea of the Member State where the first interconnection point with the Member States' network is located.
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↓ (EU) 2019/692 recital 10

- (83) It should be possible for existing agreements concluded between a Member State and a third country on the operation of transmission lines to remain in force, in accordance with this Directive.

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↓ (EU) 2019/692 recital 11

- (84) With regard to agreements or parts of agreements with third countries which may affect common rules of the Union, a coherent and transparent procedure should be established by which to authorise a Member State, upon its request, to amend, extend, adapt, renew or conclude an agreement with a third country on the operation of a transmission line or an upstream pipeline network between the Member State and a third country. The procedure should not delay the implementation of this Directive, should be without prejudice to the allocation of competence between the Union and the Member States, and should apply to existing and new agreements.

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↓ (EU) 2019/692 recital 12

- (85) Where it is apparent that the subject matter of an agreement falls partly within the competence of the Union and partly within that of a Member State, it is essential to ensure close cooperation between that Member State and the Union institutions.

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↓ (EU) 2019/692 recital 14

- (86) In order to adopt decisions authorising or refusing to authorise a Member State to amend, extend, adapt, renew or conclude an agreement with a third country, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council (11).

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↓ 2009/73/EC recital 22

⇒ new

- (87) The security of energy supply is an essential element of public security and is therefore inherently connected to the efficient functioning of the internal market in gas and the integration of the isolated gas markets of Member States. Gas can reach the citizens of the Union only through the network. Functioning open gas markets and, in particular, the networks and other assets associated with gas supply are essential for public security, for the competitiveness of the economy and for the well-being of the citizens of the Union. Persons from third countries should therefore only be allowed to control a transmission system or a transmission system operator if they comply with the requirements of effective separation that apply inside the ~~Community~~ ☒ Union ☒. Without prejudice to the international obligations of the ~~Community~~ ☒ Union ☒, the ~~Community~~ ☒ Union ☒ considers that the gas transmission system sector is of high importance to the ~~Community~~ ☒ Union ☒ and therefore additional safeguards are necessary regarding the preservation of the security of supply of energy to the ~~Community~~ ☒ Union ☒ to avoid any threats to public order and public security in the ~~Community~~ ☒ Union ☒ and the welfare of the citizens of the Union. The security of

supply of energy to the ~~Community~~  Union  requires, in particular, an assessment of the independence of network operation, the level of the ~~Community~~  Union ’s and individual Member States’ dependence on energy supply from third countries, and the treatment of both domestic and foreign trade and investment in energy in a particular third country. Security of supply should therefore be assessed in the light of the factual circumstances of each case as well as the rights and obligations arising under international law, in particular the international agreements between the ~~Community~~  Union  and the third country concerned. Where appropriate the Commission ~~⇒ will~~  ~~is encouraged~~ to submit recommendations to negotiate relevant agreements with third countries addressing the security of supply of energy to the ~~Community~~  Union  or to include the necessary issues in other negotiations with those third countries.

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↓ 2009/73/EC recital 23

- (88) Further measures should be taken in order to ensure transparent and non-discriminatory tariffs for access to transport. Those tariffs should be applicable to all users on a non-discriminatory basis. Where a 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.
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↓ 2009/73/EC recital 24

- (89) It is necessary to ensure the independence of storage system operators in order to improve third-party access to storage facilities that **are technically and/or economically necessary** for providing efficient access to the system for the supply of customers. It is therefore appropriate that storage facilities are operated through legally separate entities that have effective decision-making rights with respect to assets necessary to maintain, operate and develop storage facilities. It is also necessary to increase transparency in respect of the storage capacity that is offered to third parties, by obliging Member States to define and publish a non-discriminatory, clear framework that determines the appropriate regulatory regime applicable to storage facilities. That obligation should not require a new decision on access regimes but should improve the transparency regarding the access regime to storage. Confidentiality requirements for commercially sensitive information are particularly important where data of a strategic nature are concerned or where there is only a single user of a storage facility.
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↓ 2009/73/EC recital 25(adapted)

- (90) Non-discriminatory access to the distribution network determines downstream access to customers at retail level. The scope for discrimination as regards third party access and investment, however, is less significant at distribution level than at transmission level where congestion and the influence of production interests are generally greater than at distribution level. Moreover, legal and functional unbundling of distribution system operators was required, pursuant to Directive 2003/55/EC, only from 1 July 2007 and its effects on the internal market in natural gas still need to be evaluated. The rules on legal and functional unbundling currently in place can lead to effective

unbundling provided they are more clearly defined, properly implemented and closely monitored. To create a level playing field at retail level, the activities of distribution system operators should therefore be monitored so that they are prevented from taking advantage of their vertical integration as regards their competitive position on the market, in particular in relation to household and small non-household customers.

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↓ 2009/73/EC recital 26

- (91) Member States should take concrete measures to assist the wider use of biogas and gas from biomass, the producers of which should be granted non-discriminatory access to the gas system, provided that such access is compatible with the relevant technical rules and safety standards on an ongoing basis.
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↓ new

- (92) Producers of renewable and low carbon gases are very frequently connected to the distribution grid. To facilitate their uptake and market integration access to the wholesale market and the relevant virtual trading points it is essential. The participation in the wholesale market is determined by the way in which the entry-exit systems are defined. In many countries, generators connected to the distribution grid are not part of the entry-exit system. This Directive intends to facilitate the access of renewable and low carbon gases by adapting the current definition of entry-exit system and ultimately ensuring that generation facilities connected to the distribution system are part of it. In addition, Regulation [...] foresees that distribution system operators and transmission system operators will work together to enable reverse flows from the distribution to the transmission network or alternative means to facilitate the market integration of renewable and low carbon gases.
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↓ 2009/73/EC recital 27

- (93) To avoid imposing a disproportionate financial and administrative burden on small distribution system operators, Member States should be able, where necessary, to exempt the undertakings concerned from the legal distribution unbundling requirements.
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↓ 2009/73/EC recital 28

- (94) Where a closed distribution system is used to ensure the optimal efficiency of an integrated energy supply requiring specific operational standards, or a closed distribution system is maintained primarily for the use of the owner of the system, it should be possible to exempt the distribution system operator from obligations which would constitute an unnecessary administrative burden because of the particular nature of the relationship between the distribution system operator and the users of the system. Industrial, commercial or shared services sites such as train station buildings, airports, hospitals, large camping sites with integrated facilities or chemical industry

sites can include closed distribution systems because of the specialised nature of their operations.

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↓ 2009/73/EC recital 29

- (95) ~~Directive 2003/55/EC introduced a requirement for Member States to establish regulators with specific competences. However, experience shows that the effectiveness of regulation is frequently hampered through a lack of independence of regulators from government, and insufficient powers and discretion. For that reason, at its meeting on 8 and 9 March 2007, the European Council invited the Commission to develop legislative proposals providing for further harmonisation of the powers and strengthening of the independence of national energy regulators. It should be possible for those national regulatory authorities to cover both the electricity and the gas sectors.~~
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↓ 2009/73/EC recital 30

- (96) Energy regulators need to be able to take decisions in relation to all relevant regulatory issues if the internal market in natural gas is to function properly, and to be fully independent from any other public or private interests. This precludes neither judicial review nor parliamentary supervision in accordance with the constitutional law of the Member States. In addition, approval of the budget of the regulator by the national legislator does not constitute an obstacle to budgetary autonomy. The provisions relating to autonomy in the implementation of the allocated budget of the regulatory authority should be implemented within the framework defined by national budgetary law and rules. While contributing to the independence of the ~~national~~ regulatory authority from any political or economic interest through an appropriate rotation scheme, it should be possible for Member States to take due account of the availability of human resources and of the size of the board.
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↓ 2009/73/EC recital 31

- (97) In order to ensure effective market access for all market players, including new entrants, non-discriminatory and cost-reflective balancing mechanisms are necessary. 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. ~~National~~ National Regulatory authorities should play an active role to ensure that balancing tariffs are non-discriminatory and cost-reflective. At the same time, appropriate incentives should be provided to balance the in-input and off-take of **gas** and not to endanger the system.
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↓ 2009/73/EC recital 32

- (98) ~~National~~ 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 liquefied natural

gas (LNG) system operator, or on the basis of a proposal agreed between those operator(s) and the users of the network. In carrying out those 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.

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↓ new

- (99) Regulatory authorities should promote, in close cooperation with the Agency, an open, competitive, secure and environmentally sustainable internal market in hydrogen with unhindered cross-border flows. Energy regulators need to be able to take decisions in relation to all relevant regulatory issues if the internal market in hydrogen is to function properly.

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↓ 2009/73/EC recital 33

- (100) Energy regulators should have the power to issue binding decisions in relation to natural gas undertakings and to impose effective, proportionate and dissuasive penalties on natural gas undertakings which fail to comply with their obligations or to propose that a competent court impose such penalties on them. Energy regulators should also be granted the power to decide, irrespective of the application of competition rules, on appropriate measures ensuring customer benefits through the promotion of effective competition necessary for the proper functioning of the internal market in natural gas. The establishment of gas-release programmes is one of the possible measures that can be used to promote effective competition and ensure the proper functioning of the market. ~~Energy regulators should also be granted the powers to contribute to ensuring high standards of public service in compliance with market opening, to the protection of vulnerable customers, and to the full effectiveness of consumer protection measures. Those provisions should be without prejudice to both the Commission's powers concerning the application of competition rules including the examination of mergers with a Community dimension, and the rules on the internal market such as the free movement of capital. The independent body to which a party affected by the decision of a national regulator has a right to appeal could be a court or other tribunal empowered to conduct a judicial review.~~

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↓ 2009/73/EC recital 33

- (101) Energy regulators should also be granted the powers to contribute to ensuring high standards of public service in compliance with market opening, to the protection of vulnerable customers, and to the full effectiveness of consumer protection measures. Those provisions should be without prejudice to both the Commission's powers concerning the application of competition rules including the examination of mergers with a ~~Community~~ ☒ Union ☒ dimension, and the rules on the internal market such as the free movement of capital. The independent body to which a party affected by the decision of a national regulator has a right to appeal could be a court or other tribunal empowered to conduct a judicial review.

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↓ 2009/73/EC recital 34

- (102) Any harmonisation of the powers of ~~national~~ regulatory authorities should include the powers to provide incentives to ~~natural gas~~ undertakings and to impose effective, proportionate and dissuasive penalties on ~~natural gas~~ undertakings or to propose that a competent court impose such penalties. Moreover, regulatory authorities should have the power to request relevant information from ~~natural gas~~ undertakings, make appropriate and sufficient investigations and settle disputes.
- 

↓ new

- (103) The regulatory authorities and ACER should provide information on the hydrogen market to ensure transparency, including aspects such as supply and demand, transport infrastructure, quality of service, cross-border trade, investments, consumer prices, market liquidity.
- (104) Transmission system operators play an important role in ensuring cost effective investments in gas networks. For an optimised planning across energy carriers and bridge the gap between the diverse national and EU-wide network planning approaches, additional requirements for consist planning have been introduced. The network planning will also need to take account of the increased interlinkages between the gas and electricity, as well as the introduction of novel gases.
- (105) When developing the network development plan, it is important that infrastructure operators should take the energy efficiency first principle into account, specifically, but not limited to the expected consumption used for the joint scenario development.
- (106) Based on the energy system integration strategy “the coordinated planning and operation of the energy system ‘as a whole’, across multiple energy carriers, infrastructures, and consumption sectors – is the pathway towards an effective, affordable and deep decarbonisation of the European economy in line with the Paris Agreement and the UN’s 2030 Agenda for Sustainable Development.” In order to enable this, a network development is required to be drawn up based on a joint scenario that is developed on a cross-sectoral basis. While still keeping separate sectorial plans, infrastructure operators should work towards a higher level of integration taking into account system needs beyond specific energy carriers.
- (107) Network development plans are an important element to identify infrastructure gaps and provide information on infrastructure that either needs to be built or that can be decommissioned and could be used for other purposes, such as hydrogen transport. This is true irrespective of the unbundling model chosen.
- (108) Providing information on infrastructure that is expected to be decommissioned within the network development plan may mean either leaving the infrastructure unused, dismantling it or using it for other purposes, such as hydrogen transport. The objective of this increased transparency takes into account that repurposed infrastructure is comparatively cheaper than new built infrastructure and hence shall enable a cost effective transition.
- (109) In the Member States where a hydrogen network will be developed, reporting on the development of hydrogen infrastructure has to ensure that the construction of a hydrogen system is based on a realistic and forward-looking demand projection. If



Member States decide to allow for dedicated charges as a means of co-funding new hydrogen infrastructure, this report should support the regulator in its assessment of these charges. The report will be submitted on a regular basis to be decided by the regulatory authority. In light of the ramp-up character of the hydrogen market, a disproportionate and continuous sequencing of the reporting obligation however has to be avoided.

- (110) Information contained in the network development plan should enable a forecast on the impacts on tariffs based on planning and decommissioning affecting the regulated asset base as mentioned in Article 54 of this Directive.
- (111) Instead of providing a national network development plan on individual Member State level, Member States may choose to draw up a network development on regional level and in line with voluntary regional gas market integration.
- (112) In contrast to electricity, the role of natural gas is expected to decrease, which also affects the demand for infrastructure investments. The network development plan therefore needs to balance competition concerns and avoiding stranded assets. Consequently, ownership unbundled transmission system operators are not covered by Article 54 (7) in contrast to electricity

↓ 2009/73/EC	recital	35
(adapted)		
⇒ new		

- (113) Investments in major new infrastructure should be strongly promoted while ensuring the proper functioning of the internal market ⇒ of gases ⇐ ~~in natural gas~~. In order to enhance the positive effect of exempted infrastructure projects on competition and security of supply, market interest during the project planning phase should be tested and congestion management rules should be implemented. Where an infrastructure is located in the territory of more than one Member State, the Agency for the Cooperation of Energy Regulators established by Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators<sup>8</sup> (the ‘Agency’) should handle as a last resort the exemption request in order to take better account of its cross-border implications and to facilitate its administrative handling. Moreover, given the exceptional risk profile of constructing those exempt major infrastructure projects, it should be possible temporarily to grant partial derogations to undertakings with supply and production interests in respect of the unbundling rules for the projects concerned. The possibility of temporary derogations should apply, for security of supply reasons, in particular, to new pipelines within the ~~Community~~ Union ⇐ transporting gas from third countries into the ~~Community~~ Union ⇐. Exemptions granted under Directive ~~2003/55/EC~~ ⇒ 2009/73/EC ⇐ continue to apply until the scheduled expiry date as decided in the granted exemption decision.

<sup>8</sup> See page 1 of this Official Journal.

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↓ new

- (114) Progressing towards interconnected hydrogen markets in the Union and thereby facilitating investments in cross-border hydrogen infrastructure is among the goals of this Directive. Under the regulated third-party access regime in the absence of cross-border transportation tariffs [after 31 December 2030] a system of financial compensation should provide financial incentives for market participants to develop cross-border interconnectors.
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↓ 2009/73/EC recital 36 (adapted)

- (115) ~~The internal market in natural gas suffers from a lack of liquidity and transparency hindering the efficient allocation of resources, risk hedging and new entry.~~ Trust in the market, its liquidity and the number of market participants needs to increase, and, therefore, regulatory oversight of undertakings active in the supply of gas needs to be increased. Such requirements should be without prejudice to, and compatible with, existing Community ~~⊗~~ Union ~~⊗~~ law in relation to the financial markets. Energy regulators and financial market regulators need to cooperate in order to enable each other to have an overview of the markets concerned.
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↓ 2009/73/EC recital 37

- (116) Natural gas is mainly, and increasingly, imported into the Community ~~⊗~~ Union ~~⊗~~ from third countries. Community ~~⊗~~ Union ~~⊗~~ law should take account of the characteristics of natural gas, such as certain structural rigidities arising from the concentration of suppliers, the long-term contracts or the lack of downstream liquidity. Therefore, more transparency is needed, including in regard to the formation of prices.
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↓ 2009/73/EC recital 38

- (117) Prior to the adoption by the Commission of Guidelines defining further the record-keeping requirements, the Agency and the Committee of European Securities Regulators (the 'CESR'), established by Commission Decision 2009/77/EC<sup>9</sup>, should confer and advise the Commission in regard to their content. The Agency and the CESR should also cooperate to investigate further and advise on whether transactions in gas supply contracts and gas derivatives should be subject to pre- and/or post-trade transparency requirements and, if so, what the content of those requirements should be.
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↓ 2009/73/EC recital 39

- (118) Member States or, where a Member State has so provided, the regulatory authority, should encourage the development of interruptible supply contracts.
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<sup>9</sup> OJ L 25, 29.1.2009, p. 18.

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↓ 2009/73/EC recital 40

(119) In the interests of security of supply, the balance between supply and demand in individual Member States should be monitored, and such monitoring should be followed by a report on the situation at ~~Community~~  Union  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.

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↓ 2009/73/EC recital 41

(120) Member States should ensure that, taking into account the necessary quality requirements, biogas and gas from biomass or other types of gas are granted non-discriminatory access to the gas system, provided such access is permanently compatible with the relevant technical rules and safety standards. Those rules and standards should ensure that those gases can technically and safely be injected into, and transported through the natural gas system and should also address their chemical characteristics.

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↓ 2009/73/EC recital 42  
(adapted)  
⇒ new

(121) Long-term contracts ~~will continue to be~~ ⇒ are ⇐ 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 objective of this Directive and are compatible with the Treaty  on the Functioning of the European Union,  including the competition rules. It is ~~therefore~~ necessary to take into account long-term contracts in the planning of supply and transport capacity of ~~natural gas~~ undertakings.

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↓ 2009/73/EC recital 43 (adapted)

(122) In order to ensure the maintenance of high standards of public service in the  Union  ~~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 whether they are aimed at household customers or small and medium-sized enterprises.

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↓ 2009/73/EC recital 44

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

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↓ 2009/73/EC recital 45 (adapted)

(124) It should be possible for measures implemented by Member States to achieve the objectives of social and economic cohesion to include, in particular, the provision of adequate economic incentives, using, where appropriate, all existing national and ~~Community~~  Union  tools. It should be possible for such tools to include liability mechanisms to guarantee the necessary investment.

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↓ 2009/73/EC recital 46 (adapted)

(125) To the extent to which measures taken by Member States to fulfil public service obligations constitute State aid under Article ~~87(1)~~  107(1)  of the Treaty, there is an obligation under Article ~~88(3)~~  108(3)  of the Treaty to notify them to the Commission.

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↓ 2009/73/EC recital 53

(126) Market prices should give the right incentives for the development of the network.

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↓ 2009/73/EC recital 54

(127) Promoting fair competition and easy access for different suppliers should be of the utmost importance for Member States in order to allow consumers to take full advantage of the opportunities of a liberalised internal market in natural gas.

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↓ 2009/73/EC recital 55

(128) In order to contribute to security of supply whilst maintaining a spirit of solidarity between Member States, notably in the event of an energy supply crisis, it is important to provide a framework for regional cooperation in a spirit of solidarity. Such cooperation may rely, if Member States so decide, first and foremost on market-based mechanisms. Cooperation for the promotion of regional and bilateral solidarity should not impose a disproportionate burden on or discriminate between market participants.

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↓ 2009/73/EC recital 56

- (129) With a view to creating an internal market **in natural gas**, Member States should foster the integration of their national markets and the cooperation of system operators at ~~Community~~ ☒ Union ☒ and regional level, also incorporating the isolated systems forming gas islands that persist in the ~~Community~~ ☒ Union ☒.
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↓ new

- (130) Voluntary regional gas markets integration, notably gas market mergers, can provide various benefits, depending on the specificities of the markets. Market integration may be an opportunity to make best use of infrastructure. It is also a chance to increase competition, liquidity and trade to the benefit of the end-consumers in the region, by attracting suppliers which otherwise would not come as due to the small market size. Market integration allows also to create bigger zones accessing more supply sources. Such diversification might have an impact on the wholesale market prices, thanks to an improved competition between sources, but may also improve security of supply if there is no remaining internal congestion in the new merged zone. Market integration could be a basis to further support the transformation of the gas market, including the deployment of renewable and low-carbon gases. Member States, regulatory authorities and transmission should cooperate to facilitate regional integration.
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↓ 2009/73/EC recital 57 (adapted)

- (131) The development of a true internal market in natural gas, through a network connected across the ~~Community~~ ☒ Union ☒, should be one of the main goals of this Directive and regulatory issues on cross border interconnections and regional markets should, therefore, be one of the main tasks of the regulatory authorities, in close cooperation with the Agency where relevant.
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↓ 2009/73/EC recital 58

- (132) Securing common rules for a true internal market and a broad supply of gas should also be one of the main goals of this Directive. To that end, undistorted market prices would provide an incentive for cross-border interconnections while leading, in the long term, to price convergence.
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↓ 2009/73/EC recital 59

- (133) The regulatory authorities should also provide information on the market to permit the Commission to exercise its role of observing and monitoring the internal market in natural gas and its short, medium and long-term evolution, including aspects such as supply and demand, transmission and distribution infrastructure, quality of service, cross-border trade, congestion management, investments, wholesale and consumer prices, market liquidity and environmental and efficiency improvements. National

Regulatory authorities should report to the competition authorities and the Commission those Member States in which prices impair competition and proper functioning of the market.

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↓ 2009/73/EC recital 60 (adapted)

- (134) Since the objective of this Directive, namely the creation of a fully operational internal market in natural gas, cannot be sufficiently achieved by the Member States and can therefore be better achieved at Community Union level, the Community Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on the European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
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↓ 2009/73/EC recital 61

- (135) Under Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks<sup>10</sup>, the Commission may adopt Guidelines or network codes to achieve the necessary degree of harmonisation. Such Guidelines or network codes, which constitute binding implementing measures, are, also with regard to certain provisions of this Directive, a useful tool which can be adapted quickly where necessary.
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↓ 2009/73/EC recital 62

- ~~(136) 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>11</sup>.~~
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↓ 2009/73/EC recital 63

- (137) In particular, the Commission should be empowered to adopt the Guidelines necessary for providing the minimum degree of harmonisation required to achieve the aim of this Directive. Since those measures are of general scope and are designed to amend non-essential elements of this Directive, by supplementing it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.
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↓ 2009/73/EC recital 64

- (138) In accordance with point 34 of the Interinstitutional Agreement on better law-making<sup>12</sup>, Member States are encouraged to draw up, for themselves and in the interest

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<sup>10</sup> See page 36 of this Official Journal.

<sup>11</sup> ~~OJ L 184, 17.7.1999, p. 23.~~

<sup>12</sup> OJ C 321, 31.12.2003, p. 1.

of the Community ~~⊗~~ Union ~~⊗~~, their own tables, illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public.

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↓ 2009/73/EC recital 65

(139) ~~Given the scope of the amendments made to Directive 2003/55/EC herein, it is desirable, for reasons of clarity and rationalisation, that the provisions in question should be recast by bringing them all together in a single text in a new Directive.~~

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↓ 2009/73/EC recital

(140) This Directive respects the fundamental rights, and observes the principles, recognised in particular by the Charter of Fundamental Rights of the European Union. ~~⇒~~ Accordingly, this Directive should be interpreted and applied in accordance with those rights and principles, in particular the right to the protection of personal data guaranteed by Article 8 of the Charter. It is essential that any processing of personal data under this Directive comply with Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>13</sup>. ~~↵~~

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↓ new

(141) In order to provide the minimum degree of harmonisation required to achieve the aim of this Directive, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making<sup>14</sup>. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of the delegated acts.

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↓ new

(142) In order to ensure uniform conditions for the implementation of this Directive, implementing powers should be conferred on the Commission to determine interoperability requirements and non-discriminatory and transparent procedures for access to data. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>15</sup>.

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<sup>13</sup> OJ L 119, 4.5.2016, p. 1.

<sup>14</sup> OJ L 123, 12.5.2016, p. 1.

<sup>15</sup> OJ L 55, 28.2.2011, p. 13.

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↓ new

(143) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive amendment as compared to the earlier Directive. The obligation to transpose the provisions which are unchanged arises under the earlier Directive.

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↓ new

(144) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive amendment as compared to the earlier Directive. The obligation to transpose the provisions which are unchanged arises under the earlier Directive.

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↓ new

(145) This Directive should be without prejudice to the obligations of the Member States relating to the time-limit for the transposition into national law and the date of application of the Directive set out in Annex **XX**.

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↓ 2009/73/EC

HAVE ADOPTED THIS DIRECTIVE:

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↓ 2009/73/EC

## Chapter I

### Subject matter, scope and definitions

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↓ 2009/73/EC  
⇒ new

#### *Article 1*

#### Subject matter and scope



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↓ new

1. Using the advantages of an integrated market, this Directive aims to ensure affordable, transparent prices for gases and costs for consumers, a high degree of security of supply and a smooth and fair transition towards a carbon neutral energy system at the latest by 2050.

