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PREFACE

Overall functioning of society, industrial competitiveness and whole civilization are dependent on safe, secure, sustainable and affordable energy. Past evolution of national systems of electricity production and import dependence on gas and oil made EU countries vulnerable, less efficient, investment unattractive and environmentally overburdened. Because of that the EU has, for almost 15 years, been adapting its legislation, harmonizing markets, limiting allowed emissions, fostering proper investments in energy efficiency; as well as building infrastructure and new production capacities on conventional and renewable sources. The process is not finished yet but the facts show a tremendous success story in stability of supply, cheaper common solutions, attractiveness for proper investments and improvements in the environment.

The objective of securing energy all over Europe in a stable, sustainable and competitive way lies at the heart of the Treaty establishing the Energy Community, signed some eight years ago. By extending the internal energy market beyond the boundaries of the European Union, the Energy Community carries forward the success of EU’s energy policy, and ensures that national decisions are mutually supportive and avoid negative spillovers. The full scale of the EU’s internal energy market is the best response on challenges that emerged in Energy Community Contracting Parties after general liberalisation and after a decline of non-market-governed energy policy and strategic planning mechanisms. Like the European Union’s, the approach taken by the Energy Community is one of legal harmonization. This, with a reasonable delay compared to EU countries, translates into binding commitments by each Party to implement the acquis communautaire as set out in the provisions of the Treaty and the measures adopted by the Ministerial Council of the Energy Community. The present publication compiles that acquis communautaire.

The Energy Community turned out to be a dynamic organization. Its enlargement, with the accession of Moldova in 2010 and Ukraine in 2011, as well as Georgia’s application for full membership in 2013, shows that its fundamental objectives – market opening and exchange, regional integration, sustainability and solidarity – continue to convince countries to engage in a thorough reform process. Besides geographical enlargement also the legal framework of the Energy Community has been significantly evolving over the last eight years. In 2011, the acquis communautaire in energy shifted from the European Union’s second to the third package of internal market legislation. The Directives and Regulations comprised by the third package are to be implemented by 1 January 2015. In the area of renewable energy, an equally challenging task will be the implementation of Directive 2009/28/EC by 1 January 2014, with ambitious binding targets to be fulfilled by the Contracting Parties until 2020. In 2012, the Ministerial Council also adopted the EU acquis on emergency oil stocks and statistics. The successful incorporation of all these pieces of EU legislation is a token of the ambition of the Energy Community Contracting Parties to keep pace with development in the European Union.

Despite the progress being made by the Contracting Parties, implementation of the acquis remains a huge challenge. We believe that this third edition of a compilation of the applicable Energy Community legal frameworks will provide a useful working tool for all stakeholders involved in the process of consolidating and developing the Energy Community.

In editorial terms, it is important to note that the legislation compiled in this volume consists of consolidations done by the editor for the sake of convenience only. In any circumstance, the versions adopted by the legislature in the European Union and the Energy Community and published in the Official Journal or on the Energy Community website respectively, shall prevail.
PART I

TREATY ESTABLISHING THE ENERGY COMMUNITY
# TREATY ESTABLISHING THE ENERGY COMMUNITY

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Considering that this integrated market may involve at a later stage other energy products and carriers, such as liquefied natural gas, petrol, hydrogen, or other essential network infrastructures.

Determined to create a stable regulatory and market framework capable of attracting investment in gas networks, power generation and transmission networks, so that all Parties have access to the stable and continuous gas and electricity supply that is essential for economic development and social stability,

Determined to create a single regulatory space for trade in gas and electricity that is necessary to match the geographic extent of the concerned product markets,

Recognising that the territories of the Republic of Austria, of the Hellenic Republic, of the Republic of Hungary, of the Italian Republic, and of the Republic of Slovenia are naturally integrated or directly affected by the functioning of the gas and electricity markets of the Contracting Parties,

Determined to promote high levels of gas and electricity provision to all citizens based on public service obligations, and to achieve economic and social progress and a high level of employment as well as a balanced and sustainable development through the creation of an area without internal frontiers for gas and electricity,

Desiring to enhance the security of supply of the single regulatory space by providing the stable regulatory framework necessary for the region in which connections to Caspian, North African and Middle East gas reserves can be developed and indigenous reserves of natural gas, coal and hydro-power can be exploited,

Committed to improving the environmental situation in relation to gas and electricity, related energy efficiency and renewable energy sources,

Determined to develop gas and electricity market competition on a broader scale and exploit economies of scale,

Considering that, to achieve these aims, a broad ranging and integrated market regulatory structure needs to be put in place supported by strong institutions and effective supervision, and with the adequate involvement of the private sector,

Considering that in order to reduce stress on the state level gas and electricity systems and contribute to resolving local gas and electricity shortages, specific rules should be put in place to facilitate gas and electricity trade; and that such rules are needed to create a single regulatory space for the geographic extent of the concerned product markets,

Have decided to create an Energy Community.
TITLE I – PRINCIPLES

Article 1

1. By this Treaty, the Parties establish among themselves an Energy Community.

2. Member States of the European Community may become Participants in the Energy Community pursuant to Article 95 of this Treaty.

