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(Acts whose publication is obligatory)

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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 57(2), 66 and 100a thereof,

Having regard to the proposal from the Commission [1],

Having regard to the opinion of the Economic and Social Committee [2],

Acting in accordance with the procedure laid down in Article 189b of the Treaty [3],

(1) Whereas, according to Article 7a of the Treaty, the internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured; whereas it is important to adopt measures to continue the completion of the internal market;

(2) Whereas, under Article 7c of the Treaty, differences in development of certain economies have to be taken into account, but derogations must be of a temporary nature and cause the least possible disturbance to the functioning of the common market;

(3) Whereas the establishment of a competitive natural gas market is an important element of the completion of the internal energy market;

(4) Whereas Council Directive 91/296/EEC of 31 May 1991 on the transit of natural gas through grids [4] and Council Directive 90/377/EEC of 29 June 1990 concerning a Community procedure to improve the transparency of gas and electricity prices charged to industrial end-users [5] constitute a first phase of the completion of the internal market in natural gas;

(5) Whereas it is now necessary to take further measures with a view to establishing the internal market in natural gas;

(6) Whereas the provisions of this Directive should not affect the full application of the Treaty, in particular the provisions concerning the free movement of goods in the internal market and the rules on competition, and do not affect the powers of the Commission under the Treaty;

(7) Whereas the internal market in natural gas needs to be established gradually, in order to enable the industry to adjust in a flexible and ordered manner to its new environment and in order to take account of the different market structures in the Member States;

(8) Whereas the establishment of the internal market in the natural gas sector should favour the interconnection and interoperability of systems, for example through compatible qualities of gas;

(9) Whereas a certain number of common rules should be established for the organisation and operation of the natural gas sector; whereas, in accordance with the principle of subsidiarity, these rules are no more than general principles providing for a framework, the detailed implementation of which should be left to Member States, thus allowing each Member State to maintain or choose the

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[1] OJ C 65, 14.3.1992, p. 14, and OJ C 123, 4.5.1994, p. 26.

[2] OJ C 73, 15.3.1993, p. 31, and OJ C 195, 18.7.1994, p. 82.

[3] Opinion of the European Parliament of 17 November 1993 (OJ C 329, 6.12.1993, p. 182), Council Common Position (EC) No 17/98 of 12 February 1998 (OJ C 91, 26.3.1998, p. 46) and Decision of the European Parliament of 30 April 1998 (OJ C 152, 18.5.1998). Council Decision of 11 May 1998.

[4] OJ L 147, 12.6.1991, p. 37. Directive as last amended by Directive 95/49/EC (OJ L 233, 30.9.1995, p. 86).

[5] OJ L 185, 17.7.1990, p. 16. Directive as last amended by the 1994 Act of Accession.

regime which corresponds best to a particular situation, in particular with regard to authorisations and the supervision of supply contracts;

(10) Whereas the external supply of natural gas is of particular importance for the purchase of natural gas in Member States highly dependent on gas imports;

(11) Whereas, as a general rule, undertakings in the natural gas sector should be able to operate without being discriminated against;

(12) Whereas for some Member States the imposition of public service obligations may be necessary to ensure security of supply and consumer and environmental protection, which, in their view, free competition, left to itself, cannot necessarily guarantee;

(13) Whereas long-term planning may be one means of carrying out those public service obligations, taking into account the possibility of third parties seeking access to the system; whereas Member States may monitor take-or-pay contracts undertaken in order to keep up to date with the situation on supply;

(14) Whereas Article 90(1) of the Treaty obliges the Member States to respect the rules on competition with regard to public undertakings and undertakings which have been granted special or exclusive rights;

(15) Whereas Article 90(2) of the Treaty subjects undertakings entrusted with the operation of services of general economic interest to these rules under specific conditions; whereas the implementation of this Directive will have an impact on the activities of such undertakings; whereas, as referred to in Article 3(3), Member States need not apply Article 4, in particular, to their distribution infrastructure in order not to obstruct in law or in fact the fulfilment of obligations of general economic interest imposed on gas undertakings;

(16) Whereas, when imposing public service obligations on undertakings of the natural gas sector, Member States must therefore respect the relevant rules of the Treaty as interpreted by the Court of Justice of the European Communities;

(17) Whereas basic criteria and procedures should be laid down concerning the authorisations which Member States may grant for the construction or operation of relevant facilities under their national system; whereas these provisions should not affect the relevant rules of national legislation subjecting the construction or operation of relevant facilities to an authorisation requirement; whereas, however, such requirement should not have the effect of restricting competition among the undertakings of the sector;

(18) Whereas Decision No 1254/96/EC of the European Parliament and of the Council of 5 June 1996 laying down a series of guidelines for trans-European energy networks [1], contributes to the development of integrated infrastructures for the natural gas sector;

(19) Whereas the technical rules for the operation of systems and direct lines must be transparent and must ensure interoperability of systems;

(20) Whereas basic rules must be laid down with regard to transmission, storage and liquefied natural gas undertakings, as well as to distribution and supply undertakings;