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↓ 2009/73/EC

⇒ new

2. ~~This Directive~~ establishes common rules for the transmission, distribution, supply and storage of ~~gases using the natural gas system~~ ~~natural gas~~. It lays down the rules relating to the organisation and functioning of ~~this~~ ~~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~~ ~~gases using the natural gas system~~ and the operation of systems.
3. ~~The rules established by this Directive for natural gas, including LNG, shall also apply in a non-discriminatory way 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.~~

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↓ new

3. This Directive establishes rules for the transport, supply and storage and the transition of the natural gas system to a system based on renewable and low carbon gases.
4. This Directive establishes common rules for the transportation, supply and storage of hydrogen using the hydrogen system. It lays down the rules relating to the organisation and functioning of the hydrogen sector, access to the market, the criteria and procedures applicable to the granting of authorisations for networks, supply and storage of hydrogen and the operation of systems.
5. This Directive establishes rules for the progressive establishment of a Union-wide interconnected hydrogen system for supporting the decarbonisation of the EU energy system.

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↓ 2009/73/EC

## Article 2

### Definitions

For the purposes of this Directive, the following definitions apply:

- (1) 'natural gas' means all gases that primarily consist of methane, including biogas and gas from biomass or other types of gas, that can technically and safely be injected into, and transported through the natural gas system;
- (2) 'gases' mean natural gas and hydrogen;
- (3) 'natural gas system' means a system of infrastructures, including pipelines, LNG terminals and storage facilities, which transports gases, that primarily consist of methane and include biogas and gas from biomass or other types of gas that can technically and safely be injected into, and transported through the natural gas pipeline system.
- (4) 'hydrogen system' means a system of infrastructure, including hydrogen networks, hydrogen storage, hydrogen line pack and hydrogen terminals, which contains hydrogen of a high grade of purity;
- (5) 'hydrogen storage facility' means a facility used for the stocking of hydrogen of a high grade of purity, including the part of an hydrogen terminal used for storage but excluding the portion used for production operations, and excluding facilities reserved exclusively for hydrogen network operators in carrying out their functions. Hydrogen storage facilities include large, in particular underground, hydrogen storage but exclude smaller, easily replicable smaller hydrogen storage installations;
- (6) 'hydrogen linepack' means the storage of hydrogen of a high grade of purity by compression in hydrogen networks, excluding facilities reserved for transmission system operators carrying out their functions;
- (7) 'hydrogen terminal' means an installation used for the transformation of liquid hydrogen into gaseous hydrogen for injection into the hydrogen network. It includes ancillary services and temporary storage necessary for the transformation process and subsequent injection into the hydrogen network, but does not include any part of the hydrogen terminal used for storage;
- (8) 'hydrogen quality' means hydrogen purity and contaminants in line with applicable hydrogen quality standards.
- (9) 'low-carbon hydrogen' means hydrogen the energy content of which is derived from non-renewable sources, which meets a greenhouse gas emission reduction threshold of [70%]."
- (10) 'Low-carbon gases' are part of low-carbon fuels which mean recycled carbon fuels as defined in article 2 of Directive (EU) 2018/2001, low-carbon hydrogen and synthetic gaseous and liquid fuels the energy content of which is derived from low-carbon hydrogen, which meet the greenhouse gas emission reduction threshold of [70%].
- (11) 'hydrogen undertaking' means a natural or legal person carrying out at least one of the following functions: hydrogen network transport, supply, purchase or storage of hydrogen, or operating a hydrogen terminal, 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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↓ 2009/73/EC ⇒ new
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- (12) ~~(4)~~ ‘natural gas undertaking’ means a 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;
- (13) ~~(2)~~ ‘upstream pipeline network’ means any pipeline or network of pipelines operated and/or constructed as part of an oil or ⇒ natural ⇐ 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;
- (14) ~~(3)~~ ‘transmission’ means the transport of natural gas through a network, which mainly contains high-pressure pipelines, other than an upstream pipeline network and other than the part of high-pressure pipelines primarily used in the context of local distribution of natural gas, with a view to its delivery to customers, but not including supply;
- (15) ~~(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 for ensuring the long-term ability of the system to meet reasonable demands for the transport of ⇒ natural ⇐ gas;
- (16) ~~(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;
- (17) ~~(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 for ensuring the long-term ability of the system to meet reasonable demands for the distribution of gas;

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↓ new
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- (18) ‘hydrogen network’ means a network of pipelines used for the transport of hydrogen of a high grade of purity with a view to its delivery to customers, but not including supply.
- (19) ‘hydrogen network transport’ means the transport of hydrogen through a hydrogen network with a view to its delivery to customers, but not including supply;
- (20) ‘hydrogen network operator’ means a natural or legal person who carries out the function of hydrogen network transport and is responsible for operating, ensuring the maintenance of, and, if necessary, developing the hydrogen network in a given area and, where applicable, its interconnections with other hydrogen

networks, and for ensuring the long-term ability of the system to meet reasonable demands for the transport of hydrogen;

↓ 2009/73/EC  
⇒ new

- (21) ~~(7)~~ ‘supply’ means the sale, including resale, of natural gas, including LNG, ⇒ or hydrogen, including liquid hydrogen, ⇐ to customers;
- (22) ~~(8)~~ ‘supply undertaking’ means any natural or legal person who carries out the function of supply;
- (23) ~~(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, and excluding facilities reserved exclusively for transmission system operators in carrying out their functions;
- (24) ~~(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;
- (25) ~~(11)~~ ‘LNG facility’ means a terminal which is used for the liquefaction of natural gas or the importation, offloading, and re-gasification of LNG, and includes ancillary services and temporary storage necessary for the re-gasification process and subsequent delivery to the transmission system, but does not include any part of LNG terminals used for storage;
- (26) ~~(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-gasification of LNG and is responsible for operating a LNG facility;
- (27) ~~(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;
- (28) ~~(14)~~ ‘ancillary services’ means all services necessary for access to and the operation of transmission networks, distribution networks, LNG facilities, and/or storage facilities, including load balancing, blending and injection of inert gases, but not including facilities reserved exclusively for transmission system operators carrying out their functions;
- (29) ~~(15)~~ ‘⇒ natural gas ⇐ linepack’ means the storage of ⇒ natural ⇐ gas by compression in gas transmission and distribution systems, but not including facilities reserved for transmission system operators carrying out their functions;
- (30) ~~(16)~~ ‘interconnected system’ means a number of systems which are linked with each other;

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↓ 2019/692 Art. 1.1

- (31) ~~(17)~~ ‘interconnector’ means a transmission line which crosses or spans a border between Member States for the purpose of connecting the national transmission system of those Member States or a transmission line between a Member State and a third country up to the territory of the Member States or the territorial sea of that Member State;
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↓ new

- (32) ‘hydrogen interconnector’ means a hydrogen network which crosses or spans a border between Member States, or between a Member State and a third country up to the territory of the Member States or the territorial sea of that Member State;
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↓ 2009/73/EC

⇒ new

- (33) ~~(18)~~ ‘direct line’ means a natural gas pipeline complementary to the interconnected system;
- (34) ~~(19)~~ ‘integrated natural gas undertaking’ means a vertically or horizontally integrated undertaking;
- (35) ~~(20)~~ ‘vertically integrated undertaking’ means a natural gas undertaking or a group of natural gas undertakings ⇒ or a hydrogen undertaking or group of hydrogen undertakings ⇐ where the same person or the same persons are entitled, directly or indirectly, to exercise control, and where the undertaking or group of undertakings perform at least one of the functions of transmission, distribution, LNG or ⇒ natural gas or hydrogen storage, ⇐ and at least one of the functions of production or supply of natural gas ⇒ or of hydrogen ⇐
- (36) ~~(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- ⇒ natural ⇐ gas activity;
- (37) ~~(22)~~ ‘related undertaking’ means an affiliated undertaking, within the meaning of Article 41 of Seventh Council Directive 83/349/EEC of 13 June 1983 based on the Article 44(2)(g)<sup>16</sup> of the Treaty on consolidated accounts<sup>17</sup> and/or an associated undertaking, within the meaning of Article 33(1) of that Directive, and/or an undertaking which belong to the same shareholders;
- (38) ~~(23)~~ ‘system user’ means a natural or legal person supplying to, or being supplied by, the system;

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<sup>16</sup> The title of Directive 83/349/EEC has been adjusted to take account of the renumbering of the Articles of the Treaty establishing the European Community in accordance with Article 12 of the Treaty of Amsterdam; the original reference was to Article 54(3)(g).

<sup>17</sup> OJ L 193, 18.7.1983, p. 1.

- (39) ~~(24)~~ ‘customer’ means a wholesale or final customer of natural gas or a natural gas undertaking which purchases natural gas;
- (40) ~~(25)~~ ‘household customer’ means a customer purchasing natural gas for his own household consumption;
- (41) ~~(26)~~ ‘non-household customer’ means a customer purchasing natural gas which is not for his own household use;
- (42) ~~(27)~~ ‘final customer’ means a customer purchasing natural gas for his own use;
- (43) ~~(28)~~ ‘eligible customer’ means a customer who is free to purchase gas from the supplier of his choice, within the meaning of Article 37;
- (44) ~~(29)~~ ‘wholesale customer’ means a natural or legal person other than a transmission system operator or distribution system operator who purchases natural gas for the purpose of resale inside or outside the system where he is established;
- ~~(30) ‘long term planning’ means the planning of supply and transport 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;
- (45) ~~(33)~~ ‘new infrastructure’ means an infrastructure not **completed by 4 August 2003**;
- (46) ~~(34)~~ ‘gas supply contract’ means a contract for the supply of natural gas, but does not include a gas derivative;
- (47) ~~(35)~~ ‘gas derivative’ means a financial instrument specified in points 5, 6 or 7 of Section C of Annex I to Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments<sup>18</sup>, where that instrument relates to natural gas;
- (48) ~~(36)~~ ‘control’ means any rights, contracts or any other means which, either separately or in combination and having regard to the considerations of fact or law involved, confer the possibility of exercising decisive influence on an undertaking, in particular by:
- (a) ownership or the right to use all or part of the assets of an undertaking;
  - (b) rights or contracts which confer decisive influence on the composition, voting or decisions of the organs of an undertaking.

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↓ new

(49) ‘A long-term supply contract’ means a supply contract exceeding one year.

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<sup>18</sup> OJ L 145, 30.4.2004, p. 1.

- (50) ‘entry-exit system’ means the aggregation of all transmission and distribution systems to which one specific balancing regime applies;
- (51) ‘balancing zone’ means an entry-exit system to which a specific balancing regime is applicable;
- (52) ‘virtual trading point’ means a non-physical commercial point within an entry-exit system where gas is exchanged between a seller and a buyer without the need to book transmission or distribution capacity.
- (53) ‘entry point’ means a point subject to booking procedures by network users or producers providing access to an entry-exit system.
- (54) ‘exit point’ means a point subject to booking procedures by network users or final customers enabling gas flows out of the entry exit system .
- (55) ‘interconnection point’ means a physical or virtual point connecting adjacent entry-exit systems or connecting an entry-exit system with an interconnector, in so far as these points are subject to booking procedures by network users;
- (56) ‘virtual interconnection point’ means two or more interconnection points which connect the same two adjacent entry-exit systems, integrated together for the purposes of providing a single capacity service;
- (57) ‘market participant’ means market participant as defined in point (25) of Article 2 of Regulation (EU) 2019/943;
- (58) ‘contract termination fee’ means a charge or penalty imposed on customers by suppliers or market participants, for terminating a gas supply or service contract;
- (59) ‘switching-related fee’ means a charge or penalty for changing suppliers or market participants, including contract termination fees, that is directly or indirectly imposed on customers by suppliers, market participants or system operators;
- (60) ‘billing information’ means the information provided on a final customer's bill, apart from a request for payment;
- (61) ‘conventional meter’ means an analogue or electronic meter with no capability to both transmit and receive data;
- (62) ‘smart metering system’ means an electronic system that is capable of measuring gas fed into the grid or gas consumed from the grid, providing more information than a conventional meter, and that is capable of transmitting and receiving data for information, monitoring and control purposes, using a form of electronic communication;
- (63) ‘interoperability’ means, in the context of smart metering, the ability of two or more energy or communication networks, systems, devices, applications or components to interwork to exchange and use information in order to perform required functions;
- (64) ‘most recent available’ means, in the context of smart metering data, that it is provided within a period matching the shortest settlement period in the national market;
- (65) ‘best available techniques’ means, in the context of data protection and security in a smart metering environment, the most effective, advanced and practically

suitable techniques for providing, in principle, the basis for complying with the Union data protection and security rules;

(66) ‘energy poverty’ means energy poverty as defined in point [(49)] of Article 2 of Directive (EU) [yyyy/nnn] of the European Parliament and of the Council<sup>1</sup>.

(67) ‘citizen energy community’ means a legal entity that:

(a) is based on voluntary and open participation, is autonomous, and is effectively controlled by members or shareholders that are natural persons, local authorities, including municipalities, or small and medium-sized enterprises;

(b) has for its primary purpose to provide environmental, economic or social community benefits to its members or shareholders or to the local areas where it operates rather than to generate financial profits; and

(c) may engage in renewable gas production, distribution, supply, consumption, storage for the natural gas system, energy efficiency services or provide other energy services to its members or shareholders;

(68) ‘active customer’ means a final customer, or a group of jointly acting final customers, who consumes or stores renewable natural gas produced within its premises located within confined boundaries or, where permitted by a Member State, within other premises, or who sells self-produced renewable gas or participates in energy efficiency schemes, provided that those activities do not constitute its primary commercial or professional activity;

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↓ 2009/73/EC (adapted)

## Chapter II

### General rules for the organisation of the market ~~and infrastructure access~~

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↓ 2009/73/EC Article 37  
⇒ new

Article 3~~7~~<sup>37</sup>

~~Market opening and reciprocity~~ ⇒ **Competitive, consumer-centred, flexible and non-discriminatory markets for gases** ⇐

1. Member States shall ensure that ~~the eligible customers comprise~~ ⇒ all customers are free to purchase gases from the supplier of their choice and shall ensure that all customers are free to have more than one gas supply contract for natural gas or hydrogen at the same time, provided that the required connection and metering points are established. ⇐



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↓ new

2. Member States shall ensure that their national law does not unduly hamper cross-border trade in gases, consumer participation, investments into, in particular, renewable and low carbon gases, or energy storage between Member States, and shall ensure that prices for gases reflect actual demand and supply.
3. Member States shall ensure that no undue barriers exist within the internal market for gases as regards market entry, operation and exit, without prejudice to the competence that Member States retain in relation to third countries.
4. Member States shall ensure a level playing field where energy undertakings are subject to transparent, proportionate and non-discriminatory rules, fees and treatment, in particular with respect to access to wholesale markets, access to data, switching processes and billing regimes and, where applicable, licensing.
5. Member States shall ensure that market participants from third countries, when operating within the internal market for gases, comply with applicable Union and national law.

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↓ 2009/73/EC Article 37

~~(a) until 1 July 2004, eligible customers as specified in Article 18 of 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>19</sup>. Member States shall publish, by 31 January each year, the criteria for the definition of those eligible customers;~~

~~(b) from 1 July 2004, all non household customers;~~

~~(c) from 1 July 2007, all customers.~~

~~2. To avoid imbalance in the opening of the 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; and~~

~~(b) where transactions as described in point (a) are refused because the customer is eligible in only one of the two systems, the Commission may, taking into account the situation in the market and the common interest, oblige the refusing party to execute the requested supply, at the request of one of the Member States of the two systems.~~

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↓ new

#### Article 4

### Free choice of supplier

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<sup>19</sup> OJL 204, 21.7.1998, p. 1

Member States shall ensure that all customers are free to purchase gas from the supplier of their choice and shall ensure that all customers are free to have more than one gas supply contract at the same time, provided that the required connection and metering points are established.

## Article 5

### Market based supply prices

1. Suppliers shall be free to determine the price at which they supply gas to customers. Member States shall take appropriate actions to ensure effective competition between suppliers.
2. Member States shall ensure the protection of energy poor and vulnerable household customers pursuant to **Articles 26** by social policy or by other means than public interventions in the price setting for the supply of gas.
3. By way of derogation from paragraphs 1 and 2, Member States may apply public interventions in the price setting for the supply of natural gas to energy poor or vulnerable household customers. Such public interventions shall be subject to the conditions set out in paragraphs 4 and 5.
4. Public interventions in the price setting for the supply of natural gas shall:
  - (a) pursue a general economic interest and not go beyond what is necessary to achieve that general economic interest;
  - (b) be clearly defined, transparent, non-discriminatory and verifiable;
  - (c) guarantee equal access for Union natural gas undertakings to customers;
  - (d) be limited in time and proportionate as regards their beneficiaries;
  - (e) not result in additional costs for market participants in a discriminatory way.
5. Any Member State applying public interventions in the price setting for the supply of natural gas in accordance with paragraph 3 of this Article shall also comply with point (d) of Article 3(3) and with Article 24 of Regulation (EU) 2018/1999, regardless of whether the Member State concerned has a significant number of households in energy poverty.
6. For the purpose of a transition period to establish effective competition for natural gas supply contracts between suppliers, and to achieve fully effective market-based retail pricing of gas in accordance with paragraph 1, Member States may apply public interventions in the price setting for the supply of natural gas to household customers and to microenterprises that do not benefit from public interventions pursuant to paragraph 3.
7. Public interventions pursuant to paragraph 6 shall comply with the criteria set out in paragraph 4 and shall:
  - (a) be accompanied by a set of measures to achieve effective competition and a methodology for assessing progress with regard to those measures;
  - (b) be set using a methodology that ensures non-discriminatory treatment of suppliers;
  - (c) be set at a price that is above cost, at a level where effective price competition can occur;

- (d) be designed to minimise any negative impact on the wholesale natural gas market;
  - (e) ensure that all beneficiaries of such public interventions have the possibility to choose competitive market offers and are directly informed at least every quarter of the availability of offers and savings in the competitive market, and shall ensure that they are provided with assistance to switch to a market-based offer;
  - (f) ensure that, pursuant to Articles 19 and 21, all beneficiaries of such public interventions are entitled to, and are offered to, have smart meters installed at no extra upfront cost to the customer, are directly informed of the possibility of installing smart meters and are provided with necessary assistance;
  - (g) not lead to direct cross-subsidisation between customers supplied at free market prices and those supplied at regulated supply prices.
8. Member States shall notify the measures taken in accordance with paragraphs 3 and 6 to the Commission within one month after their adoption and may apply them immediately. The notification shall be accompanied by an explanation of why other instruments were not sufficient to achieve the objective pursued, of how the requirements set out in paragraphs 4 and 7 are fulfilled and of the effects of the notified measures on competition. The notification shall describe the scope of the beneficiaries, the duration of the measures and the number of household customers affected by the measures, and shall explain how the regulated prices have been determined.
9. From 15 March 2025, and every two years thereafter, as part of the integrated national energy and climate progress reports, Member States shall submit reports to the Commission on the implementation of this Article, the necessity and proportionality of public interventions under this Article, and an assessment of the progress towards achieving effective competition between suppliers and the transition to market-based prices. Member States that apply regulated prices in accordance with paragraph 6 shall report on the compliance with the conditions set out in paragraph 7, including on compliance by suppliers that are required to apply such interventions, as well as on the impact of regulated prices on the finances of those suppliers.
10. The Commission shall review and submit a report to the European Parliament and to the Council on the implementation of this Article for the purpose of achieving market-based retail pricing of natural gas, together with or followed by a legislative proposal, if appropriate. This report may be combined with the report on the implementation of Article 5 of Directive (EU) 2019/944. That legislative proposal may include an end date for regulated prices.

↓ 2009/73/EC (adapted)  
⇒ new

#### Article 6<sup>3</sup>

#### 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 ⇨ and hydrogen ⇩ 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~~ ⇒ gases ⇐ , and shall not discriminate between those undertakings as regards their rights or obligations.

- ~~2.~~ Having full regard to the relevant provisions of the ~~⊗~~ TFEU ~~⊗~~ Treaty, in particular ~~Article 86~~ ~~⊗~~ Article 106 ~~⊗~~ thereof, Member States may impose ⇒ on natural gas and hydrogen ⇐ undertakings ~~operating in the gas sector~~, in the general economic interest, public service obligations which may relate to security, including security of supply, regularity, ⇒ and ⇐ 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~~ ~~⊗~~ Union ~~⊗~~ 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.~~

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↓ new

3. In addition to the requirements set out in paragraph 2, public service obligations related to the security of gas supply shall not go beyond what is necessary to ensure compliance with the gas supply standards pursuant to Article 6 of Regulation (EU) 2017/1938 and shall be coherent with the results of the national risk assessments carried out pursuant Article 7(3), as detailed in the Preventive Action Plans prepared pursuant to Article 9(1)(c),(d) and (k) of the same Regulation.
4. Where financial compensation, other forms of compensation which a Member State grants for the fulfilment of the obligations set out in this Article, it shall be done in a non-discriminatory and transparent way

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↓ 2009/73/EC

~~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.~~

5. ~~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.

~~6. 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.~~

↓ 2009/73/EC (adapted)  
⇒ new

#### Article 7~~7~~

##### Promotion of regional cooperation ⇒ and integration ⇐

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 regional markets, where Member States as well regulatory authorities so decided and further 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 ⇒ natural gas ⇐ transmission system operators ⇒ and hydrogen network operators ⇐ at a regional level, including on cross-border issues with the aim of creating a competitive internal market ⇒ for gases ⇐ ~~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~~ ⊗ Union ⊗. 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. ⇒ Where the Commission considers that the EU-level rules are relevant for the regional integration of markets for gases, it shall provide appropriate guidance taking into account the specificities of these markets. ⇐
2. The Agency shall cooperate with ~~national~~ regulatory authorities and transmission system operators to ensure the compatibility of regulatory frameworks between ⇒ and within ⇐ the regions with the aim of creating a competitive internal market in ~~natural gas~~ ⇒ gases ⇐. 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~~ ACER. Compliance with the programme shall be independently monitored by the compliance officers of the vertically integrated transmission system operators.
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↓ 2009/73/EC  
⇒ new

#### Article 84

### 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 ~~and hydrogen system infrastructure~~, ~~hydrogen production facilities~~ and hydrogen system infrastructure, 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 gases 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 supply gases or to construct and/or operate natural gas facilities, hydrogen production facilities or hydrogen system infrastructure. The non-discriminatory criteria and procedures for the granting of authorisations shall be made public. Member States shall ensure that authorisation procedures for such facilities, pipelines and associated equipment take into account the importance of the project for the internal market where appropriate.
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↓ new

3. Member States shall ensure that authorisations under national law for the construction and operation of natural gas pipelines and other network assets used for the transport of natural gas shall apply also to pipelines and network assets for the transport of hydrogen.
4. Member States shall ensure that existing contractual land-use rights for the construction and operation of natural gas pipelines and other network assets shall be interpreted as encompassing also pipelines and other network assets for the transport of hydrogen.

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↓ 2009/73/EC  
⇒ new

5. ~~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.
6. ~~4~~ For the development of newly supplied areas and efficient operation generally, and without prejudice to **Article 3832**, Member States may decline to grant a further authorisation to build and operate distribution pipeline systems ⇒ for natural gas ⇐ 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.

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↓ new

#### *Article 9*

##### **Certification of renewable and low carbon gases**

1. Renewable gases shall be certified in accordance with Article **XX** of Directive EU 2018/2001.
2. In order to ensure that the greenhouse gas emissions savings from the use of low carbon fuels and low carbon hydrogen are at least 70% in accordance with the definition under article 2, Member States shall require economic operators to show that this threshold and the requirements established in the methodology referred to in paragraph 4 have been complied with. For those purposes, they shall require economic operators to use a mass balance system in line with Article 30 paragraphs 1 and 2 of Directive EU 2018/2001.
3. Member States shall take measures to ensure that economic operators submit reliable information regarding the compliance with the 70% greenhouse gas emissions savings threshold set in and with the greenhouse gas emissions saving methodology referred to in paragraph 4, and that economic operators make available to the relevant Member State, upon request, the data that were used to develop the information. Member States shall require economic operators to arrange for an adequate standard of independent auditing of the information submitted, and to provide evidence that this has been done. The auditing shall verify that the systems used by economic operators are accurate, reliable and protected against fraud.
4. The obligations laid down in paragraph 2 shall apply regardless of whether low carbon fuels or low carbon hydrogen are produced within the Union or are imported. Information about the geographic origin and feedstock type of low carbon fuels or low carbon hydrogen per fuel supplier shall be made available to consumers on the



websites of operators, suppliers or the relevant competent authorities and shall be updated on an annual basis.