Article 2

1. The task of the Energy Community shall be to organise the relations between the Parties and create a legal and economic framework in relation to Network Energy, as defined in paragraph 2, in order to:

(a) create a stable regulatory and market framework capable of attracting investment in gas networks, power generation, and transmission and distribution networks, so that all Parties have access to the stable and continuous energy supply that is essential for economic development and social stability,

(b) create a single regulatory space for trade in Network Energy that is necessary to match the geographic extent of the concerned product markets,

(c) enhance the security of supply of the single regulatory space by providing a stable investment climate in which connections to Caspian, North African and Middle East gas reserves can be developed, and indigenous sources of energy such as natural gas, coal and hydropower can be exploited,

(d) improve the environmental situation in relation to Network Energy and related energy efficiency, foster the use of renewable energy, and set out the conditions for energy trade in the single regulatory space,

(e) develop Network Energy market competition on a broader geographic scale and exploit economies of scale.

2. "Network Energy" shall include the electricity and gas sectors falling within the scope of the European Community Directives 2003/54/EC and 2003/55/EC.1

Article 3

For the purposes of Article 2, the activities of the Energy Community shall include:

(a) the implementation by the Contracting Parties of the acquis communautaire on energy, environ-
TITLE II – THE EXTENSION OF THE ACQUIS COMMUNAUTAIRE

CHAPTER I – GEOGRAPHIC SCOPE

Article 9

The provisions of and the Measures taken under this Title shall apply to the territories of the Adhering Parties, and to the territory under the jurisdiction of the United Nations Interim Administration Mission in Kosovo.

CHAPTER II – THE ACQUIS ON ENERGY

Article 10

Each Contracting Party shall implement the *acquis communautaire* on energy in compliance with the timetable for the implementation of those measures set out in Annex I.

Article 11

The “*acquis communautaire* on energy”, for the purpose of this Treaty, shall mean the acts listed in Annex I of this Treaty.1

CHAPTER III – THE ACQUIS ON ENVIRONMENT

Article 12

Each Contracting Party shall implement the *acquis communautaire* on environment in compliance with the timetable for the implementation of those measures set out in Annex II.

Article 13

The Parties recognise the importance of the Kyoto Protocol. Each Contracting Party shall endeavour to accede to it.

Article 14


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Article 15

After the entry into force of this Treaty, the construction and operation of new generating plants shall comply with the *acquis communautaire* on environment.

Article 16

The “*acquis communautaire* on environment”, for the purpose of this Treaty, shall mean


(iii) Directive 2001/80/EC of the European Parliament and of the Council of 23 October 2001 on the limitation of emissions of certain pollutants into the air from large combustion plants, and


Article 17

The provisions of and the Measures taken under this Chapter shall only apply to Network Energy.

CHAPTER IV – THE ACQUIS ON COMPETITION

Article 18

1. The following shall be incompatible with the proper functioning of the Treaty, insofar as they may affect trade of Network Energy between the Contracting Parties:

(a) all agreements between undertakings, decisions by associations of undertakings and concerted practices which have as their object or effect the prevention, restriction or distortion of competition,

(b) abuse by one or more undertakings of a dominant position in the market between the Contracting Parties as a whole or in a substantial part thereof,

(c) any public aid which distorts or threatens to distort competition by favouring certain undertakings or certain energy resources.

2. Any practices contrary to this Article shall be assessed on the basis of criteria arising from the application of the rules of Articles 81, 82 and 87 of the Treaty establishing the European Community (attached in Annex III).

Article 19

With regard to public undertakings and undertakings to which special or exclusive rights have been granted, each Contracting Party shall ensure that as from 6 months following the date of entry force of this Treaty, the principles of the Treaty establishing the European Community, in particular Article 86 (1) and (2) thereof (attached in Annex III), are upheld.
CHAPTER V – THE ACQUIS FOR RENEWABLES

Article 20


CHAPTER VI – COMPLIANCE WITH GENERALLY APPLICABLE STANDARDS OF THE EUROPEAN COMMUNITY

Article 21

Within one year of the date of entry into force of this Treaty, the Secretariat shall draw up a list of the Generally Applicable Standards of the European Community, to be submitted to the Ministerial Council for adoption.

Article 22

The Contracting Parties shall, within one year of the adoption of the list, adopt development plans to bring their Network Energy sectors into line with these Generally Applicable Standards of the European Community.

Article 23

“Generally Applicable Standards of the European Community” shall refer to any technical system standard that is applied within the European Community, and is necessary for operating network systems safely and efficiently, including aspects of transmission, cross-border connections, modulation and general technical system security standards issued where applicable via the European Committee for Standardization (CEN), the European Committee for Electrotechnical Standardization (CENELEC) and similar normation bodies or as issued by the Union for the Co-ordination of Transmission of Electricity (UCTE) and the European Association for the Streamlining of Energy Exchanges (Easeegas) for common rule setting and business practices.