(21) Whereas it is necessary to provide for access by the competent authorities to the internal accounts of undertakings, with due regard for confidentiality;

(22) Whereas the accounts of all integrated natural gas undertakings should provide for a high degree of transparency; whereas the accounts should be separate for different activities when this is necessary in order to avoid discrimination, cross-subsidisation and other distortions of competition, taking into account in relevant cases that transmission for accounting purposes includes re-gasification; whereas separate accounts should not be required for legal entities, such as stock or futures exchanges, which do not, other than in this trading capacity, perform any of the functions of a natural gas undertaking; whereas integrated accounts for hydrocarbon production and related activities may be produced as part of the requirement for accounts for non-gas activities required by this Directive; whereas the relevant information in Article 23(3) should include, where required, accounting information about upstream pipelines;

(23) Whereas access to the system should be open in accordance with this Directive and should lead to a

[1] OJ L 161, 29.6.1996, p. 147. Decision as last amended by Decision No 1047/97/EC (OJ L 152, 11.6.1997, p. 12).

sufficient and, where appropriate, a comparable level of opening-up of markets in different Member States; whereas, at the same time, the opening-up of markets should not create unnecessary disequilibrium in the competitive situation of undertakings in the different Member States;

(24) Whereas, owing to the diversity of structures and the special characteristics of systems in Member States, there should be different procedures for system access operating in accordance with objective, transparent and non-discriminatory criteria;

(25) Whereas, in order to achieve a competitive market in natural gas, provision should be made for access to upstream pipeline networks; whereas separate treatment is required as respects such access to upstream pipeline networks, having regard, in particular, to the special economic, technical and operational characteristics relating to such networks; whereas the provisions of this Directive do not in any event affect national taxation rules;

(26) Whereas provision should be made regarding authorisation, construction and use of direct lines;

(27) Whereas provision should be made for safeguards and dispute settlement procedures;

(28) Whereas any abuse of a dominant position or any predatory behaviour should be avoided;

(29) Whereas, as some Member States are liable to experience special difficulties in adjusting their systems, provision should be made for temporary derogations;

(30) Whereas long-term take-or-pay contracts are a market reality for securing Member States' gas supply; whereas, in particular, provision should be made for derogations from certain provisions of this Directive in the case of a natural gas undertaking which is or would be in serious economic difficulties because of its take-or-pay obligations; whereas these derogations should not undermine the purpose of this Directive to liberalise the internal market in natural gas; whereas any take-or-pay contracts entered into or renewed after the entry into force of this Directive should be concluded prudently in order not to hamper a significant opening of the market; whereas, therefore, such derogations should be limited in time and scope and granted in a transparent manner, under the supervision of the Commission;

(31) Whereas specific provisions are needed for markets and investments in other areas which have not yet reached a developed stage; whereas derogations for such markets and areas should be limited in time and scope; whereas, for the sake of transparency and uniformity, the Commission should have a significant role in the granting of these derogations;

(32) Whereas this Directive constitutes a further phase of liberalisation; whereas, once it has been put into effect, some obstacles to trade in natural gas between Member States will nevertheless remain in place; whereas proposals for improving the operation of the internal market in natural gas should be made in the light of experience; whereas the Commission should therefore report to the European Parliament and the Council on the application of this Directive,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

SCOPE AND DEFINITIONS

Article 1

This Directive establishes common rules for the transmission, distribution, supply and storage of natural gas. It lays down the rules relating to the organisation and functioning of the natural gas sector, including liquefied natural gas (LNG), access to the market, the operation of systems, and the criteria and procedures applicable to the granting of authorisations for transmission, distribution, supply and storage of natural gas.

Article 2

For the purposes of this Directive:

1. 'natural gas undertaking' means any natural or legal person carrying out at least one of the following functions: production, transmission, distribution, supply, purchase or storage of natural gas, including LNG, which is responsible for the commercial, technical and/or maintenance tasks related to those functions, but shall not include final customers;

2. 'upstream pipeline network' means any pipeline or network of pipelines operated and/or constructed as part of an oil or gas production project, or used to convey natural gas from one or more such projects to a processing plant or terminal or final coastal landing terminal;

3. 'transmission' means the transport of natural gas through a high pressure pipeline network other than an upstream pipeline network with a view to its delivery to customers;

4. 'transmission undertaking' means any natural or legal person who carries out the function of transmission;

5. 'distribution' means the transport of natural gas through local or regional pipeline networks with a view to its delivery to customers;

6. 'distribution undertaking' means any natural or legal person who carries out the function of distribution;

7. 'supply' means the delivery and/or sale of natural gas, including LNG, to customers;

8. 'supply undertaking' means any natural or legal person who carries out the function of supply;

9. 'storage facility' means a facility used for the stocking of natural gas and owned and/or operated by a natural gas undertaking, excluding the portion used for production operations;

10. 'storage undertaking' means any natural or legal person who carries out the function of storage;

11. 'LNG facility' means a terminal which is used for the liquefaction of natural gas or the offloading, storage and re-gasification of LNG;