5. The Commission is empowered to adopt delegated acts in accordance with ... (legal basis to be included) to supplement this Directive/ Regulation by specifying the methodology for assessing greenhouse gas emissions savings from low carbon fuels. The methodology shall ensure that credit for avoided emissions is not given for CO<sub>2</sub> the capture of which has already received an emission credit under other provisions of law.
6. The Commission may decide that voluntary national or international schemes setting standards for the production of low carbon fuels or low carbon hydrogen provide accurate data on greenhouse gas emission savings for the purposes of this article and in line with the definition of low carbon fuels and low carbon hydrogen under article 2 and demonstrate compliance with the methodology, referred to in paragraph 4 of this article.
7. Member States may set up national schemes where compliance with the greenhouse gas emissions saving threshold for low carbon fuels laid down in Article 2 and in accordance with the methodology developed under paragraph 4 of this Article, is verified throughout the entire chain of custody involving competent national authorities. A Member State may notify such a national scheme to the Commission. The Commission shall give priority to the assessment of such a scheme in order to facilitate mutual bilateral and multilateral recognition of those schemes. The Commission may decide, whether such a notified national scheme complies with the conditions laid down in this Directive. Where the decision is positive, other schemes recognised by the Commission in accordance with this Article shall not refuse mutual recognition with that Member State's national scheme as regards verification of compliance with the criteria for which it has been recognised by the Commission.
8. Where an economic operator provides evidence or data obtained in accordance with a scheme that has been the subject of a decision pursuant to paragraph 5 or 6, a Member State shall not require the economic operator to provide further evidence of compliance with the elements covered by the scheme for which the scheme has been recognised by the Commission.
9. Competent authorities of the Member States shall supervise the operation of certification bodies that are conducting independent auditing under a voluntary scheme. Certification bodies shall submit, upon the request of competent authorities, all relevant information necessary to supervise the operation, including the exact date, time and location of audits. Where Member States find issues of non-conformity, they shall inform the voluntary scheme without delay.
10. At the request of a Member State, which may be based on the request of an economic operator, the Commission shall, on the basis of all available evidence, examine whether the greenhouse gas emissions saving criteria laid down in this article, the methodology developed in line with paragraph 4 of this article, and the greenhouse gas emissions savings thresholds set in Article/paragraph ..., have been met. Within six months of receipt of such a request, the Commission shall decide whether the Member State concerned may either:
  - (a) accept the evidence already provided to show compliance with the greenhouse gas emissions saving criteria for low carbon fuels; or

(b) by way of derogation from paragraph 7 of this Article, require suppliers of the source of low carbon fuels to provide further evidence of compliance with those greenhouse gas emissions saving criteria and the 70% greenhouse gas emissions savings threshold.

11. Member States shall also require the relevant economic operators to enter into the Union database information on the transactions made and the sustainability characteristics of low carbon fuels in line with the requirements, established in article 28 of Directive EU 2008/2001.

↓ 2009/73/EC  
⇒ new

### Article 10<sup>g</sup>

#### 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, ⇒ as well as to the hydrogen system, ⇐ 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<sup>20</sup>.

↓ new

Where relevant, Member States shall require transmission system operators, distribution system operators and hydrogen network operators in their territory to publish technical rules in accordance with Article 10 of this Directive, in particular regarding network connection rules that include gas quality, gas odourisation and gas pressure requirements. Member States shall also require transmission and distribution system operators to publish the connection tariffs to connect gas from renewable sources based on objective, transparent and non-discriminatory criteria.

<sup>20</sup> OJ L 204, 21.7.1998, p. 37.

## CHAPTER III

### CONSUMER EMPOWERMENT AND PROTECTION AND RETAIL MARKETS

#### Article 11

##### Basic contractual rights

1. Member States shall ensure that all final customers 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, provided that the supplier follows the applicable trading and balancing rules. In that regard, Member States shall take all measures necessary to ensure that administrative procedures do not discriminate against suppliers already registered in another Member State.
2. Without prejudice to Union rules on consumer protection, in particular Directive 2011/83/EU of the European Parliament and of the Council (20) and Council Directive 93/13/EEC (21), Member States shall ensure that final customers have the rights provided for in paragraphs 3 to 12 of this Article.
3. Final customers shall have the right to a contract with their supplier that specifies:
  - (a) the identity and address of the supplier;
  - (b) the services provided, the service quality levels offered, as well as the time for the initial connection;
  - (c) the types of maintenance service offered;
  - (d) the means by which up-to-date information on all applicable tariffs, maintenance charges and bundled products or services may be obtained;
  - (e) the duration of the contract, the conditions for renewal and termination of the contract and services, including products or services that are bundled with those services, and whether terminating the contract without charge is permitted;
  - (f) any compensation and the refund arrangements which apply if contracted service quality levels are not met, including inaccurate or delayed billing;
  - (g) the method of initiating an out-of-court dispute settlement procedure in accordance with Article 25;
  - (h) information relating to consumer rights, including information on complaint handling and all of the information referred to in this paragraph, that is clearly communicated on the bill or the gas undertaking's web site.

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

Final customers shall be provided with a summary of the key contractual conditions in a prominent manner and in concise and simple language.

4. Final customers shall be given adequate notice of any intention to modify contractual conditions and shall be informed about their right to terminate the contract when the notice is given. Suppliers shall notify their final customers, in a transparent and comprehensible manner, directly of any adjustment in the supply price and of the reasons and preconditions for the adjustment and its scope, at an appropriate time no later than two weeks, or no later than one month in the case of household customers, before the adjustment comes into effect. Member States shall ensure that final customers are free to terminate contracts if they do not accept the new contractual conditions or adjustments in the supply price notified to them by their supplier.
5. Suppliers shall provide final customers with transparent information on applicable prices and tariffs and on standard terms and conditions, in respect of access to and use of gases services.
6. Suppliers shall offer final customers a wide choice of payment methods. Such payment methods shall not unduly discriminate between customers. Any difference in charges related to payment methods or prepayment systems shall be objective, non-discriminatory and proportionate and shall not exceed the direct costs borne by the payee for the use of a specific payment method or a prepayment system, in line with Article 62 of Directive (EU) 2015/2366 of the European Parliament and of the Council <sup>(xx)</sup>.
7. Pursuant to paragraph 6, household customers who have access to prepayment systems shall not be placed at a disadvantage by the prepayment systems.
8. Suppliers shall offer final customers fair and transparent general terms and conditions, which shall be provided in plain and unambiguous language and shall not include non-contractual barriers to the exercise of customers' rights, such as excessive contractual documentation. Customers shall be protected against unfair or misleading selling methods.
9. Final customers shall have the right to a good standard of service and complaint handling by their suppliers. Suppliers shall handle complaints in a simple, fair and prompt manner.
10. Suppliers shall provide natural gas household customers with adequate information on alternative measures to disconnection sufficiently in advance of any planned disconnection. Such alternative measures may refer to sources of support to avoid disconnection, prepayment systems, energy audits, energy consultancy services, alternative payment plans, debt management advice or disconnection moratoria and not constitute an extra cost to the customers facing disconnection.
11. Suppliers shall provide final customers with a final closure account after any switch of supplier no later than six weeks after such a switch has taken place

## *Article 12*

### **Right to switch and rules on switching-related fees**

1. Switching gas supplier or market participant shall be carried out within the shortest possible time. Member States shall ensure that a customer wishing to switch gas suppliers or market participants, while respecting contractual conditions, is entitled to such a switch within a maximum of three weeks from the date of the request. By no later than 2026, the technical process of switching supplier shall take no longer than 24 hours and shall be possible on any working day.

2. Member States shall ensure that the right to switch gas supplier or market participant is granted to customers in a non-discriminatory manner as regards cost, effort and time.
3. Member States shall ensure that at least household customers and small enterprises are not charged any switching-related fees for gas.
4. By way of derogation from paragraph 3, Member States may permit gas suppliers or market participants to charge customers contract termination fees where those customers voluntarily terminate fixed-term, fixed-price gas supply contracts before their maturity, provided that such fees are part of a contract that the customer has voluntarily entered into and that such fees are clearly communicated to the customer before the contract is entered into. Such fees shall be proportionate and shall not exceed the direct economic loss to the supplier or the market participant resulting from the customer's termination of the contract, including the costs of any bundled investments or services that have already been provided to the customer as part of the contract. The burden of proving the direct economic loss shall be on the supplier or market participant, and the permissibility of contract termination fees shall be monitored by the regulatory authority, or by an other competent national authority.
5. Household customers for gas shall be entitled to participate in collective switching schemes. Member States shall remove all regulatory or administrative barriers for collective switching, while providing a framework that ensures the utmost consumer protection to avoid any abusive practices.

### *Article 13*

#### **Comparison tools**

1. Member States shall ensure that at least natural gas household customers, and microenterprises, have access, free of charge, to at least one tool comparing the offers of suppliers, including bundled offers. Customers shall be informed of the availability of such tools in or together with their bills or by other means. The tools shall meet at least the following requirements:
  - (a) they shall be independent from market participants and ensure that gas undertakings are given equal treatment in search results;
  - (b) they shall clearly disclose their owners and the natural or legal person operating and controlling the tools, as well as information on how the tools are financed;
  - (c) they shall set out clear and objective criteria on which the comparison is to be based, including services, and disclose them;
  - (d) they shall use plain and unambiguous language;
  - (e) they shall provide accurate and up-to-date information and state the time of the last update;
  - (f) they shall be accessible to persons with disabilities, by being perceivable, operable, understandable and robust;
  - (g) they shall provide an effective procedure for reporting incorrect information on published offers; and
  - (h) they shall perform comparisons, while limiting the personal data requested to that strictly necessary for the comparison.

Member States shall ensure that at least one tool covers the entire market. Where multiple tools cover the market, those tools shall include, as complete as practicable, a range of gas offers covering a significant part of the market and, where those tools do not completely cover the market, a clear statement to that effect, before displaying results.

2. The tools referred to in paragraph 1 may be operated by any entity, including private companies and public authorities or bodies.
3. Member States shall appoint a competent authority to be responsible for issuing trust marks for comparison tools that meet the requirements set out in paragraph 1, and for ensuring that comparison tools bearing a trust mark continue to meet the requirements set out in paragraph 1. That authority shall be independent of any market participants and comparison tool operators.
4. Member States may require comparison tools referred to in paragraph 1 to include comparative criteria relating to the nature of the services offered by the suppliers.
5. Any tool comparing the offers of market participants shall be eligible to apply for a trust mark in accordance with this Article on a voluntary and non-discriminatory basis.
6. By way of derogation from paragraphs 3 and 5, Member States may choose not to provide for the issuance of trust marks to comparison tools if a public authority or body provides a comparison tool that meets the requirements set out in paragraph 1.

#### *Article 14*

##### **Active customers**

1. Member States shall ensure that final customers are entitled to act as active customers without being subject to disproportionate or discriminatory technical requirements, administrative requirements, procedures and charges, and to network charges that are not cost-reflective.
2. Member States shall ensure that active customers are:
  - (a) entitled to operate directly;
  - (b) entitled to sell self-produced renewable natural gas,
  - (c) entitled to participate in energy efficiency schemes;
  - (d) entitled to delegate to a third party the management of the installations required for their activities, including installation, operation, data handling and maintenance, without that third party being considered to be an active customer;
  - (e) are financially responsible for the imbalances they cause in the natural gas system or shall delegate their balancing responsibility in line with Article 3 of Regulation 20xx/xxx [Gas Regulation].
3. Member States may have different provisions applicable to individual and jointly-acting active customers in their national law, provided that all rights and obligations under this Article apply to all active customers. Any difference in the treatment of jointly-acting active customers shall be proportionate and duly justified.
4. Member States shall ensure that active customers that own facilities that store renewable gas:

- (a) have the right to a grid connection within a reasonable time after the request, provided that all necessary conditions, such as balancing responsibility, are fulfilled;
- (b) are not subject to any double charges, including network charges, for stored renewable gas remaining within their premises;
- (c) are not subject to disproportionate licensing requirements or fees;
- (d) are allowed to provide several services simultaneously, if technically feasible.

#### *Article 15*

#### **Citizen energy communities for natural gas**

1. Member States shall provide an enabling regulatory framework for natural gas citizen energy communities ensuring that:
  - (c) participation in a natural gas citizen energy community is open and voluntary;
  - (d) members or shareholders of a natural gas citizen energy community are entitled to leave the community, in which case **Article 12** applies;
  - (e) members or shareholders of a natural gas citizen energy community do not lose their rights and obligations as household customers or active customers;
  - (f) subject to fair compensation as assessed by the regulatory authority, relevant distribution system operators cooperate with citizen energy communities to facilitate renewable gas transfers within citizen energy communities;
  - (g) citizen energy communities are subject to non-discriminatory, fair, proportionate and transparent procedures and charges, including with respect to grid connection, registration and licensing, and to transparent, non-discriminatory and cost-reflective network charges, ensuring that they contribute in an adequate and balanced way to the overall cost sharing of the system.
2. Member States may provide in the enabling regulatory framework that natural gas citizen energy communities:
  - (a) are open to cross-border participation;
  - (b) are entitled to own, establish, purchase or lease distribution networks and to autonomously manage them subject to conditions set out in paragraph 4 of this Article;
  - (c) are subject to the exemptions provided for in **Article 28(2)**;
  - (d) are exempted from investments ensuring reverse flows, as provided by Article xx of Gas Regulation, in case the distribution system they operate is part of a balancing zone and connected to the public distribution or transmission system at a single connection point.
  - (e) benefit from a discount applied the respective capacity-based transmission tariffs for the purposes of increasing renewable natural gas injections at entry points from production installations owned by the community in accordance with **Article 16 of Gas Regulation**.
3. Member States shall ensure that natural gas citizen energy communities:
  - (a) are able to access all natural gas markets in a non-discriminatory manner;

- (b) are treated in a non-discriminatory and proportionate manner with regard to their activities, rights and obligations as final customers, producers, suppliers or distribution system operators or market participants;
- (c) are financially responsible for the imbalances they cause in the gas system or shall delegate their balancing responsibility in line with Article xx (general principles) of Gas Regulation;
- (d) are treated like active customers in accordance with Article 14 (4) (a) (c), and (d) with regard to storage of renewable natural gas and benefit from a discount applied to capacity-based distribution and transmission tariffs at entry points from and exit points to the facility that stores renewable natural gas, unless the connected facility which is connected to more than one transmission or distribution network is used to compete with an interconnection point. are entitled to arrange within the citizen energy community the sharing of renewable natural that is produced by the production units owned by the community, subject to other requirements laid down in this Article and subject to the community members retaining their rights and obligations as final customers.

For the purposes of point (e) of the first subparagraph, where renewable natural gas is shared, this shall be without prejudice to applicable network charges, tariffs and levies, in accordance with a transparent cost-benefit analysis of distributed energy resources developed by the competent national authority.

4. Member States may decide to grant citizen energy communities the right to manage distribution networks in their area of operation and establish the relevant procedures, without prejudice to Chapter VI or to other rules and regulations applying to distribution system operators.

If such a right is granted, Member States shall ensure that citizen energy communities:

- (a) are entitled to conclude an agreement on the operation of their network with the relevant distribution system operator or transmission system operator to which their network is connected;
- (b) are subject to appropriate network charges at the connection points between their network and the distribution network outside the citizen energy community;
- (c) do not discriminate or harm customers who remain connected to the distribution system.

#### *Article 16*

##### **Bills and billing information**

1. Member States shall ensure that bills and billing information are accurate, easy to understand, clear, concise, user-friendly and presented in a manner that facilitates comparison by final customers. On request, final customers shall receive a clear and understandable explanation of how their bill was derived, especially where bills are not based on actual consumption.
2. Member States shall ensure that final customers receive all their bills and billing information free of charge.
3. Member States shall ensure that final customers are offered the option of electronic bills and billing information and are offered flexible arrangements for the actual payment of the bills.



4. If the contract provides for a future change of the product or price, or a discount, this shall be indicated on the bill together with the date on which the change takes place.
5. Member States shall consult consumer organisations when they consider changes to the requirements for the content of bills.
6. Member States shall ensure that bills and billing information fulfil the minimum requirements set out in Annex I.

#### *Article 17*

#### **Smart metering systems for Natural Gas**

1. In order to promote energy efficiency and to empower final customers, Member States or, where a Member State has so provided, the regulatory authority shall strongly recommend that natural gas undertakings optimise the use of [natural] gas, inter alia, by providing energy management services, and introducing smart metering systems that are interoperable, in particular with consumer energy management systems and with smart grids, in accordance with the applicable Union data protection rules.
2. Member States shall ensure the deployment in their territories of smart metering systems that assist the active participation of final customers in the natural gas market. Such deployment may be subject to a cost-benefit assessment which shall be undertaken in accordance with the principles laid down in Annex II.
3. Member States that proceed with the deployment of smart metering systems shall adopt and publish the minimum functional and technical requirements for the smart metering systems to be deployed in their territories, in accordance with Article 19 and Annex II. Member States shall ensure the interoperability of those smart metering systems, as well as their ability to provide output for consumer energy management systems. In that respect, Member States shall have due regard to the use of the relevant available standards, including those enabling interoperability, to best practices and to the importance of the development of smart grids and the development of the internal market for natural gas.
4. Member States that proceed with the deployment of smart metering systems shall ensure that final customers contribute to the associated costs of the deployment in a transparent and non-discriminatory manner, while taking into account the long-term benefits to the whole value chain. Member States or, where a Member State has so provided, the designated competent authorities, shall regularly monitor such deployment in their territories to track the delivery of benefits to consumers.
5. Where the deployment of smart metering systems has been negatively assessed as a result of the cost-benefit assessment referred to in paragraph 2, Member States shall ensure that this assessment is revised at least every four years, or more frequently, in response to significant changes in the underlying assumptions and in response to technological and market developments. Member States shall notify to the Commission the outcome of their updated cost-benefit assessment as it becomes available.
6. The provisions in this Directive concerning smart metering systems shall apply to future installations and to installations that replace older smart meters. Smart metering systems that have already been installed, or for which the ‘start of works’ began, before [date of entry into force of this Directive], may remain in operation

over their lifetime but, in the case of smart metering systems that do not meet the requirements of Article 20 and Annex II, shall not remain in operation after [12 years after entering into force of this Directive].

7. For the purpose of this paragraph, ‘start of works’ means either the start of construction works on the investment or the first firm commitment to order equipment or other commitment that makes the investment irreversible, whichever is the first in time. Buying of land and preparatory works such as obtaining permits and conducting preliminary feasibility studies are not considered as start of works. For take-overs, ‘start of works’ means the moment of acquiring the assets directly linked to the acquired establishment.

#### *Article 18*

##### **Smart metering in the hydrogen system**

1. Member States shall ensure the deployment of smart metering systems that can accurately measure consumption, provide information on actual time of use, and are capable to transmit and receive data for information, monitoring and control purposes, using a form of electronic communication.
2. Member States shall ensure the security of those metering systems and respective data communication, and the privacy of final customers, in compliance with relevant Union data protection and privacy legislation, as well as their interoperability and due regard to the use of appropriate standards.
3. To this respect, the Commission shall adopt, by means of implementing acts, [smart metering] interoperability requirements and procedures to ensure for those eligible access to data coming from those metering systems. Those implementing acts shall be adopted in accordance with the advisory procedure referred to Article 4 of Regulation (EU) No 182/2011. Member States shall ensure that these are duly applied by the hydrogen undertakings.

#### *Article 19*

##### **Functionalities of smart metering systems in the [natural] gas system**

Where the deployment of smart metering systems is positively assessed as a result of the cost-benefit assessment referred to in Article 17(2), or where smart metering systems are systematically deployed after [date of entry into force of this Directive], Member States shall deploy smart metering systems in accordance with European standards, Annex II and the following requirements:

- (a) the smart metering systems shall accurately measure actual [natural] gas consumption and shall be capable of providing to final customers information on actual time of use. Validated historical consumption data shall be made easily and securely available and visualised to final customers on request and at no additional cost. Non-validated most recent available consumption data shall also be made easily and securely available to final customers at no additional cost, through a standardised interface or through remote access, in order to support automated energy efficiency programmes, and other services;
- (b) the security of the smart metering systems and data communication shall comply with relevant Union security rules, having due regard of the best available

techniques for ensuring the highest level of cybersecurity protection while bearing in mind the costs and the principle of proportionality;

- (c) the privacy of final customers and the protection of their data shall comply with relevant Union data protection and privacy rules;
- (d) if final customers request it, their [natural]gas consumption data shall be made available to them, in accordance with the implementing acts adopted pursuant to Article 23, through a standardised communication interface or through remote access, or to a third party acting on their behalf, in an easily understandable format allowing them to compare offers on a like-for-like basis;
- (e) appropriate advice and information shall be given to final customers prior to or at the time of installation of smart meters, in particular concerning their full potential with regard to the management of meter reading and the monitoring of energy consumption, and concerning the collection and processing of personal data in accordance with the applicable Union data protection rules;
- (f) smart metering systems shall enable final customers to be metered and settled at the same time resolution as the shortest settlement period in the national market.

For the purposes of point (d) of the first subparagraph, it shall be possible for final customers to retrieve their metering data or transmit them to another party at no additional cost and in accordance with their right to data portability under Union data protection rules.

#### *Article 20*

##### **Entitlement to a smart meter for natural gas**

1. Where the deployment of smart metering systems has been negatively assessed as a result of the cost-benefit assessment referred to in Article 17(2) and where smart metering systems are not systematically deployed, Member States shall ensure that every final customer is entitled on request, while bearing the associated costs, to have installed or, where applicable, to have upgraded, under fair, reasonable and cost-effective conditions, a smart meter that:
  - (a) is equipped, where technically feasible, with the functionalities referred to in Article 19, or with a minimum set of functionalities to be defined and published by Member States at national level in accordance with Annex II (on Smart Meters);
  - (b) is interoperable and able to deliver the desired connectivity of the metering infrastructure with consumer energy management systems.
2. In the context of a customer request for a smart meter pursuant to paragraph 1, Member States or, where a Member State has so provided, the designated competent authorities shall:
  - (a) ensure that the offer to the final customer requesting the installation of a smart meter explicitly states and clearly describes:
    - (i) the functions and interoperability that can be supported by the smart meter and the services that are feasible as well as the benefits that can be realistically attained by having that smart meter at that moment in time;
    - (ii) any associated costs to be borne by the final customer;

- (b) ensure that it is installed within a reasonable time, no later than four months after the customer's request;
- (c) regularly, and at least every two years, review and make publicly available the associated costs, and trace the evolution of those costs as a result of technology developments and potential metering system upgrades.

#### *Article 21*

##### **Conventional meters for natural gas**

1. Where final natural gas customers do not have smart meters, Member States shall ensure that final customers are provided with individual conventional meters that accurately measure their actual consumption.
2. Member States shall ensure that final natural gas customers are able to easily read their conventional meters, either directly or indirectly through an online interface or through another appropriate interface.

#### *Article 22*

##### **Data management**

1. When laying down the rules regarding the management and exchange of data, Member States or, where a Member State has so provided, the designated competent authorities shall specify the rules on the access to data of the final customer by eligible parties in accordance with this Article and the applicable Union legal framework. For the purpose of this Directive, data shall be understood to include metering and consumption data as well as data required for customer switching, and other services.
2. Member States shall organise the management of data in order to ensure efficient and secure data access and exchange, as well as data protection and data security.

Independently of the data management model applied in each Member State, the parties responsible for data management shall provide access to the data of the final customer to any eligible party, in accordance with paragraph 1. Eligible parties shall have the requested data at their disposal in a non-discriminatory manner and simultaneously. Access to data shall be easy and the relevant procedures for obtaining access to data shall be made publicly available.

3. The rules on access to data and data storage for the purpose of this Directive shall comply with the relevant Union law.

The processing of personal data within the framework of this Directive shall be carried out in accordance with Regulation (EU) 2016/679.

4. Member States or, where a Member State has so provided, the designated competent authorities, shall authorise and certify or, where applicable, supervise the parties responsible for the data management, in order to ensure that they comply with the requirements of this Directive.

Without prejudice to the tasks of the data protection officers under Regulation (EU) 2016/679, Member States may decide to require that parties responsible for the data management appoint compliance officers who are to be responsible for monitoring the implementation of measures taken by those parties to ensure non-discriminatory access to data and compliance with the requirements of this Directive.

Member States may appoint compliance officers or bodies in the case of vertically integrated network operators with data management responsibilities in order to fulfil the obligations under this paragraph.

5. No additional costs shall be charged to final customers for access to their data or for a request to make their data available.

Member States shall be responsible for setting the relevant charges for access to data by eligible parties.

Member States or, where a Member State has so provided, the designated competent authorities shall ensure that any charges imposed by regulated entities that provide data services are reasonable and duly justified.

### *Article 23*

#### **Interoperability requirements and procedures for access to data**

1. In order to promote competition in the retail market and to avoid excessive administrative costs for the eligible parties, Member States shall facilitate the full interoperability of energy services within the Union.
2. The Commission shall adopt, by means of implementing acts, interoperability requirements and non-discriminatory and transparent procedures for access to data referred to in Article 23(1). Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 4 of Regulation (EU) No 182/2011.
3. Member States shall ensure that [natural] gas undertakings apply the interoperability requirements and procedures for access to data referred to in paragraph 2. Those requirements and procedures shall be based on existing national practices.