CHAPTER VII – THE ADAPTATION AND EVOLUTION OF THE ACQUIS

Article 24

For the implementation of this Title, the Energy Community shall adopt Measures adapting the acquis communautaire described in this Title, taking into account both the institutional framework of this Treaty and the specific situation of each of the Contracting Parties.

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Chapter VI – Compliance with Generally Applicable Standards of the European Community

Article 21

Within one year of the date of entry into force of this Treaty, the Secretariat shall draw up a list of the Generally Applicable Standards of the European Community, to be submitted to the Ministerial Council for adoption.

Article 22

The Contracting Parties shall, within one year of the adoption of the list, adopt development plans to bring their Network Energy sectors into line with these Generally Applicable Standards of the European Community.

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Chapter V – The Acquis for Renewables

Article 20

Article 30

Article 29 does not imply a necessity to change energy policies or purchasing practices.

CHAPTER IV – PROVISION OF ENERGY TO CITIZENS

Article 31

The Energy Community shall promote high levels of provision of Network Energy to all its citizens within the limits of the public service obligations contained in the relevant acquis communautaire on energy.

Article 32

For this purpose, the Energy Community may take Measures to:
(a) allow for the universal provision of electricity;
(b) foster effective demand management policies;
(c) ensure fair competition.

Article 33

The Energy Community may also make Recommendations to support effective reform of the Network Energy sectors of the Parties, including inter alia to increase the level of payment for energy by all customers, and to foster the affordability of Network Energy prices to consumers.

CHAPTER V – HARMONISATION

Article 34

The Energy Community may take Measures concerning compatibility of market designs for the operation of Network Energy markets, as well as mutual recognition of licenses and Measures fostering free establishment of Network Energy companies.

CHAPTER VI – RENEWABLE ENERGY SOURCES AND ENERGY EFFICIENCY

Article 35

The Energy Community may adopt Measures to foster development in the areas of renewable energy sources and energy efficiency, taking account of their advantages for security of supply, environment protection, social cohesion and regional development.

CHAPTER VII – SAFEGUARD MEASURES

Article 36

In the event of a sudden crisis on the Network Energy market in the territory of an Adhering Party, the territory under the jurisdiction of the United Nations Interim Administration Mission in Kosovo, or a territory of the European Community referred to in Article 27, where the physical safety or security of persons, or Network Energy apparatus or installations or system integrity is threatened in this territory, the concerned Party may temporarily take necessary safeguard measures.

Article 37

Such safeguard measures shall cause the least possible disturbance in the functioning of the Network Energy market of the Parties, and not be wider in scope than is strictly necessary to remedy the sudden difficulties which have arisen. They shall not distort competition or adversely affect trade in a manner which is at variance with the common interest.

Article 38

The Party concerned shall without delay notify these safeguard measures to the Secretariat, which shall immediately inform the other Parties.

Article 39

The Energy Community may decide that the safeguard measures taken by the Party concerned do not comply with the provisions of this Chapter, and request that Party to put an end to, or modify, those safeguard measures.

TITLE IV – THE CREATION OF A SINGLE ENERGY MARKET

CHAPTER I – GEOGRAPHIC SCOPE

Article 40

The provisions of and the Measures taken under this Title shall apply to the territories to which the Treaty establishing the European Community applies under the conditions laid down in that Treaty, to the territories of the Adhering Parties and to the territory under the jurisdiction of the United Nations Interim Mission in Kosovo.
PART I TREATY ESTABLISHING THE ENERGY COMMUNITY / TITLE V

CHAPTER II – INTERNAL ENERGY MARKET

Article 41

1. Customs duties and quantitative restrictions on the import and export of Network Energy and all measures having equivalent effect, shall be prohibited between the Parties. This prohibition shall also apply to customs duties of a fiscal nature.

2. Paragraph 1 shall not preclude quantitative restrictions or measures having equivalent effect, justified on grounds of public policy or public security; the protection of health and life of humans, animals or plants, or the protection of industrial and commercial property. Such restrictions or measures shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between the Parties.

Article 42

1. The Energy Community may take Measures with the aim of creating a single market without internal frontiers for Network Energy.

2. Paragraph 1 shall not apply to fiscal measures, to those relating to the free movement of persons nor to those relating to the rights and interests of employed persons.

CHAPTER III – EXTERNAL ENERGY TRADE POLICY

Article 43

The Energy Community may take Measures necessary for the regulation of imports and exports of Network Energy to and from third countries with a view to ensuring equivalent access to and from third country markets in respect of basic environmental standards or to ensure the safe operation of the internal energy market.

CHAPTER IV – MUTUAL ASSISTANCE IN THE EVENT OF DISRUPTION

Article 44

In the event of disruption of Network Energy supply affecting a Party and involving another Party or a third country, the Parties shall seek an expeditious resolution in accordance with the provisions of this Chapter.

Article 45

Upon request of the Party directly affected by the disruption, the Ministerial Council shall meet. The Ministerial Council may take the necessary Measures in response to the disruption.