12. 'system' means any transmission networks and/or distribution networks and/or LNG facilities owned and/or operated by a natural gas undertaking, including its facilities supplying ancillary services and those of related undertakings necessary for providing access to transmission and distribution;

13. 'interconnected system' means a number of systems which are linked with each other;

14. 'direct line' means a natural gas pipeline complementary to the interconnected system;

15. 'integrated natural gas undertaking' means a vertically or horizontally integrated undertaking;

16. 'vertically integrated undertaking' means a natural gas undertaking performing two or more of the tasks of production, transmission, distribution, supply or storage of natural gas;

17. 'horizontally integrated undertaking' means an undertaking performing at least one of the functions of production, transmission, distribution, supply or storage of natural gas, and a non-gas activity;

18. 'related undertaking' means affiliated undertakings, within the meaning of Article 41 of the Seventh Council Directive, 83/349/EEC, of 13 June 1983 based on Article 54(3)(g) of the Treaty on consolidated accounts [1], and/or associated undertakings, within the meaning of Article 33(1) thereof, and/or undertakings which belong to the same shareholders;

19. 'system user' means any natural or legal person supplying to, or being supplied by, the system;

20. 'customers' means wholesale or final customers of natural gas and natural gas undertakings which purchase natural gas;

21. 'final customer' means a consumer purchasing natural gas for his own use;

22. 'wholesale customers', where Member States recognise their existence, means any natural or legal persons who purchase and sell natural gas and who do not carry out transmission or distribution functions inside or outside the system where they are established;

23. 'long-term planning' means the planning of supply and transportation capacity of natural gas undertakings on a long-term basis with a view to meeting the demand for natural gas of the system, diversification of sources and securing supplies to customers;

24. 'emergent market' means a Member State in which the first commercial supply of its first long-term natural gas supply contract was made not more than 10 years earlier;

25. 'security' means both security of supply and provision, and technical safety.

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[1] OJ L 193, 18.7.1983, p. 1. Directive as last amended by the 1994 Act of Accesion.

CHAPTER II

GENERAL RULES FOR THE ORGANISATION OF THE SECTOR

Article 3

1. Member States shall ensure, on the basis of their institutional organisation and with due regard for the principle of subsidiarity, that, without prejudice to paragraph 2, natural gas undertakings are operated in accordance with the principles of this Directive with a view to achieving a competitive market in natural gas, and shall not discriminate between such undertakings as regards either rights or obligations.

2. Having full regard to the relevant provisions of the Treaty, in particular Article 90 thereof, Member States may impose on natural gas undertakings, in the general economic interest, public-service obligations which may relate to security, including security of supply, regularity, quality and price of supplies, and to environmental protection. Such obligations shall be clearly defined, transparent, non-discriminatory and verifiable; they, and any revision thereof, shall be published and notified to the Commission by Member States without delay. As a means of carrying out public-service obligations in relation to security of supply, Member States which so wish may introduce the implementation of long-term planning, taking into account the possibility of third parties seeking access to the system.

3. Member States may decide not to apply the provisions of Article 4 with respect to distribution insofar as the application of these provisions 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 90 of the Treaty.

Article 4

1. In circumstances where an authorisation (e. g. licence, permission, concession, consent or approval) is required for the construction or operation of natural gas facilities, the Member States or any competent authority they designate shall grant authorisations to build and/or operate such facilities, pipelines and associated equipment on their territory, in accordance with paragraphs 2 to 4. Member States or any competent authority they designate may also grant authorisations on the same basis for the supply of natural gas and for wholesale customers.

2. Where Member States have a system of authorisation, they shall lay down objective and non-discriminatory criteria which shall be met by an undertaking applying for an authorisation to build and/or operate natural gas facilities or applying for an authorisation to supply natural gas. The non-discriminatory criteria and procedures for the granting of authorisations shall be made public.

3. Member States shall ensure that the reasons for any refusal to grant an authorisation are objective and non-discriminatory and are given to the applicant. Reasons for such refusals shall be forwarded to the Commission for information. Member States shall establish a procedure enabling the applicant to appeal against such refusals.

4. For the development of newly supplied areas and efficient operation generally, and without prejudice to Article 20, Member States may decline to grant a further authorisation to build and operate distribution pipeline systems in any particular area once such pipeline systems have been or are proposed to be built in that area and if existing or proposed capacity is not saturated.

Article 5

Member States shall ensure that technical rules establishing the minimum technical design and operational requirements for the connection to the system of LNG facilities, storage facilities, other transmission or distribution systems, and direct lines, are developed and made available. These technical rules shall ensure the interoperability of systems and shall be objective and non-discriminatory. They shall be notified to the Commission in accordance with Article 8 of Council Directive 83/189/EEC of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations [1].

CHAPTER III

TRANSMISSION, STORAGE AND LNG

Article 6

Member States shall take the measures necessary to ensure that transmission, storage and LNG undertakings act in accordance with Articles 7 and 8.

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[1] OJ L 109, 26.4.1983, p. 8. Directive as last amended by Directive 96/139/EC (OJ L 32, 10.2.1996, p. 31).