### *Article 24*

#### **Single points of contact**

Member States shall ensure the provision of single points of contact, to provide customers with all necessary information concerning their rights, the applicable law and dispute settlement mechanisms available to them in the event of a dispute. Such single points of contact may be part of general consumer information points and should be the same entities as the single contact points for electricity according to Art 26 of Directive 2019/944/EU on common rules for the internal market in electricity.

### *Article 25*

#### **Right to out-of-court dispute settlement**

1. Member States shall ensure that final customers have access to simple, fair, transparent, independent, effective and efficient out-of-court mechanisms for the settlement of disputes concerning rights and obligations established under this Directive, through an independent mechanism such as an energy ombudsman or a consumer body, or through a regulatory authority. Where the final customer is a consumer within the meaning of Directive 2013/11/EU of the European Parliament and of the Council (23), such out-of-court dispute settlement mechanisms shall comply with the quality requirements of Directive 2013/11/EU and shall provide, where warranted, for systems of reimbursement and compensation.

2. Where necessary, Member States shall ensure that alternative dispute resolution entities cooperate to provide simple, fair, transparent, independent, effective and efficient out-of-court dispute settlement mechanisms for any dispute that arises from products or services that are tied to, or bundled with, any product or service falling under the scope of this Directive.
3. The participation of gas undertakings in out-of-court dispute settlement mechanisms for household customers shall be mandatory unless the Member State demonstrates to the Commission that other mechanisms are equally effective.

#### Article 26

##### **Vulnerable customers**

1. 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. Member States shall ensure that rights and obligations linked to vulnerable customers are applied; such rights and obligations may include, inter alia, to the prohibition of disconnection of gas to such customers in critical times. 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.

↓ 2009/73/EC

#### Article 27~~45~~

##### **Retail markets**

In order to facilitate the emergence of well functioning and transparent retail markets in the ~~Community~~  Union , Member States shall ensure that the roles and responsibilities of transmission system operators, distribution system operators, supply undertakings and customers and if necessary other market parties are defined with respect to contractual arrangements, commitment to customers, data exchange and settlement rules, data ownership and metering responsibility.

Those rules shall be made public, be designed with the aim to facilitate customers' and suppliers' access to networks and they shall be subject to review by the regulatory authorities or other relevant national authorities.

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↓ new

## Chapter IV

### Third party access to infrastructure

#### SECTION I

#### ACCESS TO NATURAL GAS INFRASTRUCTURE

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↓ new

##### Article 28

#### Market access for renewable and low carbon gases

Member States shall enable the access of renewable and low carbon gases to the market and infrastructure regardless whether the renewable and low carbon gases production facilities are connected to distribution or transmission network.

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↓ 2009/73/EC (adapted)  
⇒ new

##### Article 29~~32~~

#### Third-party access ⇒ to natural gas distribution and transmission and LNG terminals ⇐

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 those tariffs, or the methodologies underlying their calculation are approved prior to their entry into force in accordance with **Article 7441** by a regulatory authority referred to in **Article 7239(1)** and that those tariffs — and the methodologies, where only methodologies are approved — are published prior to their entry into force. ⇒ Tariff discounts can be granted only if so provided by Union legislation. ⇐
- ~~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.~~
2. ~~3.~~ The provisions of this Directive shall not prevent the conclusion of long-term contracts in so far as they comply with ~~Community~~ ⇔ Union ⇔ competition rules.

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↓ new

3. This article shall also apply to citizen energy communities that manage distribution networks.
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↓ 2009/73/EC (adapted)  
⇒ new

Article 30~~34~~

**Access to upstream** ⇒ **natural gas** ⇐ **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 89~~54~~](#).
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 matters may be taken into account:
  - (d) the need to refuse access where there is an incompatibility of technical specifications which cannot reasonably be overcome;
  - (e) the need to avoid difficulties which cannot reasonably be overcome and could prejudice the efficient, current and planned future production of hydrocarbons, including that from fields of marginal economic viability;
  - (f) 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
  - (g) the need to apply their laws and administrative procedures, in conformity with ~~Community~~  Union  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 each other with a view to ensuring that the provisions of this Directive are applied consistently. Where the upstream pipeline network originates from a third country and connects to at least one Member State, the Member States concerned shall consult each other and the Member State where the first entry point to the Member States' network is located shall consult the third country concerned where the upstream pipeline network originates, with a view to ensuring, as regards the network concerned, that this Directive is applied consistently in the territory of the Member States.
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Article 31~~33~~

**Access to storage ⇒ of natural gas ⇐**

5. 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 of the procedures referred to in paragraphs 3 and 4. Those procedures shall operate in accordance with objective, transparent and non-discriminatory criteria.

The regulatory authorities ~~where Member States have so provided or Member States~~ shall define and publish criteria according to which the access regime applicable to storage facilities and linepack may be determined. They shall make public, or oblige storage and transmission system operators to make public, which storage facilities, or which parts of those storage facilities, and which linepack is offered under the different procedures referred to in paragraphs 3 and 4.

The obligation referred to in the second sentence of the second subparagraph shall be without prejudice to the right of choice granted to Member States in the first subparagraph.

6. The provisions of paragraph 1 shall not apply to ancillary services and temporary storage that are related to LNG facilities and are necessary for the re-gasification process and subsequent delivery to the transmission system.
7. In the case of negotiated access, ~~Member States or, where Member States have so provided,~~ the regulatory authorities 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 facilities and linepack, when technically and/or economically necessary for providing efficient access to the system, as well as for the organisation of access to other ancillary services. The parties shall be obliged to negotiate access to storage, linepack and other ancillary services in good faith.

Contracts for access to storage, linepack and other ancillary services shall be negotiated with the relevant storage system operator or natural gas undertakings. The regulatory authorities ~~where Member States have so provided or 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 ~~by 1 January 2005 and~~ on an annual basis ~~every year thereafter~~.

When developing the conditions referred to in the second subparagraph, storage operators ~~and natural gas undertakings~~ shall consult system users.

8. In the case of regulated access, the regulatory authorities ~~where Member States have so provided or 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. The regulatory authorities ~~where Member States have so provided or Member States~~ shall consult system users when developing those tariffs or the methodologies for those tariffs. The 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.

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↓ new

9. When choosing the procedure for access to storage under this Article, Member States shall take into account the results of the common and national risk assessments carried out under Article 7 of Regulation (EU) 2017/1938.

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↓ 2009/73/EC  
⇒ new

#### Article 32~~38~~

##### Direct lines ⇨ for natural gas ⇩

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; and
  - (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 (for example, 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. Those criteria shall be objective, transparent and non-discriminatory.

3. Member States may issue an authorisation to construct a direct line subject either to the refusal of system access on the basis of Article 35 or to the opening of a dispute-settlement procedure under Article 41.

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↓ new

## SECTION II

### ACCESS TO HYDROGEN INFRASTRUCTURE

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↓ new

#### Article 33

##### Third-party access to hydrogen networks

1. Member States shall ensure the implementation of a system of regulated third party access to hydrogen networks based on published tariffs and applied objectively and without discrimination between any hydrogen network users.

Member States shall ensure that those tariffs, or the methodologies underlying their calculation, are approved prior to their entry into force in accordance with Article 74 by a regulatory authority referred to in Article 72(1) and that those tariffs — and the methodologies, where only methodologies are approved — are published prior to their entry into force.

2. Hydrogen network 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 hydrogen network operators.
3. Until [31 December 2030], a Member State can decide not to apply paragraph 1. In such case, the Member State shall ensure the implementation of a system of negotiated third party access to hydrogen networks in accordance with objective, transparent and non-discriminatory criteria. The regulatory authorities shall take the necessary measures for hydrogen network users to be able to negotiate access to hydrogen networks,. The parties shall be obliged to negotiate access to hydrogen networks in good faith.
4. In case negotiated access is applied, national regulatory authorities shall provide guidance to hydrogen network users on how negotiated tariffs will be affected when regulated third party access is introduced.

#### Article 34

##### Third-party access to hydrogen terminals

For hydrogen terminals, Member States may decide not to apply Article 29 and Articles 7 Gas Regulation. In such case, Member States shall ensure the implementation of a system of third party access to hydrogen terminals based on

negotiated access to hydrogen networks whereby the regulatory authorities shall take the necessary measures for hydrogen network users to be able to negotiate access to hydrogen networks. The parties shall be obliged to negotiate access to hydrogen networks in good faith

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↓ new

#### Article 35

#### Access to hydrogen storage

Member States shall ensure the implementation of a system of regulated third party access to hydrogen storage, and line pack 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, based on published tariffs and applied objectively and without discrimination between any hydrogen system users. Member States shall ensure that those tariffs, or the methodologies underlying their calculation, are approved prior to their entry into force in accordance with Article 74 by the regulatory authority.

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↓ new

### SECTION III

## REFUSAL OF ACCESS AND CONNECTION

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↓ 2009/73/EC  
⇒ new

#### Article 36~~35~~

#### Refusal of access ⇒ and connection ⇐

1. Natural gas ⇐ and hydrogen ⇐ undertakings may refuse access ⇐ or connection ⇐ to the system ⇐ or hydrogen 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 48 and the alternative chosen by the Member State in accordance with paragraph 1 of that Article.~~ Duly substantiated reasons shall be given for any such a refusal.
2. Member States may take the measures necessary to ensure that the natural gas ⇐ or hydrogen ⇐ undertaking refusing access ⇐ or connection ⇐ to the system ⇐ or hydrogen system ⇐ on the basis of lack of capacity or a lack of connection makes the necessary enhancements as far as it is economic 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.

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↓ new

3. Access to the system for renewable and low carbon gases may only be refused subject to the provisions of Article 42 and Article 18 of the Gas Regulation.
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↓ new

## Chapter V

# Rules applicable to transmission, storage and system operators of natural gas

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↓ 2009/73/EC  
⇒ new

### Article 37~~4~~

#### Tasks of transmission, storage and/or LNG 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 to secure an open market, with due regard to the environment, ensure adequate means to meet service obligations;
  - (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; and
  - (d) provide system users with the information they need for efficient access to the system.
2. Each transmission system operator shall build sufficient cross-border capacity to integrate European transmission infrastructure accommodating all economically reasonable and technically feasible demands for capacity and taking into account security of gas supply.

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↓ new

3. Transmission system operators shall cooperate with distribution system operators to ensure the effective participation of market participants connected to the grid in retail, wholesale and balancing market.
  4. Transmission system operators shall ensure efficient gas quality management in their facilities in line with applicable gas quality standards.
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↓ 2009/73/EC

5. ~~3.~~ Rules adopted by transmission system operators for balancing the gas transmission system shall be objective, transparent and non-discriminatory, including rules for the charging of system users of their networks for energy imbalance. Terms and conditions, including rules and tariffs, for the provision of such services by transmission system operators shall be established pursuant to a methodology compatible with Article 41(6) in a non-discriminatory and cost-reflective way and shall be published.
  6. ~~4.~~ The regulatory authorities where Member States have so provided or Member States may require transmission system operators to comply with minimum standards for the maintenance and development of the transmission system, including interconnection capacity.
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↓ new

7. Member States may provide that one or several responsibilities listed under paragraph 1 be assigned to a transmission system operator other than the one which owns the transmission system to which the responsibilities concerned would otherwise be applicable. The transmission system operator to which the tasks are assigned shall be certified under the ownership unbundling, the independent system operator or the independent transmission system operator model and fulfil the requirements provided for in (reference to OU article), but shall not be required to own the transmission system it is responsible for.
8. The transmission system operator which owns the transmission system shall fulfil the requirements provided for in **Chapter IX** and be certified in accordance with Article **57**. This shall be without prejudice to the possibility for transmission system operators which are certified under the ownership unbundling, the independent system operator or the independent transmission system operator model to delegate, on their own initiative and under their supervision, certain tasks to other transmission system operators which are certified under the ownership unbundling, the independent system operator or the independent transmission system operator model where the delegation of tasks does not endanger the effective and independent decision-making rights of the delegating transmission system operator.

↓ new

9. LNG and storage system operators shall cooperate, within one Member State and regionally, to ensure most efficient use of facilities capacities and synergies between these facilities, taking into account system integrity and operation.

↓ 2009/73/EC

10. ~~5.~~ 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 38~~46~~*

#### **Confidentiality for transmission system operators and transmission system owners**

1. Without prejudice to Article ~~7130~~ or any other legal duty to disclose information, each transmission, storage and/or LNG system operator, and each transmission system owner, shall preserve the confidentiality of commercially sensitive information obtained in the course of carrying out its activities, and shall prevent information about its own activities which may be commercially advantageous from being disclosed in a discriminatory manner. In particular, it shall not disclose any commercially sensitive information to the remaining parts of the undertaking, unless this is necessary for carrying out a business transaction. In order to ensure the full respect of the rules on information unbundling, Member States shall ensure that the transmission system owner including, in the case of a combined operator, the distribution system operator, and the remaining part of the undertaking do not use joint services, such as joint legal services, apart from purely administrative or IT functions.
2. Transmission, storage and/or LNG system operators shall not, in the context of sales or purchases of natural gas by related undertakings, misuse commercially sensitive information obtained from third parties in the context of providing or negotiating access to the system.
3. Information necessary for effective competition and the efficient functioning of the market shall be made public. That obligation shall be without prejudice to protecting commercially sensitive information.

↓ new

#### *Article 39*

#### **Decision-making powers regarding the connection of new production facilities for renewable and low carbon gases to the transmission system**

1. The transmission system operator shall establish and publish transparent and efficient procedures for non-discriminatory connection of new production installations of renewable and low carbon gases. Those procedures shall be subject to approval by the regulatory authorities.

The transmission system operators shall not be entitled to refuse the connection of all economically reasonable and technically feasible connection requests of a new production facility installation for renewable and low carbon gases.

↓ 2009/73/EC (adapted)  
⇒ new

Article 40~~23~~

**Decision-making powers regarding the connection of storage facilities, LNG regasification facilities and industrial customers to the transmission system ⇒ and the hydrogen network ⇐**

1. The transmission system operator ⇒ and the hydrogen network operator ⇐ shall establish and publish transparent and efficient procedures and tariffs for non-discriminatory connection of ⇒ natural gas and hydrogen ⇐ storage facilities, LNG regasification facilities ⇒ , hydrogen terminals ⇐ and industrial customers to the transmission system ⇒ and the hydrogen network ⇐. Those procedures shall be subject to approval by the regulatory authority.
2. The transmission system operator ⇒ and the hydrogen network operator ⇐ shall not be entitled to refuse the connection of a new ⇒ natural gas or hydrogen ⇐ storage facility, LNG regasification facility⇒, hydrogen terminal ⇐ or industrial customer on the grounds of possible future limitations to available network capacities or additional costs linked with necessary capacity increase. The transmission system operator ⇒ and hydrogen network operator ⇐ shall ensure sufficient entry and exit capacity for the new connection.

~~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<sup>21</sup>;~~
  - ~~(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~~

<sup>21</sup> OJ L 127, 29.4.2004, p. 92



~~Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 51(3).~~

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↓ 2009/73/EC  
⇒ new

## Chapter VI

### Distribution ~~and supply~~ system operation ⇒ of natural gas ⇐

#### Article 41~~24~~

##### 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 42~~25~~, 44~~26~~ and 45~~27~~.

#### Article 42~~25~~

##### Tasks of distribution system operators

1. Each distribution system operator shall be responsible for ensuring the long-term ability of the system to meet reasonable demands for the distribution of gas, and for operating, maintaining and developing under economic conditions a secure, reliable and efficient system in its area, with due regard for the environment and energy efficiency.

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↓ new

2. Distribution system operators may be responsible for ensuring efficient gas quality management in their facilities in line with applicable gas quality standards, where necessary for system management due to the injection of renewable and low-carbon gases, subject to approval of the national regulatory authority.

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↓ 2009/73/EC

3. ~~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.
4. ~~2~~ Each distribution system operator shall provide any other distribution, transmission, LNG, 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.

5. ~~4~~ Each distribution system operator shall provide system users with the information they need for efficient access to, including use of, the system.
  6. ~~5~~ Where a distribution system operator is responsible for balancing the distribution system, rules adopted by it 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 distribution system operators shall be established pursuant to a methodology compatible with Article ~~754~~(6) in a non-discriminatory and cost-reflective way and shall be published.
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↓ new

7. Distribution system operators shall cooperate with transmission system operators to ensure the effective participation of market participants connected to their grid in retail, wholesale and balancing market in the entry-exit system to which the distribution system belongs to.
  8. The distribution system operator shall establish and publish transparent and efficient procedures for non-discriminatory connection of new production installations of renewable and low carbon gases. Those procedures shall be subject to approval by the regulatory authorities.
  9. The distribution system operators shall not be entitled to refuse the connection of all economically reasonable and technically feasible connection requests by a new production facility for renewable and low carbon gases.
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↓ new

#### *Article 43*

##### **Decision-making powers regarding the connection of new production facilities for renewable and low carbon gases to the distribution system**

1. Regulatory authorities shall oblige the distribution system operator to publish transparent and efficient procedures for non-discriminatory connection of new production installations of renewable and low carbon gases. Those procedures shall be subject to approval by the regulatory authorities.
  2. The distribution system operators shall not be entitled to refuse the connection of all economically reasonable and technically feasible connection requests.
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↓ 2009/73/EC  
⇒ new

#### *Article 44~~26~~*

##### **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 form, organisation and decision making from other activities not relating to distribution. Those rules shall not create an obligation to separate the ownership of assets of the distribution system from the vertically integrated undertaking.
2. In addition to the requirements under paragraph 1, where the distribution system operator is part of a vertically integrated undertaking, it shall be independent in terms of its organisation and decision-making from the other activities not related to distribution. In order to achieve this, the following minimum criteria shall apply:
  - (a) those persons responsible for the management of the distribution system operator must not participate in company structures of the integrated natural gas undertaking responsible, directly or indirectly, for the day-to-day operation of the production, transmission and supply of natural gas;
  - (b) appropriate measures must be taken to ensure that the professional interests of persons responsible for the management of the distribution system operator are taken into account in a manner that ensures that they are capable of acting independently;
  - (c) the distribution system operator must have effective decision-making rights, independent from the integrated natural gas undertaking, with respect to assets necessary to operate, maintain or develop the network. In order to fulfil those tasks, the distribution system operator shall have at its disposal the necessary resources including human, technical, financial and physical resources. This should not prevent the existence of appropriate coordination mechanisms to ensure that the economic and management supervision rights of the parent company in respect of return on assets, regulated indirectly in accordance with [Article 7541\(6\)](#) in a subsidiary are protected. In particular, this shall enable the parent company to approve the annual financial plan, or any equivalent instrument, of the distribution system operator and to set global limits on the levels of indebtedness of its subsidiary. It shall not permit the parent company to give instructions regarding day-to-day operations, nor with respect to individual decisions concerning the construction or upgrading of distribution lines, that do not exceed the terms of the approved financial plan, or any equivalent instrument; and
  - (d) the distribution system operator must establish a compliance programme, which sets out measures taken to ensure that discriminatory conduct is excluded, and ensure that observance of it is adequately monitored. The compliance programme shall set out the specific obligations of employees to meet that objective. An annual report, setting out the measures taken, shall be submitted by the person or body responsible for monitoring the compliance programme, the compliance officer of the distribution system operator, to the regulatory authority referred to in [Article 7339\(1\)](#) and shall be published. The compliance officer of the distribution system operator shall be fully independent and shall have access to all the necessary information of the distribution system operator and any affiliated undertaking to fulfil his task.
3. Where the distribution system operator is part of a vertically integrated undertaking, the Member States shall ensure that the activities of the distribution system operator are monitored by regulatory authorities or other competent bodies so that it cannot take advantage of its vertical integration to distort competition. In particular,

vertically integrated distribution system operators shall not, in their communication and branding, create confusion in respect of the separate identity of the supply branch of the vertically integrated undertaking.

4. Member States may decide not to apply paragraphs 1, 2 and 3 to integrated natural gas undertakings serving less than 100000 connected customers.

*Article 45~~27~~*

**Confidentiality obligations of distribution system operators**

1. Without prejudice to Article ~~71~~<sup>30</sup> 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 from 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 46~~28~~*

**Closed distribution systems  $\Rightarrow$  of natural gas  $\Leftarrow$**

1. Member States may provide for ~~national~~ regulatory authorities or other competent authorities to classify a system which distributes  $\Rightarrow$  natural  $\Leftarrow$  gas within a geographically confined industrial, commercial or shared services site and does not, without prejudice to paragraph 4, supply household customers, as a closed distribution system if:
  - (a) for specific technical or safety reasons, the operations or the production process of the users of that system are integrated; or
  - (b) that system distributes  $\Rightarrow$  natural  $\Leftarrow$  gas primarily to the owner or operator of the system or to their related undertakings.
2. Member States may provide for ~~national~~ regulatory authorities to exempt the operator of a closed  $\Rightarrow$  natural gas  $\Leftarrow$  distribution system from the requirement under Article ~~29~~<sup>32</sup>(1) that tariffs, or the methodologies underlying their calculation, are approved prior to their entry into force in accordance with Article ~~75~~<sup>41</sup>.
3. Where an exemption is granted under paragraph 2, the applicable tariffs, or the methodologies underlying their calculation, shall be reviewed and approved in accordance with Article ~~75~~<sup>41</sup> upon request by a user of the closed  $\Rightarrow$  natural gas  $\Leftarrow$  distribution system.
4. Incidental use by a small number of households with employment or similar associations with the owner of the distribution system and located within the area served by a closed distribution system shall not preclude an exemption under paragraph 2 being granted.

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↓ new

5. Closed distribution systems shall be considered as distribution systems for the purpose of the Directive.
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↓ 2009/73/EC

*Article 47~~29~~*

### **Combined operator**

Article 44(1) shall not prevent the operation of a combined transmission, LNG, storage and distribution system operator provided that operator complies with Articles 57(1), or 58 and 59, or Chapter IV or falls under Article 82(6).

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↓ new

## **Chapter VII**

### **Rules applicable to the dedicated hydrogen networks**

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↓ new

*Article 48*

#### **Tasks of hydrogen network, storage and terminal operators**

1. Each operator of hydrogen networks, storage or terminal shall be responsible for:
  - (a) operating, maintaining and developing under economic conditions secure, reliable and infrastructure for hydrogen transport or storage with due regard to the environment, in close cooperation with connected and neighbouring hydrogen network operators;
  - (b) ensuring the long-term ability of the hydrogen system to meet reasonable demands for the transport and storage of hydrogen;
  - (c) ensuring adequate means to meets its obligations;
  - (d) providing to the operator of other networks or systems with which its system is interconnected sufficient information to ensure the secure and efficient operation, coordinated development and interoperability of the interconnected system;

- (e) refraining from discriminating between system users or classes of infrastructure users, particularly in favour of its related undertakings; and
  - (f) providing system users with the information they need for efficient access to the infrastructure.
2. Each hydrogen network operator shall build sufficient cross-border capacity to integrate European hydrogen infrastructure accommodating all economically reasonable and technically feasible demands for capacity and taking into account security of [hydrogen] supply.
  3. Hydrogen network operators may be responsible for ensuring efficient hydrogen quality management in their networks in line with applicable hydrogen quality standards, where necessary for system management and subject to the approval of the national regulatory authority.

#### *Article 49*

##### **Existing hydrogen networks**

1. Member States may decide to grant a derogation from the requirements of Articles 65, 66 and 67, and Articles 6, 33 and 47 of Gas regulation to hydrogen networks that belonged to a vertically integrated undertaking on [Date entry into force]. The derogation shall be limited in scope to the network capacity in operation on [Date entry into force].
2. Such derogation shall be limited in time and shall expire:
  - (a) if the vertically integrated undertaking submits a request to end the derogation;
  - (b) if the hydrogen network benefitting from the derogation is connected to a hydrogen network to which Articles 57, 58 and 59, and Article 33, Article 6, Article 47 of Gas regulation are applicable;
  - (c) if the hydrogen network benefitting from the derogation or its capacity is expanded significantly [10%];
  - (d) at the latest on 31 December 2030.

#### *Article 50*

##### **Geographically confined hydrogen networks**

1. Member States may provide for regulatory authorities to grant a derogation from Articles 57(1), or 78 and 79 and Article 47 of Gas regulation for hydrogen networks which transport hydrogen from one entry point to a limited number of exit points within a geographically confined, industrial or commercial area on the territory of a single Member State.
2. The derogations under paragraph 1 shall apply at least until 2030. After 2030, the derogation will expire:
  - (a) if a competing renewable hydrogen producer wants to get access to the network;
  - (b) if the exempted hydrogen network becomes connected to another hydrogen network.