Article 46

Within one year of the date of entry into force of this Treaty, the Ministerial Council shall adopt a Procedural Act for the operation of the mutual assistance obligation under this Chapter, which may include the conferral of powers to take interim Measures to the Permanent High Level Group.

TITLE V – INSTITUTIONS OF THE ENERGY COMMUNITY

CHAPTER I - THE MINISTERIAL COUNCIL

Article 47

The Ministerial Council shall ensure that the objectives set out in this Treaty are attained. It shall:

(a) provide general policy guidelines;

(b) take Measures;

(c) adopt Procedural Acts, which may include the conferral, under precise conditions, of specific tasks, powers and obligations to carry out the policy of the Energy Community on the Permanent High Level Group, the Regulatory Board or the Secretariat.

Article 48

The Ministerial Council shall consist of one representative of each Contracting Party and two representatives of the European Community. One non-voting representative of each Participant may participate in its meetings.

Article 49

The Ministerial Council shall adopt its internal rules of procedure by Procedural Act.

Article 50

The Presidency shall be held in turn by each Contracting Party for a term of one year in the order decided by a Procedural Act of the Ministerial Council. The Presidency shall convene the Ministerial Council in a place decided upon by the Presidency. The Ministerial Council shall meet at least once every year. The meetings shall be prepared by the Secretariat.

PART I TREATY ESTABLISHING THE ENERGY COMMUNITY / TITLE V

Article 51

The Presidency shall chair the Ministerial Council and be assisted by one representative of the European Community and one representative of the incoming Presidency as Vice-Presidents. The Presidency and the Vice-Presidents shall prepare the draft Agenda.

Article 52

The Ministerial Council shall submit an annual report on the activities of the Energy Community to the European Parliament and to the Parliaments of the Adhering Parties and of the Participants.

CHAPTER II - THE PERMANENT HIGH LEVEL GROUP

Article 53

The Permanent High Level Group shall:
(a) prepare the work of the Ministerial Council;
(b) give assent to technical assistance requests made by international donor organisations, international financial institutions and bilateral donors;
(c) report to the Ministerial Council on progress made toward achievement of the objectives of this Treaty;
(d) take Measures, if so empowered by the Ministerial Council;
(e) adopt Procedural Acts, not involving the conferral of tasks, powers or obligations on other institutions of the Energy Community;
(f) discuss the development of the acquis communautaire described in Title II on the basis of a report that the European Commission shall submit on a regular basis.

Article 54

The Permanent High Level Group shall consist of one representative of each Contracting Party and two representatives of the European Community. One non-voting representative of each Participant may participate in its meetings.

Article 55

The Permanent High Level Group shall adopt its internal rules of procedure as a Procedural Act.

Article 56

The Presidency shall convene the Permanent High Level Group at a place to be determined by the Presidency. The meetings shall be prepared by the Secretariat.

PART I TREATY ESTABLISHING THE ENERGY COMMUNITY / TITLE V

Article 57

The Presidency shall chair the Permanent High Level Group and be assisted by one representative of the European Community and one representative of the incoming Presidency as Vice-Presidents. The Presidency and the Vice-Presidents shall prepare the draft Agenda.

CHAPTER III – THE REGULATORY BOARD

Article 58

The Regulatory Board shall:
(a) advise the Ministerial Council or the Permanent High Level Group on the details of statutory, technical and regulatory rules;
(b) issue Recommendations on cross-border disputes involving two or more Regulators, upon request of any of them;
(c) take Measures, if so empowered by the Ministerial Council;
(d) adopt Procedural Acts.

Article 59

The Regulatory Board shall be composed of one representative of the energy regulator of each Contracting Party, pursuant to the relevant parts of the acquis communautaire on energy. The European Union shall be represented by the European Commission, assisted by one regulator of each Participant, and one representative of the Agency for the Cooperation of Energy Regulators.

Article 60

The Regulatory Board shall adopt its internal rules of procedure by Procedural Act.

Article 61

The Regulatory Board shall elect a President for a term determined by the Regulatory Board. The President and the Vice-President shall prepare the draft Agenda.

Article 62

The Regulatory Board shall meet in Athens.

CHAPTER IV - THE FORA

Article 63

Two Fora, composed of representatives of all interested stakeholders, including industry, regulators, industry representative groups and consumers, shall advise the Energy Community.

Article 64

The Fora shall be chaired by a representative of the European Community.

Article 65

The conclusions of the Fora shall be adopted by consensus. They shall be forwarded to the Permanent High Level Group.

Article 66

The Electricity Forum shall meet in Athens. The Gas Forum shall meet at a place to be determined by a Procedural Act of the Ministerial Council.

CHAPTER V - THE SECRETARIAT

Article 67

The Secretariat shall:

(a) provide administrative support to the Ministerial Council, the Permanent High Level Group, the Regulatory Board and the Fora;

(b) review the proper implementation by the Parties of their obligations under this Treaty, and submit yearly progress reports to the Ministerial Council;

(c) review and assist in the coordination by the European Commission of the donors’ activity in the territories of the Adhering Parties and the territory under the jurisdiction of the United Nations Interim Administration Mission in Kosovo, and provide administrative support to the donors;

(d) carry out other tasks conferred on it under this Treaty or by a Procedural Act of the Ministerial Council, excluding the power to take Measures; and

(e) adopt Procedural Acts.

Article 68

The Secretariat shall comprise a Director and such staff as the Energy Community may require.

Article 69

The Director of the Secretariat shall be appointed by a Procedural Act of the Ministerial Council. The Ministerial Council shall lay down, by Procedural Act, rules for the recruitment, working conditions and geographic equilibrium of the Secretariat’s staff. The Director shall select and appoint the staff.

Article 70

In the performance of their duties the Director and the staff shall not seek or receive instructions from any Party to this Treaty. They shall act impartially and promote the interests of the Energy Community.

Article 71

The Director of the Secretariat or a nominated alternate shall assist at the Ministerial Council, the Permanent High Level Group, the Regulatory Board and the Fora.

Article 72

The seat of the Secretariat shall be in Vienna.

CHAPTER VI – BUDGET

Article 73

Each Party shall contribute to the budget of the Energy Community as set out in Annex IV. The level of contributions may be reviewed every five years, on request of any Party, by a Procedural Act of the Ministerial Council.

Article 74

The Ministerial Council shall adopt the budget of the Energy Community by Procedural Act every two years. The budget shall cover the operational expenses of the Energy Community necessary for the functioning of its institutions. The expenditure of each institution shall be set out in a different part of the budget. The Ministerial Council shall adopt a Procedural Act specifying the procedure for the implementation of the budget, and for presenting and auditing accounts and inspection.

Article 75

The Director of the Secretariat shall implement the budget in accordance with the Procedural Act adopted pursuant to Article 74, and shall report annually to the Ministerial Council on the execution of the budget. The Ministerial Council may decide by Procedural Act, if appropriate, to entrust independent auditors with verifying the proper execution of the budget.
TITLE VI – DECISION MAKING PROCESS

CHAPTER I – GENERAL PROVISIONS

Article 76

Measures may take the form of a Decision or a Recommendation. A Decision is legally binding in its entirety upon those to whom it is addressed. A Recommendation has no binding force. Parties shall use their best endeavours to carry out Recommendations.

Article 77

Save as provided in Article 80, each Party shall have one vote.

Article 78

The Ministerial Council, the Permanent High Level Group or the Regulatory Board may act only if two third of the Parties are represented. Abstentions in a vote from Parties present shall not count as votes cast.

CHAPTER II – MEASURES UNDER TITLE II

Article 79

The Ministerial Council, the Permanent High Level Group or the Regulatory Board shall take Measures under Title II on a proposal from the European Commission. The European Commission may alter or withdraw its proposal at any time during the procedure leading to adoption of the Measures.

Article 80

Each Contracting Party shall have one vote.

Article 81

The Ministerial Council, the Permanent High Level Group or the Regulatory Board shall act by a majority of the votes cast.

CHAPTER III – MEASURES UNDER TITLE III

Article 82

The Ministerial Council, the Permanent High Level Group or the Regulatory Board shall take Measures under Title III on a proposal from a Party or the Secretariat.

Article 83

The Ministerial Council, the Permanent High Level Group or the Regulatory Board shall act by a two third majority of the votes cast, including a positive vote of the European Community.

CHAPTER IV – MEASURES UNDER TITLE IV

Article 84

The Ministerial Council, the Permanent High Level Group or the Regulatory Board shall take Measures under Title IV on a proposal from a Party.

Article 85

The Ministerial Council, the Permanent High Level Group or the Regulatory Board shall take Measures by unanimity.

CHAPTER V – PROCEDURAL ACTS

Article 86

A Procedural Act shall regulate organizational, budgetary and transparency issues of the Energy Community, including the delegation of power from the Ministerial Council to the Permanent High Level Group, the Regulatory Board or the Secretariat, and shall have binding force on the institutions of the Energy Community, and, if the Procedural Act so provides, on the Parties.

Article 87

Save as provided in Article 88, Procedural Acts shall be adopted in compliance with the Decision Making Process set out in Chapter III of this Title.

Article 88

The Procedural Act appointing the Director of the Secretariat provided for in Article 69 shall be adopted by simple majority on a proposal from the European Commission. The Procedural Acts on budgetary matters provided for in Articles 73 and 74 shall be adopted by unanimity on a proposal from the European Commission. The Procedural Acts conferring powers on the Regulatory Board provided for in Article 47(c) shall be taken by unanimity on a proposal from a Party or the Secretariat.
TITLE VII - IMPLEMENTATION OF DECISIONS AND DISPUTE SETTLEMENT

Article 89

The Parties shall implement Decisions addressed to them in their domestic legal system within the period specified in the Decision.