## Article 51

### Closed hydrogen systems

1. Member States may provide for regulatory authorities to classify a hydrogen network which transports hydrogen within a geographically confined industrial, commercial or shared services site and does not, without prejudice to paragraph 4, supply household customers, as a closed hydrogen system if:
  - (a) for specific technical or safety reasons, the operations or the production process of the users of that hydrogen system are integrated; or
  - (b) that system transports hydrogen primarily to the owner or operator of the system or to their related undertakings.
2. Member States may provide for regulatory authorities to exempt the operator of a closed hydrogen system from the requirements under Article 65, 66, and 67 and Article 6 of Gas Regulation that tariffs, or the methodologies underlying their calculation, are approved prior to their entry into force in accordance with Article 74.
3. Where an exemption is granted under paragraph 2, the applicable tariffs, or the methodologies underlying their calculation, shall be reviewed and approved in accordance with Article 74 upon request by a user of the closed hydrogen system.
4. Incidental use by a small number of households with employment or similar associations with the owner of the closed hydrogen system and located within the area served by the closed hydrogen system shall not preclude an exemption under paragraph 2 being granted.

## Article 52

### Hydrogen interconnectors with third countries

Hydrogen interconnectors between Member States and third countries shall be subject to the rules applicable to hydrogen networks as set out in this Directive and in Regulation [recast Gas Regulation]. Member States shall ensure that the enforcement of these rules takes into account their effective application on Union territory and the integrated nature of the interconnector.

## Article 53

### Confidentiality for operators of hydrogen networks, hydrogen storage facilities and hydrogen terminals

1. Without prejudice to legal duties to disclose information, each operator of a hydrogen network, hydrogen storage facility or hydrogen terminal, and each owner of a hydrogen network, shall preserve the confidentiality of commercially sensitive information obtained in the course of carrying out its activities, and shall prevent information about its own activities which may be commercially advantageous from being disclosed in a discriminatory manner. In particular, it shall not disclose any commercially sensitive information to the remaining parts of the undertaking, unless this is necessary for carrying out a business transaction. In order to ensure the full respect of the rules on information unbundling, Member States shall ensure that the owner of the hydrogen network and the remaining part of the undertaking do not use joint services, such as joint legal services, apart from purely administrative or IT functions.

2. The operator of a hydrogen network, hydrogen storage facility or hydrogen terminal shall not, in the context of sales or purchases of hydrogen by related undertakings, misuse commercially sensitive information obtained from third parties in the context of providing or negotiating access to the system.
3. Information necessary for effective competition and the efficient functioning of the market shall be made public. That obligation shall be without prejudice to protecting commercially sensitive information.

↓ new

## CHAPTER VIII

### INTEGRATED NETWORK PLANNING

↓ 2009/73/EC  
⇒ new

#### Article 54~~22~~

##### Network development and powers to make investment decisions

1. ~~Every year,~~ ⇒ At least every two years, all ⇐ transmission system operators shall submit to the ⇒ relevant ⇐ regulatory authority a ten-year network development plan based on existing and forecast supply and demand after having consulted all ~~the~~ relevant stakeholders. ⇒ There should be one single network development plan at least per Member State. Infrastructure operators, including LNG Terminal operators, Storage operators, Distribution System operators as well as hydrogen, district heating infrastructure and electricity operators are required to provide and exchange all relevant information to the transmission system operators required for developing the single plan. ⇐ That network development plan shall contain efficient measures in order to guarantee the adequacy of the ⇒ natural gas ⇐ system and the security of supply ⇒ in particular the compliance with the infrastructure standards under Regulation (EU) 2017/2017. The ten-year network development plan shall be published and accessible on a website ⇐.
2. The ten-year network development plan shall, in particular:
  - (a) ~~indicate to market participants~~ ⇒ contain ⇐ the main ~~transmission~~ infrastructure that needs to be built or upgraded over the next ten years;
  - (b) contain all the investments already decided and identify new investments which have to be executed in the next three years; ~~and~~

↓ new

- (c) include information on infrastructure that can or will be decommissioned; and



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↓ 2009/73/EC

⇒ new

- (d) ~~(e)~~ provide for a time frame for all investment ⇒ and decommissioning ⇐ projects.
- 

↓ new

- (e) be based on a joint scenario framework developed between the relevant infrastructure operators, including relevant distribution system operators, of at least gas and electricity;
- (f) be consistent with the results of the common and national risk assessments under Article 7 of Regulation 2017/1938;
- (g) be in line with the national energy and climate plan and its updates submitted in accordance with Regulation (EU) 2018/1999 and support the European climate and energy objectives [reference to climate law];
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↓ 2009/73/EC (adapted)

⇒ new

3. When elaborating the ten-year network development plan, ⇒ the transmission system operator shall fully take into account the potential for alternatives to system expansion, e.g. the use of demand response, as well as expected consumption following the application of the energy efficiency first principle, trade with other countries, the Union-wide network development plan and shall work towards an assessment of addressing a system need across electricity and gases systems including information on the optimal location and size of energy storage and power to gas assets. ⇐ ~~the transmission system operator shall make reasonable assumptions about the evolution of the production, supply, consumption and exchanges with other countries, taking into account investment plans for regional and Community wide networks, as well as investment plans for storage and LNG regasification facilities.~~
4. The regulatory authority shall consult all actual or potential system users on the ten-year network development plan in an open and transparent manner. Persons or undertakings claiming to be potential system users may be required to substantiate such claims. The regulatory authority shall publish the result of the consultation process, in particular possible needs for investments.
5. The regulatory authority shall examine whether the ten-year network development plan covers all investment needs identified during the consultation process, and whether it is consistent with ⇒ the most recent Union wide simulation of disruption scenarios carried out by the ENTSO for Gas under Article 7 of Regulation (EU) 2017/1938, with the regional and national risk assessments and ⇐ ~~the non-binding Community~~ ☒ Union ☒-wide ten-year network development plan (~~Community~~ ☒ Union ☒-wide network development plan) referred to ☒ in point (b) of Article 30(1) of Regulation (EU) 2019/943 ☒ ~~in Article 8(3)(b) of Regulation (EC) No 715/2009.~~ If any doubt arises as to the consistency with the ~~Community~~

⊗ Union ⊗-wide network development plan, the regulatory authority shall consult the Agency. The regulatory authority may require the transmission system operator to amend its ten-year network development plan.

⇒ The competent national authorities shall examine the consistency of the ten-year network development plan with the national energy and climate plan and its updates submitted in accordance with Regulation (EU) 2018/1999. ⇐

6. The regulatory authority shall monitor and evaluate the implementation of the ten-year network development plan.
7. In circumstances where the ~~transmission system operator~~ ⇒ Independent System Operator or Independent Transmission Operator ⇐, other than for overriding reasons beyond its control, does not execute an investment, which, under the ten-year network development plan, was to be executed in the following three years, Member States shall ensure that the regulatory authority is required to take at least one of the following measures to ensure that the investment in question is made if such investment is still relevant on the basis of the most recent ten-year network development plan:
  - (a) to require the transmission system operator to execute the investments in question;
  - (b) to organise a tender procedure open to any investors for the investment in question; or
  - (c) to oblige the transmission system operator to accept a capital increase to finance the necessary investments and allow independent investors to participate in the capital.

Where the regulatory authority has made use of its powers under point (b) of paragraph 7 ~~the first subparagraph~~, it may oblige the transmission system operator to agree to one or more of the following:

- (a) financing by any third party;
- (b) construction by any third party;
- (c) building the new assets concerned itself;
- (d) operating the new asset concerned itself.

The transmission system operator shall provide the investors with all information needed to realise the investment, shall connect new assets to the transmission network and shall generally make its best efforts to facilitate the implementation of the investment project.

The relevant financial arrangements shall be subject to approval by the regulatory authority.

8. Where the regulatory authority has made use of its powers under ~~the first subparagraph of~~ paragraph 7, the relevant tariff regulations shall cover the costs of the investments in question.

*Article 55*

**Hydrogen network development reporting**

1. Hydrogen network operators shall submit to the regulatory authority, at regular intervals as determined by that authority, an overview of the hydrogen network infrastructure they aim to develop. It shall in particular:
  - (a) include information on capacity needs, both in volume and duration, as negotiated between network users and hydrogen network operators;
  - (b) include information on the extent to which repurposed natural gas pipelines will be used for the transport of hydrogen;
  - (c) be in line with the national energy and climate plan submitted in accordance with Regulation (EU) 2018/1999
2. Hydrogen storage and terminal operators are required to provide and exchange all relevant information to the hydrogen network operators required for developing the overview.
3. The regulatory authority shall examine the overview. It shall take the overall energy-economic necessity of the hydrogen network into account in this examination as well as the joint scenario framework developed under Article 54 (2)(e).
4. The regulatory authority shall take the examination of the overview into account in its approval of dedicated charges as meant in Article 4 of Gas Regulation.
5. Hydrogen network operators will publish on a regular basis a joint report on the development of the hydrogen system based on the overview submitted to the regulatory authority. They will take the examination of the regulatory authority under paragraph 4 into account.
6. Member States may decide to apply the requirements pursuant to Article 54 to hydrogen network operators.

*Article 56*

**Financing new cross-border hydrogen infrastructure**

1. Where a hydrogen interconnector project is included in the EU-wide ten-year network development plan as referred to in Article 26 of Gas Regulation and is not a project of common interest as referred to in Article xx [of TEN-E revision], adjacent and affected hydrogen network operators shall design a project plan, including a request for cross-border cost allocation, and submit it jointly to the concerned regulatory authorities for a joint approval.
2. The project plan and request as referred to in paragraph 1 shall be accompanied by a project-specific cost-benefit analysis, taking into account benefits beyond the borders of the Member State concerned, as well as by business plan evaluating the financial viability of the project, which shall include a financing solution and if the hydrogen system operators involved agree on a substantiated proposal for a cross-border cost allocation.

3. The concerned regulatory authorities shall, after consulting the hydrogen network operators, take coordinated decisions on the allocation of investment costs to be borne by each network operator for the project.
4. Where the concerned regulatory authorities cannot reach an agreement on the request within six months, the Agency shall take a decision, following the process pursuant to Article 6(10) in Regulation (EU) 2019/942.
5. [After 31 December 2030], all affected hydrogen network operators are required to negotiate a system of financial compensation to ensure financing for cross-border hydrogen infrastructure. While developing the system of financial compensation, hydrogen network operators shall conduct an extensive consultation process involving all relevant market participants.
6. The network operators concerned shall agree on the system of financial compensation within [3] years. If no agreement is reached within this period, the involved regulatory authorities shall decide jointly within [2] years. Where the relevant regulatory authorities cannot reach a joint agreement within [2] years, the Agency shall take a decision, following the process pursuant to Article 6(10) in Regulation (EU) 2019/942.
7. For the transition to a system of financial compensation mechanism, existing capacity contracts shall not be affected (reference to transition to regulated TPA).
8. Further details required to implement the process set out in this Article, including [...] shall be set in a network code established on the basis of Article 50 of Regulation xxxx/xx.

↓ 2009/73/EC (adapted)

## Chapter IX

### ⊗ Unbundling of transmission system operators ⊗

#### ⊗ SECTION 1

#### OWNERSHIP UNBUNDLING ⊗

##### Article 57<sup>9</sup>

#### Unbundling of transmission systems and transmission system operators

1. Member States shall ensure that ~~from 3 March 2012~~:
  - (a) each undertaking which owns a transmission system acts as a transmission system operator;
  - (b) the same person or persons are entitled neither:
    - (i) directly or indirectly to exercise control over an undertaking performing any of the functions of production or supply, and directly or indirectly to exercise control or exercise any right over a transmission system operator or over a transmission system; nor

- (ii) directly or indirectly to exercise control over a transmission system operator or over a transmission system, and directly or indirectly to exercise control or exercise any right over an undertaking performing any of the functions of production or supply;
  - (c) the same person or persons are not entitled to appoint members of the supervisory board, the administrative board or bodies legally representing the undertaking, of a transmission system operator or a transmission system, and directly or indirectly to exercise control or exercise any right over an undertaking performing any of the functions of production or supply; and
  - (d) the same person is not entitled to be a member of the supervisory board, the administrative board or bodies legally representing the undertaking, of both an undertaking performing any of the functions of production or supply and a transmission system operator or a transmission system.
2. The rights referred to in points (b) and (c) of paragraph 1 shall include, in particular:
    - (a) the power to exercise voting rights;
    - (b) the power to appoint members of the supervisory board, the administrative board or bodies legally representing the undertaking; or
    - (c) the holding of a majority share.
  3. For the purpose of paragraph 1(b), the notion ‘undertaking performing any of the functions of production or supply’ shall include ‘undertaking performing any of the functions of generation and supply’ within the meaning of Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity<sup>22</sup>, and the terms ‘transmission system operator’ and ‘transmission system’ shall include ‘transmission system operator’ and ‘transmission system’ within the meaning of that Directive.
  4. Member States may allow for derogations from points (b) and (c) of paragraphs 1 ~~until 3 March 2013~~, provided that transmission system operators are not part of a vertically integrated undertaking.
  5. The obligation set out in paragraph 1(a) of this Article shall be deemed to be fulfilled in a situation where two or more undertakings which own transmission systems have created a joint venture which acts as a transmission system operator in two or more Member States for the transmission systems concerned. No other undertaking may be part of the joint venture, unless it has been approved under Article ~~5814~~ as an independent system operator or as an independent transmission operator for the purposes of ~~Section 2~~ Chapter IV.
  6. For the implementation of this Article, where the person referred to in points (b), (c) and (d) of paragraph 1 is the Member State or another public body, two separate public bodies exercising control over a transmission system operator or over a transmission system on the one hand, and over an undertaking performing any of the functions of production or supply on the other, shall be deemed not to be the same person or persons.
  7. Member States shall ensure that neither commercially sensitive information referred to in Article ~~3816~~ held by a transmission system operator which was part of a vertically integrated undertaking, nor the staff of such a transmission system

<sup>22</sup> See page 55 of this Official Journal.

operator, is transferred to undertakings performing any of the functions of production and supply.

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↓ 2019/692 Art. 1.2(a)

8. Where on 3 September 2009 the transmission system belonged to a vertically integrated undertaking, a Member State may decide not to apply paragraph 1. As regards the part of the transmission system connecting a Member State with a third country between the border of that Member State and the first connection point with that Member State's network, where on 23 May 2019 the transmission system belongs to a vertically integrated undertaking, a Member State may decide not to apply paragraph 1.
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↓ 2009/73/EC

In such case, the Member State concerned shall either:

- (a) designate an independent system operator in accordance with Article 14, or
  - (b) comply with the provisions of Chapter IV.
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↓ 2019/692 Art. 1.2(b)

9. Where on 3 September 2009 the transmission system belonged to a vertically integrated undertaking and arrangements are in place which guarantee more effective independence of the transmission system operator than the provisions of Section 2 Chapter IV, a Member State may decide not to apply paragraph 1 of this Article.

As regards the part of the transmission system connecting a Member State with a third country between the border of that Member State and the first connection point with that Member State's network, where on 23 May 2019 the transmission system belongs to a vertically integrated undertaking and arrangements are in place which guarantee more effective independence of the transmission system operator than the provisions of Section 2 Chapter IV, that Member State may decide not to apply paragraph 1 of this Article.

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↓ 2009/73/EC

10. Before an undertaking is approved and designated as a transmission system operator under paragraph 9 of this Article, it shall be certified according to the procedures laid down in Article ~~68~~(4), (5) and (6) of this Directive and in Article 3 of Regulation (EC) No 715/2009, pursuant to which the Commission shall verify that the arrangements in place clearly guarantee more effective independence of the transmission system operator than the provisions of Chapter IV.
11. Vertically integrated undertakings which own a transmission system shall not in any event be prevented from taking steps to comply with paragraph 1.

12. Undertakings performing any of the functions of production or supply shall not in any event be able to directly or indirectly take control over or exercise any right over unbundled transmission system operators in Member States which apply paragraph 1.

## ⊗ SECTION 2

### INDEPENDENT SYSTEM OPERATORS ⊗

*Article 58~~14~~*

#### Independent system operators

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↓ 2019/692 Art. 1.3

1. Where on **3 September 2009** the transmission system belonged to a vertically integrated undertaking, a Member State may decide not to apply Article 9(1) and to designate an independent system operator upon a proposal from the transmission system owner.

As regards the part of the transmission system connecting a Member State with a third country between the border of that Member State and the first connection point with that Member State's network, **where on 23 May 2019** the transmission system belongs to a vertically integrated undertaking, that Member State may decide not to apply Article 9(1) and to designate an independent system operator upon a proposal from the transmission system owner.

The designation of an independent system operator shall be subject to approval by the Commission.

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↓ 2009/73/EC (adapted)

*Article 59~~15~~*

#### Unbundling of transmission system owners and storage system operators

1. A transmission system owner, where an independent system operator has been appointed, and a storage system operator which are part of vertically integrated undertakings shall be independent at least in terms of their legal form, organisation and decision making from other activities not relating to transmission, distribution and storage.

This Article shall apply only to storage facilities that are technically and/or economically necessary for providing efficient access to the system for the supply of customers pursuant to **Article 33**.

2. In order to ensure the independence of the transmission system owner and storage system operator referred to in paragraph 1, the following minimum criteria shall apply:

- (a) persons responsible for the management of the transmission system owner and storage system operator shall 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 shall be taken to ensure that the professional interests of persons responsible for the management of the transmission system owner and storage system operator are taken into account in a manner that ensures that they are capable of acting independently;
  - (c) the storage 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 storage facilities. This shall not preclude the existence of appropriate coordination mechanisms to ensure that the economic and management supervision rights of the parent company in respect of return on assets regulated indirectly in accordance with **Article 74(6)** in a subsidiary are protected. In particular, this shall enable the parent company to approve the annual financial plan, or any equivalent instrument, of the storage system operator and to set global limits on the levels of indebtedness of its subsidiary. It shall not permit the parent company to give instructions regarding day-to-day operations, nor with respect to individual decisions concerning the construction or upgrading of storage facilities, that do not exceed the terms of the approved financial plan, or any equivalent instrument; and
  - (d) the transmission system owner and the storage system operator shall establish a compliance programme, which sets out measures taken to ensure that discriminatory conduct is excluded, and ensure that observance of it is adequately monitored. The compliance programme shall set out the specific obligations of employees to meet those objectives. 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 and shall be published.
3. The Commission may adopt Guidelines to ensure full and effective compliance of the transmission system owner and of the storage system operator with paragraph 2 of this Article. 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 86(3)**.
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↓ 2009/73/EC (adapted)

4. The Member State may approve and designate an independent system operator only where:
- (a) the candidate operator has demonstrated that it complies with the requirements of **Article 57(1)(b), (c) and (d)**;
  - (b) the candidate operator has demonstrated that it has at its disposal the required financial, technical, physical and human resources to carry out its tasks under Article 13;
  - (c) the candidate operator has undertaken to comply with a ten-year network development plan monitored by the regulatory authority;



- (d) the transmission system owner has demonstrated its ability to comply with its obligations under paragraph 5. To that end, it shall provide all the draft contractual arrangements with the candidate undertaking and any other relevant entity; and
  - (e) the candidate operator has demonstrated its ability to comply with its obligations under **Regulation (EC) No 715/2009** including the cooperation of transmission system operators at European and regional level.
5. Undertakings which have been certified by the regulatory authority as having complied with the requirements of Article ~~6911~~ and of paragraph 2 of this Article shall be approved and designated as independent system operators by Member States. The certification procedure in either Article ~~6840~~ of this Directive and Article 3 of Regulation (EC) No 715/2009 or in Article ~~6911~~ of this Directive shall be applicable.
6. Each independent system operator shall be responsible for granting and managing third-party access, including the collection of access charges and congestion charges, for operating, maintaining and developing the transmission system, as well as for ensuring the long-term ability of the system to meet reasonable demand through investment planning. When developing the transmission system the independent system operator shall be responsible for planning (including authorisation procedure), construction and commissioning of the new infrastructure. For this purpose, the independent system operator shall act as a transmission system operator in accordance with this Chapter. The transmission system owner shall not be responsible for granting and managing third-party access, nor for investment planning.
7. Where an independent system operator has been designated, the transmission system owner shall:
- (a) provide all the relevant cooperation and support to the independent system operator for the fulfilment of its tasks, including in particular all relevant information;
  - (b) finance the investments decided by the independent system operator and approved by the regulatory authority, or give its agreement to financing by any interested party including the independent system operator. The relevant financing arrangements shall be subject to approval by the regulatory authority. Prior to such approval, the regulatory authority shall consult the transmission system owner together with other interested parties;
  - (c) provide for the coverage of liability relating to the network assets, excluding the liability relating to the tasks of the independent system operator; and
  - (d) provide guarantees to facilitate financing any network expansions with the exception of those investments where, pursuant to point (b), it has given its agreement to financing by any interested party including the independent system operator.
8. In close cooperation with the regulatory authority, the relevant national competition authority shall be granted all relevant powers to effectively monitor compliance of the transmission system owner with its obligations under paragraph 5.

## CHAPTER IV

### ⊗ SECTION 3

#### INDEPENDENT TRANSMISSION OPERATORS ⊗

##### Article 60~~17~~

##### **Assets, equipment, staff and identity**

1. Transmission system operators shall be equipped with all human, technical, physical and financial resources necessary for fulfilling their obligations under this Directive and carrying out the activity of gas transmission, in particular:
  - (a) assets that are necessary for the activity of gas transmission, including the transmission system, shall be owned by the transmission system operator;
  - (b) personnel necessary for the activity of gas transmission, including the performance of all corporate tasks, shall be employed by the transmission system operator;
  - (c) leasing of personnel and rendering of services, to and from any other parts of the vertically integrated undertaking shall be prohibited. A transmission system operator may, however, render services to the vertically integrated undertaking as long as:
    - (i) the provision of those services does not discriminate between system users, is available to all system users on the same terms and conditions and does not restrict, distort or prevent competition in production or supply; and
    - (ii) the terms and conditions of the provision of those services are approved by the regulatory authority;
  - (d) without prejudice to the decisions of the Supervisory Body under Article ~~63~~<sup>29</sup>, appropriate financial resources for future investment projects and/or for the replacement of existing assets shall be made available to the transmission system operator in due time by the vertically integrated undertaking following an appropriate request from the transmission system operator.
2. The activity of gas transmission shall include at least the following tasks in addition to those listed in ~~Article 37~~<sup>13</sup>:
  - (a) the representation of the transmission system operator and contacts to third parties and the regulatory authorities;
  - (b) the representation of the transmission system operator within the European Network of Transmission System Operators for Gas (ENTSO for Gas);
  - (c) granting and managing third-party access on a non-discriminatory basis between system users or classes of system users;
  - (d) the collection of all the transmission system related charges including access charges, balancing charges for ancillary services such as gas treatment, purchasing of services (balancing costs, energy for losses);

- (e) the operation, maintenance and development of a secure, efficient and economic transmission system;
  - (f) investment planning ensuring the long-term ability of the system to meet reasonable demand and guaranteeing security of supply;
  - (g) the setting up of appropriate joint ventures, including with one or more transmission system operators, gas exchanges, and the other relevant actors pursuing the objective to develop the creation of regional markets or to facilitate the liberalisation process; and
  - (h) all corporate services, including legal services, accountancy and IT services.
3. Transmission system operators shall be organised in a legal form as referred to in **Article 1 of Council Directive 68/151/EEC<sup>23</sup>**.
  4. The transmission system operator shall not, in its corporate identity, communication, branding and premises, create confusion in respect of the separate identity of the vertically integrated undertaking or any part thereof.
  5. The transmission system operator shall not share IT systems or equipment, physical premises and security access systems with any part of the vertically integrated undertaking, nor use the same consultants or external contractors for IT systems or equipment, and security access systems.
  6. The accounts of transmission system operators shall be audited by an auditor other than the one auditing the vertically integrated undertaking or any part thereof.

#### *Article 61~~48~~*

#### **Independence of the transmission system operator**

1. Without prejudice to the decisions of the Supervisory Body under Article **63~~20~~**, the transmission system operator shall have:
  - (a) effective decision-making rights, independent from the vertically integrated undertaking, with respect to assets necessary to operate, maintain or develop the transmission system; and
  - (b) the power to raise money on the capital market in particular through borrowing and capital increase.
2. The transmission system operator shall at all times act so as to ensure it has the resources it needs in order to carry out the activity of transmission properly and efficiently and develop and maintain an efficient, secure and economic transmission system.
3. Subsidiaries of the vertically integrated undertaking performing functions of production or supply shall not have any direct or indirect shareholding in the transmission system operator. The transmission system operator shall neither have any direct or indirect shareholding in any subsidiary of the vertically integrated

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<sup>23</sup> First Council Directive 68/151/EEC of 9 March 1968 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community (OJ L 65, 14.3.1968, p. 8).

undertaking performing functions of production or supply, nor receive dividends or any other financial benefit from that subsidiary.