Article 90

1. Failure by a Party to comply with a Treaty obligation or to implement a Decision addressed to it within the required period may be brought to the attention of the Ministerial Council by a reasoned request of any Party, the Secretariat or the Regulatory Board. Private bodies may approach the Secretariat with complaints.
2. The Party concerned may make observations in response to the request or complaint.

Article 91

1. The Ministerial Council may determine the existence of a breach by a Party of its obligations. The Ministerial Council shall decide:
   (a) by a simple majority, if the breach relates to Title II;
   (b) by a two-third majority, if the breach relates to Title III;
   (c) by unanimity, if the breach relates to Title IV.
2. The Ministerial Council may subsequently decide by simple majority to revoke any decisions adopted under this Article.

Article 92

1. At the request of a Party, the Secretariat or the Regulatory Board, the Ministerial Council, acting by unanimity, may determine the existence of a serious and persistent breach by a Party of its obligations under this Treaty and may suspend certain of the rights deriving from application of this Treaty to the Party concerned, including the suspension of voting rights and exclusion from meetings or mechanisms provided for in this Treaty.
2. The Ministerial Council may subsequently decide by simple majority to revoke any decisions taken under this Article.

Article 93

When adopting the decisions referred to in Articles 91 and 92, the Ministerial Council shall act without taking into account the vote of the representative of the Party concerned.

TITLE VIII - INTERPRETATION

Article 94

The institutions shall interpret any term or other concept used in this Treaty that is derived from European Community law in conformity with the case law of the Court of Justice or the Court of First Instance of the European Communities. Where no interpretation from those Courts is available, the Ministerial Council shall give guidance in interpreting this Treaty. It may delegate that task to the Permanent High Level Group. Such guidance shall not prejudge any interpretation of the acquis communautaire by the Court of Justice or the Court of First Instance at a later stage.

TITLE IX – PARTICIPANTS AND OBSERVERS

Article 95

Upon a request to the Ministerial Council, any Member State of the European Community may be represented in the Ministerial Council, the Permanent High Level Group and the Regulatory Board under the conditions laid down in Articles 48, 54 and 59 as a Participant, and shall be permitted to participate in the discussions of the Ministerial Council, the Permanent High Level Group, the Regulatory Board and the Fora.

Article 96

1. Upon a reasoned request of a neighbouring third country, the Ministerial Council may, by unanimity, accept that country as an Observer. Upon a request presented to the Ministerial Council within six months of the date of entry into force of this Treaty, Moldova shall be accepted as an Observer.
2. Observers may attend the meetings of the Ministerial Council, the Permanent High Level Group, the Regulatory Board and the Fora, without participating in the discussions.

TITLE X - DURATION

Article 97

This Treaty is concluded for a period of 10 years from the date of entry into force. The Ministerial Council, acting by unanimity, may decide to extend its duration. If no such decision is taken, the Treaty may continue to apply between those Parties who voted in favour of extension, provided that their number amounted to at least two thirds of the Parties to the Energy Community.
Any obligations under an agreement between the European Community and its Member States on the one hand, and a Contracting Party on the other hand shall not be affected by this Treaty. Any commitment taken in the context of negotiations for accession to the European Union shall not be affected by this Treaty.

Until the adoption of the Procedural Act referred to in Article 50, the 2003 Athens Memorandum of Understanding shall define the order for holding the Presidency.

This Treaty shall be approved by the Parties in accordance with their internal procedures. This Treaty shall enter into force on the first day of the month following the date on which the European Community and six Contracting Parties have notified the completion of the procedures necessary for this purpose. Notification shall be sent to the Secretary-General of the Council of the European Union who shall be the depositary for this Treaty.

In witness thereof the duly authorised representatives have signed this Treaty.

PART I

TREATY ESTABLISHING THE ENERGY COMMUNITY / SIGNING PAGES

Done at Athens, on the twenty-fifth day of October in the year two thousand and five.

For the European Community

[Signature]

For the Republic of Albania

[Signature]

For the Republic of Bulgaria

[Signature]

For Bosnia and Herzegovina

[Signature]

For the Republic of Croatia

[Signature]

For the former Yugoslav Republic of Macedonia

[Signature]

For the Republic of Montenegro

[Signature]

For Romania

[Signature]

For the Republic of Serbia

[Signature]

For the United Nations Interim Administration Mission in Kosovo pursuant to the United Nations Security Council Resolution 1244

[Signature]
Republic of Macedonia
Office of the Deputy Prime Minister –
Minčo Jordanov

Athens, 25 October 2005

Your Excellency,

Hereby I declare that the text of the Treaty establishing the Energy Community is acceptable for the Government of the Republic of Macedonia.

With this letter, the Government of the Republic of Macedonia considers itself as signatory of the Treaty establishing the Energy Community.

However, I declare that the Republic of Macedonia does not accept the denomination used for my country in the above-mentioned documents having in view that the constitutional name of my country is the Republic of Macedonia.

Please accept, Your Excellency, the assurances of my highest consideration.

Minčo Jordanov

THE EUROPEAN COMMUNITY
Brussels

COUNCIL OF
THE EUROPEAN UNION
The Presidency

Athens, 25 October 2005

Mr. Minčo Jordanov,
Vice-President of the Government of the former Yugoslav Republic of Macedonia.

Sir,

The European Community takes note of your letter of today’s date and confirms that your letter and this reply shall together take the place of the signature of the Treaty establishing the Energy Community by the former Yugoslav Republic of Macedonia. However, this cannot be construed as acceptance or recognition by the European Community, in whatever form or content of a denomination other than “former Yugoslav Republic of Macedonia”.

Please accept, Sir, the assurance of my highest consideration.

On behalf of the European Community

[Signature]

Iliindanska bb, 1000 Skopje, + 389 (0) 2 1234211 (tel); + 389 (0) 2 3221356 (fax); http://www.vlada.mk

37 Rue de la Loi, 1048 Brussels, Belgium
DECLARATION

I, Søren Jessen-Petersen, Special Representative of the Secretary General and Head of the United Nations Interim Administration Mission in Kosovo (UNMIK),

HEREBY DECLARE that the United Nations Interim Administration Mission in Kosovo (UNMIK) is signing the Treaty establishing the Energy Community on 25 October 2005, subject to the following terms:

(i) The United Nations Interim Administration Mission in Kosovo (UNMIK) established by Security Council resolution 1244 (1999) of 10 June 1999 signs the Treaty on behalf of Kosovo;

(ii) The Treaty is valid in respect of Kosovo for the duration of UNMIK administration under resolution 1244 (1999), and its continued validity beyond that would depend on the future administration of Kosovo; and

(iii) The conclusion of the Treaty on the part of UNMIK is without prejudice to the future status of Kosovo.

Furthermore, the Treaty does not engage the responsibility of the United Nations, nor does it create for the Organization any legal, financial or other obligations.

I request that this Declaration be duly recorded and form part of the official records of the Treaty.

IN WITNESS WHEREOF, I have hereto set my hand and seal.

Done at Pristina on 21 October 2005.

Søren Jessen-Petersen
Special Representative of the Secretary General

STATEMENT

Of the Serbian Delegation at the
Ceremony of the signing of the Treaty establishing the Energy Community

"The Government of the Republic of Serbia would like to state that the signing of the Treaty establishing the Energy Community on behalf of the Special Representative of the Secretary General United Nations Interim Administration Mission in Kosovo shall in no way prejudice the final status of Kosovo and Metohija. The Government of the Republic of Serbia recalls the UN Security Council Resolution 1244 reaffirming the commitment of all Member States to the sovereignty and territorial integrity of the Serbia and Montenegro."

Athens, October 25, 2005

[Signature]
ANNEX II

TIMETABLE FOR THE IMPLEMENTATION OF THE ACQUIS ON ENVIRONMENT


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ANNEX I

LIST OF ACTS INCLUDED IN THE “ACQUIS COMMUNAUTEAIRE ON ENERGY”


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ANNEX III

EC COMPETITION RULES

Article 81 of the EC Treaty

1. The following shall be prohibited as incompatible with the common market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market, and in particular those which:
   (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
   (b) limit or control production, markets, technical development, or investment;
   (c) share markets or sources of supply;
   (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
   (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

2. Any agreements or decisions prohibited pursuant to this article shall be automatically void.

3. The provisions of paragraph 1 may, however, be declared inapplicable in the case of:
   - any agreement or category of agreements between undertakings,
   - any decision or category of decisions by associations of undertakings,
   - any concerted practice or category of concerted practices,
   which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:
   (a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;
   (b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

Article 82 of the EC Treaty

Any abuse by one or more undertakings of a dominant position within the common market or in a substantial part of it shall be prohibited as incompatible with the common market in so far as it may affect trade between Member States.

Such abuse may, in particular, consist in:
   (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
   (b) limiting production, markets or technical development to the prejudice of consumers;
   (c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
   (d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

Article 86(1) and (2) of the EC Treaty

1. In the case of public undertakings and undertakings to which Member States grant special or exclusive rights, Member States shall neither enact nor maintain in force any measure contrary to the rules contained in this Treaty, in particular to those rules provided for in Article 12 and Articles 81 to 89.

2. Undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules contained in this Treaty, in particular to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the interests of the Community.

Article 87 of the EC Treaty

1. Save as otherwise provided in this Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market.

2. The following shall be compatible with the common market:
   (a) aid having a social character, granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned;
   (b) aid to make good the damage caused by natural disasters or exceptional occurrences;
   (c) aid granted to the economy of certain areas of the Federal Republic of Germany affected by the division of Germany, in so far as such aid is required in order to compensate for the economic disadvantages caused by that division.