4. The overall management structure and the corporate statutes of the transmission system operator shall ensure effective independence of the transmission system operator in compliance with this Chapter. The vertically integrated undertaking shall not determine, directly or indirectly, the competitive behaviour of the transmission system operator in relation to the day to day activities of the transmission system operator and management of the network, or in relation to activities necessary for the preparation of the ten-year network development plan developed pursuant to [Article 54~~22~~](#).
5. In fulfilling their tasks in [Article 37~~43~~](#) and [Article 60~~17~~\(2\)](#) of this Directive, and in complying with [Article 15~~13~~\(1\)](#), [Article 5~~14~~\(1\)\(a\)](#), [Article 9~~16~~\(2\)](#), (3) and (5), [Article 30~~18~~\(6\)](#) and [Article 12~~21~~\(1\) of Regulation \(EC\) No 715/2009](#), transmission system operators shall not discriminate against different persons or entities and shall not restrict, distort or prevent competition in production or supply.
6. Any commercial and financial relations between the vertically integrated undertaking and the transmission system operator, including loans from the transmission system operator to the vertically integrated undertaking, shall comply with market conditions. The transmission system operator shall keep detailed records of such commercial and financial relations and make them available to the regulatory authority upon request.
7. The transmission system operator shall submit for approval by the regulatory authority all commercial and financial agreements with the vertically integrated undertaking.
8. The transmission system operator shall inform the regulatory authority of the financial resources, referred to in [Article 60~~17~~\(1\)\(d\)](#), available for future investment projects and/or for the replacement of existing assets.
9. The vertically integrated undertaking shall refrain from any action impeding or prejudicing the transmission system operator from complying with its obligations in this Chapter and shall not require the transmission system operator to seek permission from the vertically integrated undertaking in fulfilling those obligations.
10. An undertaking which has been certified by the regulatory authority as being in compliance with the requirements of this Chapter shall be approved and designated as a transmission system operator by the Member State concerned. The certification procedure in either [Article 68~~10~~ of this Directive](#) and [Article 13~~2~~ of Regulation \(EC\) No 715/2009](#) or in [Article 69~~11~~ of this Directive](#) shall apply.

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↓ new

11. The transmission system operator shall make public detailed information regarding the quality of the gases transported in their networks, which might affect network users, based on [Articles 16 and 17 of Regulation \(EU\) 2015/703](#)

*Article 62~~19~~*

**Independence of the staff and the management of the transmission system operator**

1. Decisions regarding the appointment and renewal, working conditions including remuneration, and termination of the term of office, of the persons responsible for the management and/or members of the administrative bodies of the transmission system operator shall be taken by the Supervisory Body of the transmission system operator appointed in accordance with **Article 63~~20~~**.
2. The identity of, and the conditions governing the term, the duration and the termination of office of, the persons nominated by the Supervisory Body for appointment or renewal as persons responsible for the executive management and/or as members of the administrative bodies of the transmission system operator, and the reasons for any proposed decision terminating such term of office, shall be notified to the regulatory authority. Those conditions and the decisions referred to in paragraph 1 shall become binding only if the regulatory authority has raised no objections within three weeks of notification.

The regulatory authority may object to the decisions referred to in paragraph 1 where:

- (a) doubts arise as to the professional independence of a nominated person responsible for the management and/or member of the administrative bodies; or
  - (b) in the case of premature termination of a term of office, doubts exist regarding the justification of such premature termination.
3. No professional position or responsibility, interest or business relationship, directly or indirectly, with the vertically integrated undertaking or any part of it or its controlling shareholders other than the transmission system operator shall be exercised for a period of three years before the appointment of the persons responsible for the management and/or members of the administrative bodies of the transmission system operator who are subject to this paragraph.
  4. The persons responsible for the management and/or members of the administrative bodies, and employees of the transmission system operator shall have no other professional position or responsibility, interest or business relationship, directly or indirectly, with any other part of the vertically integrated undertaking or with its controlling shareholders.
  5. The persons responsible for the management and/or members of the administrative bodies, and employees of the transmission system operator shall hold no interest in or receive any financial benefit, directly or indirectly, from any part of the vertically integrated undertaking other than the transmission system operator. Their remuneration shall not depend on activities or results of the vertically integrated undertaking other than those of the transmission system operator.
  6. Effective rights of appeal to the regulatory authority shall be guaranteed for any complaints by the persons responsible for the management and/or members of the administrative bodies of the transmission system operator against premature terminations of their term of office.

7. After termination of their term of office in the transmission system operator, the persons responsible for its management and/or members of its administrative bodies shall have no professional position or responsibility, interest or business relationship with any part of the vertically integrated undertaking other than the transmission system operator, or with its controlling shareholders for a period of not less than four years.
8. Paragraph 3 shall apply to the majority of the persons responsible for the management and/or members of the administrative bodies of the transmission system operator.

The persons responsible for the management and/or members of the administrative bodies of the transmission system operator who are not subject to paragraph 3 shall have exercised no management or other relevant activity in the vertically integrated undertaking for a period of at least six months before their appointment.

The first subparagraph of this paragraph and paragraphs 4 to 7 shall be applicable to all the persons belonging to the executive management and to those directly reporting to them on matters related to the operation, maintenance or development of the network.

#### *Article ~~6320~~*

#### **Supervisory Body**

1. The transmission system operator shall have a Supervisory Body which shall be in charge of taking decisions which may have a significant impact on the value of the assets of the shareholders within the transmission system operator, in particular decisions regarding the approval of the annual and longer-term financial plans, the level of indebtedness of the transmission system operator and the amount of dividends distributed to shareholders. The decisions falling under the remit of the Supervisory Body shall exclude those that are related to the day to day activities of the transmission system operator and management of the network, and in relation to activities necessary for the preparation of the ten-year network development plan developed pursuant to [Article ~~5422~~](#).
2. The Supervisory Body shall be composed of members representing the vertically integrated undertaking, members representing third party shareholders and, where the relevant legislation of a Member State so provides, members representing other interested parties such as employees of the transmission system operator.
3. The first subparagraph of [Article ~~6219~~\(2\)](#) and [Article ~~6219~~ \(3\) to \(7\)](#) shall apply to at least half of the members of the Supervisory Body minus one.

Point (b) of the second subparagraph of Article [6219](#)(2) shall apply to all the members of the Supervisory Body.

#### *Article ~~6421~~*

#### **Compliance programme and compliance officer**

1. Member States shall ensure that transmission system operators establish and implement a compliance programme which sets out the measures taken in order to ensure that discriminatory conduct is excluded, and ensure that the compliance with that programme is adequately monitored. The compliance programme shall set out the specific obligations of employees to meet those objectives. It shall be subject to

- approval by the regulatory authority. Without prejudice to the powers of the national regulator, compliance with the program shall be independently monitored by a compliance officer.
2. The compliance officer shall be appointed by the Supervisory Body, subject to the approval by the regulatory authority. The regulatory authority may refuse the approval of the compliance officer only for reasons of lack of independence or professional capacity. The compliance officer may be a natural or legal person. Article ~~6249~~(2) to (8) shall apply to the compliance officer.
  3. The compliance officer shall be in charge of:
    - (a) monitoring the implementation of the compliance programme;
    - (b) elaborating an annual report, setting out the measures taken in order to implement the compliance programme and submitting it to the regulatory authority;
    - (c) reporting to the Supervisory Body and issuing recommendations on the compliance programme and its implementation;
    - (d) notifying the regulatory authority on any substantial breaches with regard to the implementation of the compliance programme; and
    - (e) reporting to the regulatory authority on any commercial and financial relations between the vertically integrated undertaking and the transmission system operator.
  4. The compliance officer shall submit the proposed decisions on the investment plan or on individual investments in the network to the regulatory authority. This shall occur at the latest when the management and/or the competent administrative body of the transmission system operator submits them to the Supervisory Body.
  5. Where the vertically integrated undertaking, in the general assembly or through the vote of the members of the Supervisory Body it has appointed, has prevented the adoption of a decision with the effect of preventing or delaying investments, which under the ten-year network development plan, was to be executed in the following three years, the compliance officer shall report this to the regulatory authority, which then shall act in accordance with Article ~~5422~~.
  6. The conditions governing the mandate or the employment conditions of the compliance officer, including the duration of its ~~his~~ mandate, shall be subject to approval by the regulatory authority. Those conditions shall ensure the independence of the compliance officer, including by providing it with all the resources necessary for fulfilling its ~~his~~ duties. During his mandate, the compliance officer shall have no other professional position, responsibility or interest, directly or indirectly, in or with any part of the vertically integrated undertaking or with its controlling shareholders.
  7. The compliance officer shall report regularly, either orally or in writing, to the regulatory authority and shall have the right to report regularly, either orally or in writing, to the Supervisory Body of the transmission system operator.
  8. The compliance officer may attend all meetings of the management or administrative bodies of the transmission system operator, and those of the Supervisory Body and the general assembly. The compliance officer shall attend all meetings that address the following matters:

- (a) conditions for access to the network, as defined in Regulation (EC) No 715/2009, in particular regarding tariffs, third party access services, capacity allocation and congestion management, transparency, balancing and secondary markets;
  - (b) projects undertaken in order to operate, maintain and develop the transmission system, including investments in new transport connections, in expansion of capacity and in optimisation of existing capacity;
  - (c) energy purchases or sales necessary for the operation of the transmission system.
9. The compliance officer shall monitor the compliance of the transmission system operator with Article 53~~4~~6.
  10. The compliance officer shall have access to all relevant data and to the offices of the transmission system operator and to all the information necessary for the fulfilment of his task.
  11. After prior approval by the regulatory authority, the Supervisory Body may dismiss the compliance officer. It shall dismiss the compliance officer for reasons of lack of independence or professional capacity upon request of the regulatory authority.
  12. The compliance officer shall have access to the offices of the transmission system operator without prior announcement.
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↓ new

## SECTION 4

### UNBUNDLING OF DEDICATED HYDROGEN NETWORK OPERATORS

#### Article 65

##### Unbundling of hydrogen network operators

1. Member States shall ensure that from [EiF + 3yrs] hydrogen network operators are unbundled in accordance with the rules for gas transmission system operators set out in Article 57(1) to (3).
2. For the purpose of this Article, hydrogen production and hydrogen supply shall be considered functions of production or supply in the meaning of Article 57.
3. Where on [EiF] the hydrogen network belonged to a vertically integrated undertaking, a Member State may decide not to apply paragraph 1. In such case, the Member State concerned shall designate an independent hydrogen network operator unbundled in accordance with the rules on independent system operators for gas set out Article 58. Hydrogen network operators and transmission system operators for gas unbundled in accordance with Article 57(1), paragraph 1 can act as independent hydrogen network operator.
4. Until 31 December 2030, Member State may instead designate an integrated hydrogen network operator unbundled in accordance with the rules on independent transmission operators for gas set out Section III.



5. The rules applicable to transmission system operators set out in Article 68 shall apply to hydrogen network operators.

*Article 66*

**Horizontal unbundling of hydrogen network operators**

Where a hydrogen network operator is part of an undertaking active in transmission or distribution of natural gas or electricity, it shall be independent at least in terms of its legal form and organisation.

*Article 67*

**Unbundling of accounts for hydrogen network operators**

Member States shall ensure that the accounts of hydrogen network operators are kept in accordance with Article 72 on unbundling of accounts for natural gas undertakings.

↓ 2009/73/EC (adapted)  
⇒ new

⊠ SECTION 5 ⊠

⇒ **DESIGNATION AND CERTIFICATION OF NATURAL GAS AND HYDROGEN SYSTEM OPERATORS** ⇐

↓ 2009/73/EC  
⇒ new

*Article 68~~10~~*

**Designation and certification of transmission system operators ⇐ and hydrogen network operators ⇐**

1. Before an undertaking is approved and designated as transmission system operator ⇐ or hydrogen network operator ⇐, it shall be certified according to the procedures laid down in paragraphs 4, 5 and 6 of this Article and in Article 3 of Regulation (EC) No 715/2009.
2. Undertakings ~~which own a transmission system and~~ which have been certified by the national regulatory authority as having complied with the requirements of Article 9 ⇐ or xx [unbundling for hydrogen network operators] ⇐, pursuant to the certification procedure, shall be approved and designated as transmission system operators ⇐ or hydrogen network operators ⇐ by Member States. The designation of transmission system operators ⇐ and hydrogen network operators ⇐ shall be notified to the Commission and published in the *Official Journal of the European Union*.

3. ~~Transmission system operators~~ ⇒ Certified undertakings ⇐ shall notify to the regulatory authority any planned transaction which may require a reassessment of their compliance with the requirements of Article 9 ⇒ or Article xx (Unbundling of hydrogen network operators) ⇐ .
4. The regulatory authorities shall monitor the continuing compliance of ~~transmission system operators~~ ⇒ certified undertakings ⇐ with the requirements of Article 9 ⇒ or Article xx (Unbundling of hydrogen network operators) ⇐. They shall open a certification procedure to ensure such compliance:
  - (a) upon notification by the of ~~transmission system operators~~ ⇒ certified undertaking ⇐ pursuant to paragraph 3;
  - (d) on their own initiative where they have knowledge that a planned change in rights or influence over ~~transmission system owners or of transmission system operators~~ ⇒ certified undertakings or transmission system owners ⇐ may lead to an infringement of Article 579 ⇒ or Article 65, ⇐ or where they have reason to believe that such an infringement may have occurred; or
  - (e) upon a reasoned request from the Commission.
5. The regulatory authorities shall adopt a decision on the certification of a ⇒ natural gas ⇐ ~~transmission system operator~~ ⇒ or a hydrogen network operator ⇐ within a ~~period of four months~~ ⇒ 100 working days ⇐ from the date of the notification by ⇒ the natural gas ⇐ ~~transmission system operator~~ ⇒ or the hydrogen network operator ⇐ or from the date of the Commission request. After expiry of that period, the certification shall be deemed to be granted. The explicit or tacit decision of the regulatory authority shall become effective only after the conclusion of the procedure set out in paragraph 6.
6. The explicit or tacit decision on the certification ~~of a transmission system operator~~ shall be notified without delay to the Commission by the regulatory authority, together with all the relevant information with respect to that decision. The Commission shall act in accordance with the procedure laid down in Article 133 of Regulation (EC) No 715/2009.
7. The regulatory authorities and the Commission may request from transmission system operators, ⇒ hydrogen network operators ⇐ and undertakings performing any of the functions of production or supply any information relevant for the fulfilment of their tasks under this Article.
8. The regulatory authorities and the Commission shall preserve the confidentiality of commercially sensitive information.

↓ new (adapted) ⇒ new
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#### Article 69~~44~~

#### **Certification in relation to third countries**

1. Where certification is requested by a transmission system owner, ~~or~~ a transmission system operator, ⇒ a hydrogen network operator or a hydrogen network owner ⇐

which is controlled by a person or persons from a third country or third countries, the regulatory authority shall notify the Commission.

The regulatory authority shall also notify to the Commission without delay any circumstances that would result in a person or persons from a third country or third countries acquiring control of a transmission system, ~~or~~ a transmission system operator ~~⇒~~, a hydrogen network operator or a hydrogen network owner ~~⇐~~.

2. The transmission system operator shall notify to the regulatory authority any circumstances that would result in a person or persons from a third country or third countries acquiring control of the transmission system or the transmission system operator.
3. The regulatory authority shall adopt a draft decision on the certification of a transmission system operator ~~⇒~~ or hydrogen network operator ~~⇐~~ within ~~four months~~ ~~⇒~~ 100 working days ~~⇐~~ from the date of notification by the transmission system operator. It shall refuse the certification if it has not been demonstrated:
  - (a) that the entity concerned complies with the requirements of Article ~~579~~ ~~⇒~~ or Article 65 ~~⇐~~; and
  - (f) to the regulatory authority or to another competent authority designated by the Member State that granting certification will not put at risk the security of energy supply of the Member State and the ~~Community~~ ~~⊗~~ Union ~~⊗~~. In considering that question the regulatory authority or other competent authority so designated shall take into account:
    - (i) the rights and obligations of the ~~Community~~ ~~⊗~~ Union ~~⊗~~ with respect to that third country arising under international law, including any agreement concluded with one or more third countries to which the ~~Community~~ ~~⊗~~ Union ~~⊗~~ is a party and which addresses the issues of security of energy supply;
    - (ii) the rights and obligations of the Member State with respect to that third country arising under agreements concluded with it, insofar as they are in compliance with ~~Community~~ ~~⊗~~ Union ~~⊗~~ law; and
    - (iii) other specific facts and circumstances of the case and the third country concerned.
4. The regulatory authority shall notify the decision to the Commission without delay, together with all the relevant information with respect to that decision.
5. Member States shall provide for the regulatory authority or the designated competent authority referred to in paragraph 3(b), before the regulatory authority adopts a decision on the certification, to request an opinion from the Commission on whether:
  - (a) the entity concerned complies with the requirements of ~~Article 579~~ ~~⇒~~ or Article 65 ~~⇐~~; and
  - (g) granting certification will not put at risk the security of energy supply to the ~~Community~~ ~~⊗~~ Union ~~⊗~~.
6. The Commission shall examine the request referred to in paragraph 5 as soon as it is received. Within a period of ~~⇒~~ 50 working days ~~⇐~~ ~~two months~~ after receiving the request, it shall deliver its opinion to the national regulatory authority or, if the request was made by the designated competent authority, to that authority.

In preparing the opinion, the Commission may request the views of the Agency, the Member State concerned, and interested parties. In the event that the Commission makes such a request, the ~~two-month~~ ⇒ 50 working days ⇐ period shall be extended by ⇒ further 50 working days ⇐ ~~two months~~.

In the absence of an opinion by the Commission within the period referred to in the first and second subparagraphs, the Commission is deemed not to raise objections to the decision of the regulatory authority.

7. When assessing whether the control by a person or persons from a third country or third countries will put at risk the security of energy supply to the ~~Community~~ ☒ Union ☒, the Commission shall take into account:
  - (a) the specific facts of the case and the third country or third countries concerned; and
  - (h) the rights and obligations of the ~~Community~~ ☒ Union ☒ with respect to that third country or third countries arising under international law, including an agreement concluded with one or more third countries to which the ~~Community~~ ☒ Union ☒ is a party and which addresses the issues of security of supply.
8. The national regulatory authority shall, within a period of ⇒ 50 working days ⇐ ~~two months~~ after the expiry of the period referred to in paragraph 6, adopt its final decision on the certification. In adopting its final decision the national regulatory authority shall take utmost account of the Commission's opinion. In any event Member States shall have the right to refuse certification where granting certification puts at risk the Member State's security of energy supply or the security of energy supply of another Member State. Where the Member State has designated another competent authority to assess paragraph 3(b), it may require the national regulatory authority to adopt its final decision in accordance with the assessment of that competent authority. The regulatory authority's final decision and the Commission's opinion shall be published together. Where the final decision diverges from the Commission's opinion, the Member State concerned shall provide and publish, together with that decision, the reasoning underlying such decision.
9. Nothing in this Article shall affect the right of Member States to exercise, in compliance with ~~Community~~ ☒ Union ☒ law, national legal controls to protect legitimate public security interests.
10. The Commission may adopt Guidelines setting out the details of the procedure to be followed for the application of this Article. 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 ~~8651~~(3).
11. This Article, with exception of paragraph 3(a), shall also apply to Member States which are subject to a derogation under Article ~~8349~~ ⇒ and 84 ⇐ ..

#### Article 70~~12~~

**Designation of ⇒ operators of natural gas ⇐ storage ⇒ , hydrogen storage, ⇐ ~~and~~ LNG ⇒ facilities and hydrogen terminals ⇐ ~~system operators~~**

Member States shall designate, or shall require ~~natural gas~~ undertakings which own ⇒ natural gas ⇐ storage ⇒ , hydrogen storage, ⇐ ~~or~~ LNG facilities ⇒ and hydrogen terminals ⇐ 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 ~~storage and LNG system operators~~ ⇨ for these infrastructure ⇨.

## **CHAPTER VI**

### **SECTION 6**

#### **UNBUNDLING AND TRANSPARENCY OF ACCOUNTS**

##### *Article 71~~30~~*

##### **Right of access to accounts**

1. Member States or any competent authority they designate, including the regulatory authorities referred to in Article ~~7339~~(1) and the dispute settlement authorities referred to in Article ~~3034~~(3), shall, insofar as necessary to carry out their functions, have right of access to the accounts of natural gas and ⇨ hydrogen ⇨ undertakings as set out in Article 7231.
2. Member States and any designated competent authority, including the regulatory authorities referred to in Article ~~7339~~(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 72~~31~~*

##### **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 of this Article. ~~Where natural gas undertakings benefit from a derogation from this provision on the basis of Article 49(2) and (4), they shall at least keep their internal accounts in accordance with this Article.~~
2. Natural gas undertakings, whatever their system of ownership or legal form, shall draw up, submit to audit and publish their annual accounts in accordance with the rules of national law concerning the annual accounts of limited liability companies adopted pursuant to the Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 44(2)(g)<sup>24</sup> of the Treaty on the annual accounts of certain types of companies<sup>25</sup>.

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

3. ~~Natural gas~~ Undertakings shall, in their internal accounting, keep separate accounts for each of their transmission, distribution, LNG, ~~and~~ storage ⇨ and hydrogen network transport ⇨ 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

<sup>24</sup> The title of Directive 78/660/EEC has been adjusted to take account of the renumbering of the Articles of the Treaty establishing the European Community in accordance with Article 12 of the Treaty of Amsterdam; the original reference was to Article 54(3)(g).

<sup>25</sup> OJ L 222, 14.8.1978, p. 11.

keep accounts, which may be consolidated, for other ~~gas~~ activities not relating to transmission, distribution, LNG, ~~and~~ storage ~~⇒~~ and hydrogen network transport activities ~~⇐~~. ~~Until 1 July 2007, they shall keep separate accounts for supply activities for eligible customers and supply activities for non-eligible customers.~~ Revenue from ownership of the transmission or 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. The audit~~s~~ referred to in paragraph 2~~s~~ shall, in particular, verify that the obligation to avoid discrimination and cross-subsidies referred to in paragraph 3 is respected.
5. 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. Those internal rules may be amended only in exceptional cases. Such amendments shall be mentioned and duly substantiated.
6. The annual accounts shall indicate in notes any transaction of a certain size conducted with related undertakings.

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↓ 2009/73/EC

## Chapter VIII

### National Regulatory Authorities

#### Article 73~~39~~

#### Designation and independence of regulatory authorities

1. Each Member State shall designate a single national regulatory authority at national level.
2. Paragraph 1 of this Article shall be without prejudice to the designation of other regulatory authorities at regional level within Member States, provided that there is one senior representative for representation and contact purposes at ~~Community~~  Union  level within the Board of Regulators of the Agency in accordance with Article 14(1) of Regulation (EC) No 713/2009.
3. By way of derogation from paragraph 1 of this Article, a Member State may designate regulatory authorities for small systems on a geographically separate region whose consumption, in 2008, accounted for less than 3 % of the total consumption of the Member State of which it is part. That derogation shall be without prejudice to the appointment of one senior representative for representation and contact purposes at ~~Community~~  Union  level within the Board of Regulators of the Agency in compliance with Article 14(1) of Regulation (EC) No 713/2009.
4. Member States shall guarantee the independence of the regulatory authority and shall ensure that it exercises its powers impartially and transparently. For this purpose,

Member States shall ensure that, when carrying out the regulatory tasks conferred upon it by this Directive and related legislation, the regulatory authority:

- (a) is legally distinct and functionally independent from any other public or private entity;
- (b) ensures that its staff and the persons responsible for its management:
  - (i) act independently from any market interest; and
  - (ii) do not seek or take direct instructions from any government or other public or private entity when carrying out the regulatory tasks. That requirement is without prejudice to close cooperation, as appropriate, with other relevant national authorities or to general policy guidelines issued by the government not related to the regulatory powers and duties under Article 41.

5. In order to protect the independence of the regulatory authority, Member States shall in particular ensure that:

- (a) the regulatory authority can take autonomous decisions, independently from any political body, ~~and has separate annual budget allocations, with autonomy in the implementation of the allocated budget, and adequate human and financial resources to carry out its duties;~~ and

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↓ new

- (b) the regulatory authority has all the necessary human and financial resources it needs to carry out its duties and exercise its powers in an effective and efficient manner;
- (c) the regulatory authority has a separate annual budget allocation and autonomy in the implementation of the allocated budget;

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↓ 2009/73/EC  
⇒ new

- (d) ~~(b)~~ the members of the board of the regulatory authority or, in the absence of a board, the regulatory authority's top management are appointed ⇒ based on objective, transparent and published criteria, in an independent and impartial procedure, which ensures that the candidates have the necessary skills and experience for any relevant position in the national regulatory authority; ⇐ ~~for a fixed term of five up to seven years, renewable once;~~

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↓ new

- (e) conflict of interest provisions are in place and confidentiality obligations extend beyond the end of the mandate of the members of the board of the regulatory authority or, in the absence of a board, the regulatory authority's top;
- (f) the members of the board of the regulatory authority or, in the absence of a board, the regulatory authority's top management can be dismissed only based on transparent criteria in place;

- (g) Member States may provide for the ex-post control of the regulatory authorities' annual accounts by an independent auditor.

↓ 2009/73/EC

In regard to point (b) of the first subparagraph, Member States shall ensure an appropriate rotation scheme for the board or the top management. The members of the board or, in the absence of a board, members of the top management may be relieved from office during their term only if they no longer fulfil the conditions set out in this Article or have been guilty of misconduct under national law.

↓ new

6. By [xxxx] and every four years thereafter, the Commission shall submit a report to the European Parliament and the Council on the compliance of national authorities with the principle of independence set out in this Article.

↓ 2009/73/EC (adapted)  
⇒ new

#### Article 74~~40~~

##### General objectives of the regulatory authority

In carrying out the regulatory tasks specified in this Directive, the regulatory authority shall take all reasonable measures in pursuit of the following objectives within the framework of their duties and powers as laid down in Article 75~~41~~, in close consultation with other relevant national authorities, including competition authorities ⇒ and authorities from neighboring countries, including third countries, ⇐ as appropriate, and without prejudice to their competencies:

- (a) promoting, in close cooperation with ~~the Agency,~~ regulatory authorities of other Member States, ~~and~~ the Commission ~~and~~ ACER, a competitive, ⇒ flexible, ⇐ secure and environmentally sustainable internal market in natural gas ⇒, renewable and low-carbon gases and hydrogen ⇐ within the ~~Community~~ ☒ Union ☒, ~~and effective market opening for all customers and suppliers in the Community,~~ and ensuring appropriate conditions for the effective and reliable operation of gas ⇒ and hydrogen ⇐ networks, taking into account long-term objectives;
- (b) developing competitive and properly functioning regional ⇒ cross-border ⇐ markets within the ~~Community~~ ☒ Union ☒ in view of the achievement of the objectives referred to in point (a);
- (c) eliminating restrictions on trade in natural gas ⇒ and hydrogen ⇐ between Member States, including ⇒ eliminating restrictions due to gas quality differences or differences of the volume of hydrogen blended into the natural gas system as referred to in Article XX of Gas Regulation [Cross-border



**coordination**], ⇐ developing appropriate cross-border transmission capacities to meet demand and enhancing the integration of national markets ⇒ helping to achieve interoperability of the interconnected EU hydrogen system, ⇐ which may facilitate natural gas flow across the ~~Community~~ ⊗ Union ⊗;

- (d) helping to achieve, in the most cost-effective way, the development of secure, reliable and efficient non-discriminatory systems that are consumer oriented, and promoting system adequacy and, in ~~line~~ accordance with general energy policy objectives, energy efficiency as well as the integration of large and small scale production of gas from renewable ~~energy~~ sources and distributed production in both transmission and distribution networks ⇒ and facilitating their operation in relation to other energy networks of electricity and heat ⇐ ;
- (e) facilitating access to the network for new production capacity, in particular removing barriers that could prevent access for new market entrants and of gas ⇒ and hydrogen ⇐ from renewable energy sources;
- (f) ensuring that system operators and system users are granted appropriate incentives, in both the short and the long term, to increase efficiencies ⇒ , especially energy efficiency, ⇐ in system performance and foster market integration;
- (g) ensuring that customers benefit through the efficient functioning of their national market, promoting effective competition and helping to ensure consumer protection;
- (h) helping to achieve high standards of public service for natural gas, contributing to the protection of vulnerable customers and contributing to the compatibility of necessary data exchange processes for customer switching.

#### Article 75~~44~~

### Duties and powers of the regulatory authority

1. The regulatory authority shall have the following duties:

- (a) fixing or approving, in accordance with transparent criteria, transmission or distribution tariffs or their methodologies ⇒ , or both ⇐ ;

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↓ new

- (b) as of 1 January 2031, fixing or approving, in accordance with transparent criteria, tariffs for hydrogen network access or their methodologies, or both;

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↓ 2009/73/EC (adapted)  
⇒ new

- (c) ~~(b)~~ ensuring compliance of transmission ⇒ system operators ⇐ and distribution system operators, and where relevant, system owners, ⇒ hydrogen network operators ⇐ as well as of any **natural gas** ⇒ and hydrogen ⇐ **undertakings** ⇒ and other market participants ⇐ , with their obligations under this Directive ⇒ , **[the Gas Regulation]**, the network codes and guidelines adopted pursuant Article 48 of Gas Regulation, Regulation (EU) 2017/1938⇐ and other relevant

~~Community~~ ☒ Union ☒ legislation, including as regards cross-border issues  
⇒ , as well as ACER's decisions ⇐ ;

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↓ new

- (d) in close coordination with the other regulatory authorities, ensuring the compliance of the ENTSO for Gas, the EU DSO entity and the European Network of Network Operators for Hydrogen with their obligations under this Directive, Gas Regulation, the network codes and guidelines adopted pursuant to Articles 48, 49 and 50 of [Gas Regulation], and other relevant Union law, including as regards cross-border issues, as well as with ACER's decisions, and jointly identifying non-compliance of the ENTSO for Gas, the EU DSO entity and the European Network of Network Operators for Hydrogen with their respective obligations; where the regulatory authorities have not been able to reach an agreement within a period of four months after the start of consultations for the purpose of jointly identifying non-compliance, the matter shall be referred to the ACER for a decision, pursuant to Article 6(10) of Regulation (EU) 2019/942;
  - (e) monitoring the development of gas qualities and gas quality management by transmission system operators and where relevant by distribution system operators, including monitoring the development of costs related to the management of gas quality by system operators and the developments related to the blending of hydrogen into the [natural] gas system.
  - (f) monitoring the development of hydrogen quality and hydrogen quality management by hydrogen network operators where relevant as referred to in Article 48, including monitoring the development of costs related to the management of hydrogen quality.
  - (g) examining and providing an assessment of the overview submitted by hydrogen network operators on the development [of hydrogen transport infrastructure], taking the overall energy-economic necessity of the hydrogen network into account in this examination as well as the joint scenario framework under the Article 54 (2)(e) on network development planning;
  - (h) taking the examination and assessment of the overview of the development of the hydrogen transport infrastructure as requested under point (g) into account in its approval of dedicated charges within the meaning of Article 4.
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↓ 2019/692 Art. 1.6

⇒ new

- (i) ~~(e)~~ cooperating with regard to cross-border issues with the regulatory authority or authorities of the Member States concerned and with the Agency ⇒ [, in particular through participation in the work of ACER's Board of Regulators pursuant to Article 21 of Regulation (EU) 2019/942 ⇐ ]. In respect of infrastructure to and from a third country, the regulatory authority of the Member State where the first interconnection point with the Member States' network is located may cooperate with the relevant authorities of the third country, after consulting the regulatory authorities of other Member States concerned, aiming

at, as regards this infrastructure, consistent application of this Directive in the territory of the Member States;

↓ 2009/73/EC (adapted)  
⇒ new

- (j) ~~(d)~~ complying with, and implementing, any relevant legally binding decisions of the Agency and of the Commission;
- (k) ~~(e)~~ reporting annually on its activity and the fulfilment of its duties to the relevant authorities of the Member States, the Agency and the Commission. Such reports shall cover the steps taken and the results obtained as regards each of the tasks listed in this Article;
- (l) ~~(f)~~ ensuring that there are no cross-subsidies between transmission, distribution, ⇒ hydrogen network transport, natural gas and hydrogen ⇐ storage, LNG ⇒ and hydrogen terminals ⇐ and ⇒ natural gas and hydrogen ⇐ supply activities;
- (m) ~~(g)~~ monitoring investment plans of the transmission system operators, and providing in its annual report an assessment of the investment plans of the transmission system operators as regards their consistency with the ~~Community~~  Union ~~↔~~-wide network development plan referred to  in point (x) of Article 29 of Regulation (EU) xxxx/xxx ~~↔~~ in Article 8(3)(b) of Regulation ~~(EC) No 715/2009~~; such assessment may include recommendations to amend those investment plans;
- (n) ~~(h)~~ monitoring compliance with and reviewing the past performance of network security and reliability rules and setting or approving standards and requirements for quality of service and supply or contributing thereto together with other competent authorities;
- (o) ~~(i)~~ monitoring the level of transparency, including of wholesale prices, and ensuring compliance of natural gas ⇒ and hydrogen ⇐ undertakings with transparency obligations;
- (p) ~~(j)~~ monitoring the level and effectiveness of market opening and competition at wholesale and retail levels, including on natural gas ⇒ and hydrogen ⇐ exchanges, prices for household customers including prepayment systems, switching rates, disconnection rates, charges for and the execution of maintenance services and complaints by household customers, as well as any distortion or restriction of competition, including providing any relevant information, and bringing any relevant cases to the relevant competition authorities;
- (q) ~~(k)~~ monitoring the occurrence of restrictive contractual practices, including exclusivity clauses which may prevent large non-household customers from contracting simultaneously with more than one supplier or restrict their choice to do so, and, where appropriate, informing the national competition authorities of such practices;
- (r) ~~(l)~~ respecting contractual freedom with regard to ~~interruptible supply contracts as well as with regard to~~ long-term contracts provided that they are compatible with ~~Community~~  Union ~~↔~~ law and consistent with

~~Community~~ ~~Union~~ policies and provided they contribute to decarbonisation objectives;

- (s) ~~(m)~~ monitoring the time taken by natural gas transmission and distribution system operators or hydrogen network operators to make connections and repairs;
- (t) ~~(n)~~ monitoring and reviewing the access conditions to storage, linepack and other ancillary services as provided for in Article ~~3133~~ or Article xx (article on hydrogen storage). In the event that the access regime to natural gas storage is defined according to Article ~~3133~~ (3), that task shall exclude the reviewing of tariffs;
- (u) ~~(o)~~ helping to ensure, together with other relevant authorities, that the consumer protection measures, including those set out in Annex I, are effective and enforced;
- (v) ~~(p)~~ publishing recommendations, at least annually, in relation to compliance of supply prices with Article ~~63~~, and providing those to the competition authorities, where appropriate;
- (w) ~~(q)~~ ensuring non-discriminatory access to customer consumption data, the provision for optional use, of an easily understandable harmonised format at national level for consumption data and prompt access for all customers to such data pursuant Article ~~22 and 23~~ under point (h) of Annex I;
- (x) ~~(r)~~ monitoring the implementation of rules relating to the roles and responsibilities of transmission system operators, distribution system operators, hydrogen network operators, suppliers and customers and other market parties pursuant to Regulation (EC) No 715/2009;
- (y) ~~(s)~~ monitoring the correct application of the criteria that determine whether a natural gas storage facility falls under Article ~~3133~~ (3) or (4); and
- (z) ~~(t)~~ monitoring the implementation of safeguards measures as referred to in Article ~~8046~~;
- (aa) ~~(u)~~ contributing to the compatibility of data exchange processes for the most important market processes at regional level;

↓ new

- (bb) implementing the network codes and guidelines adopted pursuant (include reference) through national measures or, where so required, coordinated regional or Union-wide measures;
- (cc) ensuring a transparent and efficient process for the setting up of the national network development plan in line with the requirements set out in Articles xx and xx.
- (dd) approving and amending the network development plan;
- (ee) monitoring gas quality control and management by transmission system operators, distribution system operators, (storage system operators?) and LNG facility operators;

- (ff) ensuring that transmission system operators make available interconnection capacities to the utmost extent, preventing capacity hoarding [pursuant to Article ...].
- (gg) monitoring the implementation of the measures taken in emergency state, as provided for in Regulation (EU) 2017/1938 and foreseen in the national emergency plan, including solidarity measures under its Article 13;
- (hh) monitoring the availability of comparison websites, including comparison tools that fulfil the criteria in Article xx(include reference).

↓ 2009/73/EC  
⇒ new

2. Where a Member State has so provided, the monitoring duties set out in paragraph 1 may be carried out by other authorities than the regulatory authority. In such a case, the information resulting from such monitoring shall be made available to the regulatory authority as soon as possible.

While preserving their independence, without prejudice to their own specific competencies and consistent with the principles of better regulation, the regulatory authority shall, as appropriate, consult ⇒ natural gas ⇐ transmission system ⇒ and hydrogen network ⇐ operators and, as appropriate, closely cooperate with other relevant national authorities when carrying out the duties set out in paragraph 1.

Any approvals given by a regulatory authority or the Agency under this Directive are without prejudice to any duly justified future use of its powers by the regulatory authority under this Article or to any penalties imposed by other relevant authorities or the Commission.

3. In addition to the duties conferred upon it under paragraph 1 of this Article, when an independent system operator or an ⇒ independent hydrogen network operator ⇐ has been designated under Article 14, the regulatory authority shall:
  - (a) monitor the transmission system owner's and the independent system operator's ⇒ and of hydrogen network owner's and independent hydrogen network operator's ⇐ compliance with their obligations under this Article, and issue penalties for non compliance in accordance with paragraph 4(d);
  - (b) monitor the relations and communications between the independent system operator and the transmission system owner ⇒ or the hydrogen network owner and the independent hydrogen network operator ⇐, so as to ensure compliance of the independent system operator ⇒ or the independent hydrogen network operator ⇐ with its obligations, and in particular approve contracts and act as a dispute settlement authority between the independent system operator and the transmission system owner ⇒ or the hydrogen network owner and the independent hydrogen network operator ⇐ in respect of any complaint submitted by either party pursuant to paragraph 11;
  - (c) without prejudice to the procedure under Article 5814(2)(c), for the first ten-year network development plan, approve the investments planning and the multi-annual network development plan presented annually by the independent system operator ⇒ or the independent hydrogen network operator ⇐ ;

- (d) ensure that network access tariffs collected by the independent system operator  $\Rightarrow$  or the independent hydrogen network operator  $\Leftarrow$  include remuneration for the network owner or network owners, which provides for adequate remuneration of the network assets and of any new investments made therein, provided they are economically and efficiently incurred; and
- (e) have the powers to carry out inspections, including unannounced inspections, at the premises of transmission system owner and independent system operator,  $\Rightarrow$  or of the hydrogen network owner and the independent hydrogen network operator  $\Leftarrow$ .
4. Member States shall ensure that regulatory authorities are granted the powers enabling them to carry out the duties referred to in paragraph 1, 3 and 6 in an efficient and expeditious manner. For this purpose, the regulatory authority shall have at least the following powers:
- (a) to issue binding decisions on natural gas  $\Rightarrow$  and hydrogen  $\Leftarrow$  undertakings;
- (b) to carry out investigations into the functioning of the ~~gas~~ markets  $\Rightarrow$  for gases  $\Leftarrow$ , and to decide upon and impose any necessary and proportionate measures to promote effective competition and ensure the proper functioning of the ~~gas~~ markets  $\Rightarrow$  for gases  $\Leftarrow$ . Where appropriate, the regulatory authority shall also have the power to cooperate with the national competition authority and the financial market regulators or the Commission in conducting an investigation relating to competition law;
- (c) to require any information from natural gas  $\Rightarrow$  and hydrogen  $\Leftarrow$  undertakings relevant for the fulfilment of its tasks, including the justification for any refusal to grant third-party access, and any information on measures necessary to reinforce the network;
- (d) to impose effective, proportionate and dissuasive penalties on natural gas  $\Rightarrow$  and hydrogen  $\Leftarrow$  undertakings not complying with their obligations under this Directive or any relevant legally binding decisions of the regulatory authority or of the Agency, or to propose to a competent court to impose such penalties. This shall include the power to impose or propose the imposition of penalties of up to 10 % of the annual turnover of the transmission system operator  $\Rightarrow$  or hydrogen network operator  $\Leftarrow$  or of up to 10 % of the annual turnover of the vertically integrated undertaking on the transmission system operator  $\Rightarrow$  or hydrogen network operator  $\Leftarrow$  or on the vertically integrated undertaking, as the case may be, for non compliance with their respective obligations pursuant to this Directive; and
- (e) appropriate rights of investigations and relevant powers of instructions for dispute settlement under paragraphs 11 and 12.
5. In addition to the duties and powers conferred on it under paragraphs 1 and 4 of this Article, when  $\Rightarrow$  an independent transmission  $\Leftarrow$  ~~a transmission system~~ operator  $\Rightarrow$  or an integrated hydrogen network operator  $\Leftarrow$  has been designated in accordance with **Chapter ~~IX~~ Section 2**, the regulatory authority shall be granted at least the following duties and powers:
- (a) to issue penalties in accordance with paragraph 4(d) for discriminatory behaviour in favour of the vertically integrated undertaking;

- (b) to monitor communications between the transmission system operator ⇨ or an integrated hydrogen network operator ⇩ and the vertically integrated undertaking so as to ensure compliance of the transmission system operator ⇨ or the integrated hydrogen network operator ⇩ with its obligations;
  - (c) to act as dispute settlement authority between the vertically integrated undertaking and the transmission system operator ⇨ or the integrated hydrogen network operator ⇩ in respect of any complaint submitted pursuant to paragraph 11;
  - (d) to monitor commercial and financial relations including loans between the vertically integrated undertaking and the transmission system operator ⇨ or the integrated hydrogen network operator ⇩ ;
  - (e) to approve all commercial and financial agreements between the vertically integrated undertaking and the transmission system operator ⇨ or the integrated hydrogen network operator ⇩ , on the condition that they comply with market conditions;
  - (f) to request justification from the vertically integrated undertaking when notified by the compliance officer in accordance with Article ~~6421~~(4). Such justification shall in particular include evidence to the end that no discriminatory behaviour to the advantage of the vertically integrated undertaking has occurred;
  - (g) to carry out inspections, including unannounced inspections, on the premises of the vertically integrated undertaking and the transmission system operator ⇨ or the integrated hydrogen network operator ⇩ ; and
  - (h) to assign all or specific tasks of the transmission system operator ⇨ or the integrated hydrogen network operator ⇩ to an independent system operator ⇨ or an independent hydrogen network operator, ⇩ appointed in accordance with Article 14 in case of a persistent breach by the transmission system operator ⇨ or the integrated hydrogen network operator ⇩ of its obligations under this Directive, in particular in case of repeated discriminatory behaviour to the benefit of the vertically integrated undertaking.
6. The regulatory authorities shall be responsible for fixing or approving sufficiently in advance of their entry into force at least the methodologies used to calculate or establish the terms and conditions for:
- (a) connection and access to national ⇨ natural gas ⇩ networks, including transmission and distribution tariffs, and terms, conditions and tariffs for access to LNG facilities. Those tariffs or methodologies shall allow the necessary investments in the networks and LNG facilities to be carried out in a manner allowing those investments to ensure the viability of the networks and LNG facilities;

⇩ new

- (b) connection and access to national hydrogen networks, including, as from 1 January 2031, the hydrogen network tariffs, and terms and conditions and tariffs for hydrogen storage and hydrogen terminals;

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↓ 2009/73/EC

- (c) ~~(b)~~ the provision of balancing services which shall be performed in the most economic manner and provide appropriate incentives for network users to balance their input and off-takes. The balancing services shall be provided in a fair and non-discriminatory manner and be based on objective criteria; and

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↓ new

- (d) approving and monitoring dedicated charges in accordance with Article xx [Gas regulation] [on Separation of regulated asset bases].

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↓ 2009/73/EC

⇒ new

- (e) ~~(e)~~ access to cross-border infrastructures, including the procedures for the allocation of capacity and congestion management.
7. The methodologies or the terms and conditions referred to in paragraph 6 shall be published.
8. In fixing or approving the tariffs or methodologies and the balancing services, the regulatory authorities shall ensure that transmission and distribution system operators ⇒ and, as from 1 January 2031, hydrogen network operators ⇐ are granted appropriate incentive, over both the short and long term, to increase efficiencies, foster market integration and security of supply and support the related research activities.
9. The regulatory authorities shall monitor congestion management of national ~~gas~~ transmission networks ⇒ and hydrogen networks ⇐ including interconnectors, and the implementation of congestion management rules. To that end, transmission system operators ⇒ , hydrogen network operators ⇐ or market operators shall submit their congestion management rules, including capacity allocation, to the national regulatory authorities. ~~National~~ ~~r~~Regulatory authorities may request amendments to those rules.

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↓ new

#### Article 76

#### Decisions and complains



1. ~~10.~~ Regulatory authorities shall have the authority to require ⇒ natural gas ⇐ transmission, storage, LNG and distribution system operators, ⇒ hydrogen storage and terminal operators, and, as from 1 January 2031, hydrogen network ⇐ if necessary, to modify the terms and conditions, including tariffs and methodologies referred to in this Article, to ensure that they are proportionate and applied in a non-discriminatory manner. In the event that the access regime to storage is defined according to Article 33(3), that task shall exclude the modification of tariffs. In the event of delay in the fixing of ⇒ natural gas ⇐ transmission and distribution tariffs ⇒ and, where appropriate, hydrogen network tariffs, ⇐ regulatory authorities shall have the power to fix or approve provisional transmission and distribution tariffs or methodologies ⇒ and hydrogen network tariffs and methodologies ⇐ and to decide on the appropriate compensatory measures if the final tariffs or methodologies deviate from those provisional tariffs or methodologies.
2. ~~11.~~ Any party having a complaint against a ⇒ natural gas ⇐ transmission, storage, LNG or distribution system operator ⇒ or a hydrogen network, storage or terminal operator ⇐ in relation to that operator's obligations under this Directive may refer the complaint to the regulatory authority which, acting as dispute settlement authority, shall issue a decision within a period of two months after receipt of the complaint. That period may be extended by two months where additional information is sought by the regulatory authorities. That extended period may be further extended with the agreement of the complainant. The regulatory authority's decision shall have binding effect unless and until overruled on appeal.
3. ~~12.~~ Any party who is affected and who has a right to complain concerning a decision on methodologies taken pursuant to this Article or, where the regulatory authority has a duty to consult, concerning the proposed tariffs or methodologies, may, at the latest within two months, or a shorter time period as provided by Member States, following publication of the decision or proposal for a decision, submit a complaint for review. Such a complaint shall not have suspensive effect.
4. ~~13.~~ Member States shall create appropriate and efficient mechanisms for regulation, control and transparency so as to avoid any abuse of a dominant position, in particular to the detriment of consumers, and any predatory behaviour. Those mechanisms shall take account of the provisions of the Treaty ⊗ Treaties ⊗ , and in particular Article 82 ⊗ 102 of the Treaty on the Functioning of the European Union ⊗ thereof.
5. ~~14.~~ 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.
6. ~~15.~~ Complaints referred to in paragraphs 11 and 12 shall be without prejudice to the exercise of rights of appeal under Community ⊗ Union ⊗ or national law.
7. ~~16.~~ Decisions taken by regulatory authorities shall be fully reasoned and justified to allow for judicial review. The decisions shall be available to the public while preserving the confidentiality of commercially sensitive information.

8. ~~17.~~ Member States shall ensure that suitable mechanisms exist at national level under which a party affected by a decision of a regulatory authority has a right of appeal to a body independent of the parties involved and of any government.

Article 77~~42~~

~~Regulatory regime~~ ⇒ **Regional cooperation between regulatory authorities** ⇐ for cross-border issues

1. Regulatory authorities shall closely consult and cooperate with each other ⇒ , in particular with the Agency, ⇐ and shall provide each other and the Agency with any information necessary for the fulfilment of their tasks under this Directive. In respect of the information exchanged, the receiving authority shall ensure the same level of confidentiality as that required of the originating authority.
2. Regulatory authorities shall cooperate at least at a regional level to:
  - (a) foster the creation of operational arrangements in order to enable an optimal management of the network, promote joint gas ⇒ and hydrogen ⇐ exchanges and the allocation of cross-border capacity, and to enable an adequate level of interconnection capacity, including through new interconnections, within the region and between regions to allow for development of effective competition and improvement of security of supply without discriminating between supply undertakings in different Member States;
  - (b) coordinate the development of all network codes for the relevant transmission system operators ⇒ , hydrogen network operators ⇐ and other market actors; and
  - (c) coordinate the development of the rules governing the management of congestion.

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↓ new

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- (d) to ensure regulatory compliance of legal entities fulfilling transmission operators' and network operators' tasks at cross-border or regional level.

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↓ 2009/73/EC  
⇒ new

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3. ~~National~~ Regulatory authorities shall have the right to enter into cooperative arrangements with each other to foster regulatory cooperation.
4. The actions referred to in paragraph 2 shall be carried out, as appropriate, in close consultation with other relevant national authorities and without prejudice to their specific competencies.
5. ~~The Commission may adopt Guidelines on the extent of the duties of the regulatory authorities to cooperate with each other and with the Agency. 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).~~ ⇒ The Commission is empowered to adopt delegated acts in accordance with Article (include reference) in order to supplement this Directive by

establishing guidelines on the extent of the duties of the regulatory authorities to cooperate with each other and with ACER. ⇐

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↓ 2019/692 Art. 1.7  
⇒ new

6. Regulatory authorities, or where appropriate other competent authorities, may consult and cooperate with the relevant authorities of third countries in relation to the operation of gas ⇐ and hydrogen ⇐ infrastructure to and from third countries with a view to ensuring, as regards the infrastructure concerned, that this Directive is applied consistently in the territory and territorial sea of a Member State.
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↓ 2009/73/EC (adapted)  
⇒ new

#### Article 78~~43~~

#### Compliance with the ⇐ network codes and ⇐ Guidelines

1. Any regulatory authority and the Commission may request the opinion of the Agency on the compliance of a decision taken by a regulatory authority with ⇐ the network codes and ⇐ the Guidelines referred to in this Directive or in **Regulation (EC) No 715/2009**.
2. The Agency shall provide its opinion to the regulatory authority which has requested it or to the Commission, respectively, and to the regulatory authority which has taken the decision in question within three months from the date of receipt of the request.
3. Where the regulatory authority which has taken the decision does not comply with the Agency's opinion within four months from the date of receipt of that opinion, the Agency shall inform the Commission accordingly.
4. Any regulatory authority may inform the Commission where it considers that a decision relevant for cross border-trade taken by another regulatory authority does not comply with the Guidelines referred to in this Directive or in **Regulation (EC) No 715/2009** within two months from the date of that decision.
5. Where the Commission, within two months of having been informed by the Agency in accordance with paragraph 3, or by a regulatory authority in accordance with paragraph 4, or on its own initiative, within three months from the date of the decision, finds that the decision of a regulatory authority raises serious doubts as to its compatibility with ⇐ the network codes and ⇐ the Guidelines referred to in this Directive or in **Regulation (EC) No 715/2009**, the Commission may decide to examine the case further. In such a case, it shall invite the regulatory authority and the parties to the proceedings before the regulatory authority to submit observations.
6. Where the Commission takes a decision to examine the case further, it shall, within four months of the date of such decision, issue a final decision:
  - (a) not to raise objections against the decision of the regulatory authority; or

- (b) to require the regulatory authority concerned to withdraw its decision on the basis that ⇒ the network codes and ⇐ the ~~G~~guidelines have not been complied with.
7. Where the Commission has not taken a decision to examine the case further or a final decision within the time-limits set in paragraphs 5 and 6 respectively, it shall be deemed not to have raised objections to the decision of the regulatory authority.
  8. The regulatory authority shall comply with the Commission decision to withdraw its decision within a period of two months and shall inform the Commission accordingly.
  9. **The Commission** ~~may adopt Guidelines setting out the details of the procedure to be followed by the regulatory authorities, the Agency and the Commission as regards the compliance of decisions taken by regulatory authorities with the Guidelines referred to in this Article. 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).~~ ⇒ is empowered to adopt delegated acts in accordance with **Article XX** supplementing this Directive by establishing guidelines setting out the details of the procedure to be followed for the application of this Article. ⇐

#### Article 79~~44~~

#### **Record keeping**

1. Member States shall require supply undertakings to keep at the disposal of the national authorities, including the regulatory authority, the national competition authorities and the Commission, for the fulfilment of their tasks, for at least five years, the relevant data relating to all transactions in ⇒ natural ⇐ gas and ⇒ hydrogen ⇐ supply contracts and gas ⇒ and hydrogen ⇐ derivatives with wholesale customers and transmission system operators, ~~as well~~ as storage and LNG operators ⇒ as well as hydrogen network, storage and terminal operators ⇐.
2. The data shall include details on the characteristics of the relevant transactions such as duration, delivery and settlement rules, the quantity, the dates and times of execution and the transaction prices and means of identifying the wholesale customer concerned, as well as specified details of all unsettled ⇒ natural ⇐ gas ⇒ and hydrogen ⇐ supply contracts and gas derivatives.
3. The regulatory authority may decide to make available to market participants elements of this information provided that commercially sensitive information on individual market players or individual transactions is not released. This paragraph shall not apply to information about financial instruments which fall within the scope of Directive ☒ 2014/65/EU ☒ ~~2004/39/EC~~.
4. To ensure the uniform application of this Article, the Commission may adopt Guidelines which define the methods and arrangements for record keeping as well as the form and content of the data that shall be kept. 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 ~~8651~~(3).
5. With respect to transactions in gas ⇒ and hydrogen ⇐ derivatives of supply undertakings with wholesale customers and ⇒ natural gas ⇐ transmission system

operators, ~~as well~~ as storage and LNG operators ⇒ as well as hydrogen network, storage and terminal operators ⇐, this Article shall apply only once the Commission has adopted the Guidelines referred to in paragraph 4.

6. The provisions of this Article shall not create additional obligations towards the authorities referred to in paragraph 1 for entities falling within the scope of Directive ~~2004/39/EC~~  2014/65/EU .
7. In the event that the authorities referred to in paragraph 1 need access to data kept by entities falling within the scope of Directive ~~2004/39/EC~~  2014/65/EU , the authorities responsible under that Directive shall provide them with the required data.

↓ 2009/73/EC (adapted)  
⇒ new

## Chapter XI

### Final provisions

#### ~~Article 80~~<sup>46</sup>

##### 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~~ ⇒ declare an emergency state pursuant to Article 11 of Regulation (EU) 2017/1938 and take the measures foreseen in the national emergency plan ⇐.
- ~~2. Such measures shall cause the least possible disturbance to the functioning of the internal market and shall be no wider in scope than is strictly necessary to remedy the sudden difficulties which have arisen.~~
- ~~3. The Member State concerned shall, without delay, notify those 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 81~~<sup>47</sup>

##### Level playing field

1. Measures that the Member States may take pursuant to this Directive in order to ensure a level playing field shall be compatible with the  TFEU  Treaty, notably Article ~~30~~  36  thereof, and with the legislation of the ~~Community~~  Union .
2. The measures referred to in paragraph 1 shall be proportionate, non-discriminatory and transparent. Those measures may be put into effect only following the notification to and approval by the Commission.

3. The Commission shall act on the notification referred to in paragraph 2 within two months of the receipt of the notification. That period shall begin on the day following receipt of the complete information. In the event that the Commission has not acted within that two-month period, it shall be deemed not to have raised objections to the notified measures.

~~Article 48~~

~~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, it may send an application for a temporary derogation from Article 32 to the Member State concerned or the designated competent authority. Applications shall, in accordance with 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 of presenting 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 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. That information may be submitted to the Commission in an aggregated form, enabling the Commission to reach a well founded decision. Within eight weeks of receipt of that 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 that request within a period of four weeks, a final decision shall be taken expeditiously in accordance with the advisory procedure referred to in Article 51(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 of achieving 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 that 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 those 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 market in natural gas.~~

~~A decision on a request for a derogation concerning take or pay contracts concluded before 4 August 2003 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 of this Article 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 Articles 32 to 44 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 Union*.~~

~~6. The Commission shall, within 4 August 2008, 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.~~

↓ 2019/692 Art. 1.8  
⇒ new

Article 82~~48a~~

**Technical agreements regarding the operation of ⇒ natural gas and hydrogen pipeline lines with third countries ⇐ transmission lines**

This Directive does not affect the freedom of transmission system operators ⇐, hydrogen network operators ⇐ or other economic operators to maintain in force or to conclude technical agreements on issues concerning the operation of transmission ⇐ pipe⇐lines between a Member State and a third country, insofar as those agreements are compatible with Union law and relevant decisions of the national regulatory authorities of the Member States concerned. Such agreements shall be notified to the regulatory authorities of the Member States concerned.

↓ 2009/73/EC

Article 49

**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, 37 and/or 38. A supply undertaking having a market share of more than 75 % shall be considered to be a main supplier. Any such derogation shall automatically expire where at least one of the conditions referred to in this subparagraph no longer applies. Any such derogation shall be notified to the Commission.~~

~~Cyprus may derogate from Articles 4, 9, 37 and/or 38. Such derogation shall expire from the moment when Cyprus is not qualifying as an isolated market.~~

~~Articles 4, 9, 37 and/or 38 shall not apply to Estonia, Latvia and/or Finland until any of those Member States is directly connected to the interconnected system of any Member State other than Estonia, Latvia, Lithuania and Finland. This subparagraph is without prejudice to derogations under the first subparagraph of this paragraph.~~

~~2. A Member State, qualifying as an emergent market, which, because of the implementation of this Directive, would experience substantial problems may derogate from Articles 4 and 9, Article 13(1) and (3), Articles 14 and 24, Article 25(5), Articles 26, 31 and 32, Article 37(1) and/or Article 38. Such 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.~~

~~Cyprus may derogate from Articles 4 and 9, Article 13(1) and (3), Articles 14 and 24, Article 25(5), Articles 26, 31 and 32, Article 37(1) and/or Article 38. Such derogation shall expire from the moment when Cyprus is not qualifying as an emergent market.~~

~~3. On the date at which the derogation referred to in the first subparagraph of paragraph 2 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, Article 37(1)(b) shall apply, and three years thereafter, Article 37(1)(c) shall apply. Until Article 37(1)(b) applies the Member State referred to in paragraph 2 of this Article may decide not to apply Article 32 as far as ancillary services and temporary storage for the re-gasification process and its subsequent delivery to the transmission system are concerned.~~

~~4. Where the 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 Articles 4 and 9, Article 13(1) and (3), Articles 14 and 24, Article 25(5), Articles 26, 31 and 32, Article 37(1) and/or Article 38 for developments within that area.~~

~~5. The Commission may grant the derogation referred to in paragraph 4, taking into account, in particular, the following criteria:~~

~~the need for infrastructure investments, which would not be economic 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 socioeconomic and demographic factors,~~

~~For gas infrastructure other than distribution infrastructure, a derogation may be granted only if no gas infrastructure has been established in the area or if gas infrastructure has been established for less than 10 years. The temporary derogation shall not exceed 10 years from the time gas is first supplied in the area.~~

~~For distribution infrastructure a derogation may be granted for a period not exceeding 20 years from when gas is first supplied through the said infrastructure in the area.~~

~~6. Article 9 shall not apply to Cyprus, Luxembourg and/or Malta.~~

~~7. The Commission shall inform the Member States of applications made under paragraph 4 prior to taking a decision pursuant to paragraph 5, taking into account respect for confidentiality. That decision, as well as the derogations referred to in paragraphs 1 and 2, shall be published in the *Official Journal of the European Union*.~~

~~8. Greece may derogate from Articles 4, 24, 25, 26, 32, 37 and/or 38 of this Directive for the geographical areas and time periods specified in the licences issued by it, 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.~~

↓ new

### Article 83

#### Derogations for natural gas system

1. Member States which are not directly connected to the interconnected system of any other Member State may apply to the Commission for derogations from Articles 3, 8, 57 or 32. Any such derogation shall expire from the moment when the first interconnector to the Member State is completed.
2. Member States may apply to the Commission for derogations from applying Articles 3, 8, 57 or 32 to outermost regions within the meaning of Article 349 TFEU or to other geographically isolated areas. Any such derogation shall expire from the moment a connection from the region or area to a Member State with an interconnected system is completed.
3. The Commission shall inform the Member States of applications for derogations referred to in paragraphs 1 and 2 before taking a decision, taking into account justified requests for confidentiality of commercially sensitive information.
4. Derogations granted by the Commission as referred to in paragraphs 1 and 2 shall be limited in time and subject to conditions that aim to increase competition in and the integration of the internal market and to ensure that the derogations do not hamper the transition towards renewable energy or the application of the energy efficiency first principle within the meaning of Article 2 No 18 of Regulation (EU) 2018/1999.
5. Decisions to grant derogations shall be published in the Official Journal of the European Union.

Article 84~~49a~~

**Derogations in relation to ⇒ natural gas ⇐ transmission lines to and from third countries**

1. In respect of gas transmission lines between a Member State and a third country completed before 23 May 2019, the Member State where the first connection point of such a transmission line with a Member State's network is located may decide to derogate from Articles ~~579~~, ~~6810~~, ~~6911~~ and ~~2932~~ and Article ~~7541~~(6), (8) and (10) for the sections of such gas transmission line located in its territory and territorial sea, for objective reasons such as to enable the recovery of the investment made or for reasons of security of supply, provided that the derogation would not be detrimental to competition on or the effective functioning of the internal market in natural gas, or to security of supply in the Union.

The derogation shall be limited in time up to 20 years based on objective justification, renewable if justified and may be subject to conditions which contribute to the achievement of the above conditions.

Such derogations shall not apply to transmission lines between a Member State and a third country which has the obligation to transpose this Directive and which effectively implements this Directive in its legal order under an agreement concluded with the Union.

2. Where the transmission line concerned is located in the territory of more than one Member State, the Member State in the territory of which the first connection point with the Member States' network is located shall decide whether to grant a derogation for that transmission line after consulting all the Member States concerned.

Upon request by the Member States concerned, the Commission may decide to act as an observer in the consultation between the Member State in the territory of which the first connection point is located and the third country concerning the consistent application of this Directive in the territory and territorial sea of the Member State where the first interconnection point is located, including the granting of derogations for such transmission lines.

3. Decisions pursuant to paragraphs 1 and 2 shall be adopted **by 24 May 2020**. Member States shall notify any such decisions to the Commission and shall publish them.

Article 85~~49b~~

**Empowerment procedure**

1. Without prejudice to other obligations under Union law, and to the allocation of competence between the Union and the Member States, existing agreements between a Member State and a third country on the operation of a transmission line or an upstream pipeline network may be maintained in force until the entry into force of a subsequent agreement between the Union and the same third country or until the procedure under paragraphs 2 to 15 of this Article applies.

2. Without prejudice to the allocation of competence between the Union and the Member States, where a Member State intends to enter into negotiations with a third country in order to amend, extend, adapt, renew or conclude an agreement on the operation of a transmission line with a third country concerning matters falling, entirely or partly, within the scope of this Directive, it shall notify the Commission of its intention in writing.

Such a notification shall include the relevant documentation and an indication of the provisions to be addressed in the negotiations or to be renegotiated, the objectives of the negotiations and any other relevant information, and shall be transmitted to the Commission at least five months before the intended start of the negotiations.

3. Further to any notification pursuant to paragraph 2, the Commission shall authorise the Member State concerned to enter into formal negotiations with a third country for the part which may affect Union common rules unless it considers that the opening of such negotiations would:
  - (a) be in conflict with Union law other than the incompatibilities arising from the allocation of competence between the Union and the Member States;
  - (b) be detrimental to the functioning of the internal market in natural gas, competition or security of supply in a Member State or in the Union;
  - (c) undermine the objectives of pending negotiations of intergovernmental agreements by the Union with a third country;
  - (d) be discriminatory.
4. When carrying out the assessment under paragraph 3, the Commission shall take into account whether the intended agreement concerns a transmission line or an upstream pipeline that contributes to the diversification of natural gas supplies and suppliers by means of new natural gas sources.
5. Within 90 days of receipt of the notification referred to in paragraph 2, the Commission shall adopt a decision authorising or refusing to authorise a Member State to enter into negotiations in order to amend, extend, adapt, renew or conclude an agreement with a third country. Where additional information is needed to adopt a decision, the 90-day period shall run from the date of receipt of such additional information.
6. In the event that the Commission adopts a decision refusing to authorise a Member State to enter into negotiations in order to amend, extend, adapt, renew or conclude an agreement with a third country, it shall inform the Member State concerned accordingly and shall give the reasons therefor.
7. Decisions authorising or refusing to authorise a Member State to enter into negotiations in order to amend, extend, adapt, renew or conclude an agreement with a third country shall be adopted, by means of implementing acts, in accordance with the procedure referred to in Article ~~865~~(2).
8. The Commission may provide guidance and may request the inclusion of particular clauses in the agreement envisaged, in order to ensure compatibility with Union law in accordance with Decision (EU) 2017/684 of the European Parliament and of the Council<sup>26</sup>.

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<sup>26</sup> Decision (EU) 2017/684 of the European Parliament and of the Council of 5 April 2017 on establishing an information exchange mechanism with regard to intergovernmental agreements and non-binding

9. The Commission shall be kept informed of the progress and results of the negotiations to amend, extend, adapt, renew or to conclude an agreement throughout the different stages of such negotiations and may request to participate in such negotiations between the Member State and the third country in accordance with Decision (EU) 2017/684.
10. The Commission shall inform the European Parliament and the Council of the decisions adopted pursuant to paragraph 5.
11. Before signing an agreement with a third country, the Member State concerned shall notify the Commission of the outcome of negotiations and shall transmit the text of the negotiated agreement to the Commission.
12. Upon notification pursuant to paragraph 11, the Commission shall assess the negotiated agreement pursuant to paragraph 3. Where the Commission finds that the negotiations have resulted in an agreement which complies with paragraph 3, it shall authorise the Member State to sign and conclude the agreement.
13. Within 90 days of receipt of the notification referred to in paragraph 11, the Commission shall adopt a decision authorising or refusing to authorise a Member State to sign and conclude the agreement with a third country. Where additional information is needed to adopt a decision, the 90-day period shall run from the date of receipt of such additional information.
14. Where the Commission adopts a decision pursuant to paragraph 13, authorising a Member State to sign and conclude the agreement with a third country, the Member State concerned shall notify the Commission of the conclusion and entry into force of the agreement, and of any subsequent changes to the status of that agreement.
15. In the event that the Commission adopts a decision refusing to authorise a Member State to sign and conclude the agreement with a third country pursuant to paragraph 13, it shall inform the Member State concerned accordingly and shall give the reasons therefor.

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↓ 2009/73/EC

#### ~~Article 50~~

#### ~~Review procedure~~

~~In the event that in the report referred to in Article 52(6), the Commission reaches the conclusion that, given the effective manner in which network access has been carried out in a Member State which gives rise to fully effective, non-discriminatory and unhindered network access certain obligations imposed by this Directive on undertakings (including those with respect to legal unbundling for distribution system operators) are not proportionate to the objective pursued, the Member State in question may submit a request to the Commission for exemption from the requirement in question.~~

~~Such request shall be notified, without delay, by the Member State to the Commission, together with all the relevant information necessary to demonstrate that the conclusion reached in the report on effective network access being ensured will be maintained.~~

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instruments between Member States and third countries in the field of energy, and repealing Decision No 994/2012/EU (OJ L 99, 12.4.2017, p. 1).

~~Within three months of its receipt of a notification, the Commission shall adopt an opinion with respect to the request by the Member State concerned, and where appropriate, submit proposals to the European Parliament and to the Council to amend the relevant provisions of this Directive. The Commission may propose, in the proposals to amend this Directive, to exempt the Member State concerned from specific requirements subject to that Member State implementing equally effective measures as appropriate.~~

#### ~~Article 51~~

#### ~~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. Where reference is made to this paragraph, Article 5a(1) to (4), and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.~~

↓ 1999/2018 Art. 51.2

#### ~~Article 52~~

#### ~~Reporting~~

~~The Commission shall monitor and review the application of this Directive and submit an overall progress report to the European Parliament and to the Council as an annex to the State of the Energy Union Report referred to in Article 35 of Regulation (EU) 2018/1999 of the European Parliament and of the Council<sup>27</sup>.~~

↓ new

#### ~~Article 86~~

#### ~~Exercise of delegation~~

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in **Articles 59, 69, 80 and 87** shall be conferred on the Commission for an indeterminate period of time from **[entry into force]**.
3. The delegation of power referred to in **Articles 59, 69, 80 and 87** may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall

<sup>27</sup> ~~Regulation (EU) 2018/1999 of the European Parliament and of the Council of 11 December 2018 on the Governance of the Energy Union and Climate Action, amending Regulations (EC) No 663/2009 and (EC) No 715/2009 of the European Parliament and of the Council, Directives 94/22/EC, 98/70/EC, 2009/31/EC, 2009/73/EC, 2010/31/EU, 2012/27/EU and 2013/30/EU of the European Parliament and of the Council, Council Directives 2009/119/EC and (EU) 2015/652 and repealing Regulation (EU) No 525/2013 of the European Parliament and of the Council (OJ L 328, 21.12.2018, p. 1).~~

put an end to the delegation of power specified in that decision. It shall take effect on the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated act already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
6. A delegated act adopted pursuant to **Articles 59, 69, 80 and 87** shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

#### *Article 87*

##### **Committee procedure**

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.
3. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

#### *Article 88*

##### **Reporting**

By 31 December 2030 the Commission shall review this Directive and shall submit a report to the European Parliament and to the Council.

#### *Article 89*

##### **Amendments to Directive (EU) 2019/944**

1. Article 51 is deleted.
2. The following Article is inserted in Directive (EU) 2019/944:

#### *'Article 42a*

##### **Network development and powers to make investment decisions**

'1. At least every two years, transmission system operators shall submit to the regulatory authority a ten-year network development plan based on existing and forecast supply and demand after having consulted all the relevant stakeholders. That network development plan shall contain efficient measures in order to guarantee the

adequacy of the system and the security of supply. The transmission system operator shall publish the ten-year network development plan on its website.

‘2. The ten-year network development plan shall in particular:

(a) indicate to market participants the main transmission infrastructure that needs to be built or upgraded over the next ten years;

(b) contain all the investments already decided and identify new investments which have to be executed in the next three years;

(c) provide for a time frame for all investment projects;

(d) be based on a joint scenario framework developed between the relevant infrastructure operators, including relevant distribution system operators, of at least gas and electricity;

(e) be consistent with the results of the common and national risk assessments under Article 7 of Regulation 2017/1938; and

(f) be in line with the national energy and climate plan and its updates submitted in accordance with Regulation (EU) 2018/1999 and support the European climate and energy objectives [reference to climate law];

3. When elaborating the ten-year network development plan, the transmission system operator shall fully take into account the potential for the use of demand response, energy storage facilities or other resources as alternatives to system expansion, as well as expected consumption, trade with other countries and investment plans for Union-wide and regional networks.

4. The regulatory authority shall consult all actual or potential system users on the ten-year network development plan in an open and transparent manner. Persons or undertakings claiming to be potential system users may be required to substantiate such claims. The regulatory authority shall publish the result of the consultation process, in particular possible needs for investments.

5. The regulatory authority shall examine whether the ten-year network development plan covers all investment needs identified during the consultation process, and whether it is consistent with the non-binding Union-wide ten-year network development plan (‘Union-wide network development plan’) referred to in point (b) of Article 30(1) of Regulation (EU) 2019/943. If any doubt arises as to the consistency with the Union-wide network development plan, the regulatory authority shall consult ACER. The regulatory authority may require the transmission system operator to amend its ten-year network development plan. The competent national authorities shall examine the consistency of the ten-year network development plan with the national energy and climate plan submitted in accordance with Regulation (EU) 2018/1999.

6. The regulatory authority shall monitor and evaluate the implementation of the ten-year network development plan.

7. In circumstances where the Independent System Operator or Independent Transmission Operator, other than for overriding reasons beyond its control, does not execute an investment, which, under the ten-year network development plan, was to be executed in the following three years, Member States shall ensure that the regulatory authority is required to take at least one of the following measures to ensure that the investment in question is made if such investment is still relevant on the basis of the most recent ten-year network development plan:

(a) to require the transmission system operator to execute the investments in question;  
(b) to organise a tender procedure open to any investors for the investment in question;  
or

(c) to oblige the transmission system operator to accept a capital increase to finance the necessary investments and allow independent investors to participate in the capital.

8. Where the regulatory authority has made use of its powers under point (b) of paragraph 7, it may oblige the transmission system operator to agree to one or more of the following:

- (a) financing by any third party;
- (b) construction by any third party;
- (c) building the new assets concerned itself;
- (d) operating the new asset concerned itself.

The transmission system operator shall provide the investors with all information needed to realise the investment, shall connect new assets to the transmission network and shall generally make its best efforts to facilitate the implementation of the investment project.

The relevant financial arrangements shall be subject to approval by the regulatory authority.

9. Where the regulatory authority has made use of its powers under paragraph 7, the relevant tariff regulations shall cover the costs of the investments in question.’

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↓ 2009/73/EC

Article 90~~53~~

### Repeal

~~Directive 2003/55/EC is repealed from 3 March 2011 without prejudice to the obligations of Member States concerning the deadlines for transposition and application of the said Directive. References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex II.~~

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↓ new

Directive 2009/72/EC is repealed with effect from [1 January 2023 / entry into force of this Directive], without prejudice to the obligations of Member States relating to the time-limit for the transposition into national law and date of application of the Directive set out in Annex II.

References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table set out in Annex III.



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↓ 2009/73/EC

Article 91~~54~~

**Transposition**

~~1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 3 March 2011. They shall forthwith inform the Commission thereof.~~

~~They shall apply those measures from 3 March 2011 with the exception of Article 11, which they shall apply from 3 March 2013.~~

~~Where Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.~~

~~2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.~~

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↓ new

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Articles xxxxxxxx and Annexes xxxx 31 December 2023. They shall immediately communicate the text of those provisions to the Commission.

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. They shall also include a statement that references in existing laws, regulations and administrative provisions to the Directive repealed by this Directive shall be construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

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↓ 2009/73/EC

Article 92~~55~~

**Entry into force**

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

Article 93~~56~~

**Addressees**

This Directive is addressed to the Member States.

Done at Brussels, For the European Parliament      For the Council  
*The President*    *The President*