3. The following may be considered to be compatible with the common market:
   (a) aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment;
   (b) aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State;
   (c) aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest;
   (d) aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the Community to an extent that is contrary to the common interest;
   (e) such other categories of aid as may be specified by decision of the Council acting by a qualified majority on a proposal from the Commission.
PROTOCOL
CONCERNING THE ACCESSION OF THE REPUBLIC OF MOLDOVA
TO THE ENERGY COMMUNITY

The Energy Community, in accordance with the Treaty establishing the Energy Community (hereinafter - the Treaty) on the one hand,

and the Republic of Moldova on the other hand,

Taking note of the outcome of negotiations on the Republic of Moldova’s accession to the Energy Community,

Having regard to the Decision of the Ministerial Council of the Energy Community of 18 December 2009 approving the accession of the Republic of Moldova to the Energy Community on the conditions set out herein (Decision 2009/03/MC-EnC),

AGREED ON THE FOLLOWING:

Article 1

1. The Republic of Moldova accedes to the Energy Community as a Contracting Party under the terms and conditions set out in the Decision of the Ministerial Council of the Energy Community of 18 December 2009 on the accession of the Republic of Moldova to the Energy Community (Decision 2009/03/MC-EnC), as laid down in this Protocol.

2. Unless specified otherwise in this Protocol, by date of accession, the Republic of Moldova is entitled to all rights granted to Contracting Parties and is subject to all obligations imposed on Contracting Parties by the Treaty and by all Decisions and Procedural Acts adopted in application of the Treaty since its entry into force.

Article 2

1. For the purpose of compliance with Title II of the Treaty establishing the Energy Community and its related Annexes, the timetable for implementation by the Republic of Moldova of the acquis communautaire is defined as follows:

<table>
<thead>
<tr>
<th>Directive</th>
<th>Due Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Regulation 1775/2005 on conditions for access to the natural gas transmission networks</td>
<td>By 31 December 2010</td>
</tr>
<tr>
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<td>Regulation 1228/2003 on conditions for access to the network for cross-border exchanges in electricity</td>
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</tr>
<tr>
<td>Commission Decision 2006/770/EC amending the Annex to Regulation no. 1228/2003 on conditions for access to the network for cross-border exchanges in electricity</td>
<td>By 31 December 2010</td>
</tr>
<tr>
<td>Directive 2005/89/EC concerning measures to safeguard security of electricity supply and infrastructure investment</td>
<td>By 31 December 2010</td>
</tr>
<tr>
<td>Directive 1999/32/EC relating to a reduction in the sulphur content of certain liquid fuels</td>
<td>By 31 December 2014</td>
</tr>
<tr>
<td>Directive 2001/80/EC on the limitation of emissions of certain pollutants into the air from large combustion plants</td>
<td>By 31 December 2017</td>
</tr>
<tr>
<td>Directive 79/409/EC, Article 4(2), on the conservation of wild birds</td>
<td>By 31 December 2010</td>
</tr>
<tr>
<td>Plan for the implementation of Directive 2001/77/EEC on the promotion of electricity produced from renewable energy sources in the internal electricity market</td>
<td>By 31 December 2010</td>
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<tr>
<td>Plan for the implementation of Directive 2003/30/EC on the promotion of the use of biofuels or other renewable fuels for transport</td>
<td>By 31 December 2010</td>
</tr>
</tbody>
</table>
2. The Republic of Moldova must ensure that the eligible customers within the meaning of EC Directives 2003/54/EC and 2003/55/EC are:

– From 1 January 2013, all non-household customers; and
– From 1 January 2015, all customers.

3. In Article 19 of the Treaty, the reference “as from six months following the date of entry into force of this Treaty” shall be understood as meaning “as from six months following the date of accession of the Republic of Moldova”. In Article 22 of the Treaty, the reference “within one year of the adoption of the list” shall be understood as meaning “within one year of the date of accession of the Republic of Moldova”. In Article 29 of the Treaty, the reference “within one year of the date of entry into force of this Treaty” shall be understood as meaning “within one year of the date of accession of the Republic of Moldova”.

4. Article 15 of the Treaty shall apply to the Republic of Moldova as from one year following the date of accession of the Republic of Moldova.

Article 3

1. The contribution of the Republic of Moldova and of the other Parties to the budget of the Energy Community shall be set out in a Procedural Act to be adopted pursuant to Article 73 of the Treaty. The methodology to be applied shall be based on a pro-rata calculated in relation to GDP and Total Primary Energy Supply.

2. The first contribution of the Republic of Moldova shall be due for the first full budgetary year following accession.

Article 4

1. After adoption by the Ministerial Council of the Energy Community of its Decision on the Republic of Moldova’s accession to the Energy Community, the Republic of Moldova shall initiate its internal procedures required for entry into force of its accession to the Energy Community.

2. The accession to the Energy Community shall enter into force on the first day of the second month following the month of completion of the procedures provided in the first paragraph of this article.

Done at Vienna, this seventeenth day of March in the year two thousand and ten.

For the Energy Community For the Republic of Moldova

PART I TREATY ESTABLISHING THE ENERGY COMMUNITY / ACCESSION OF UKRAINE

2. The Energy Community, in accordance with the Treaty establishing the Energy Community (hereinafter - the Treaty) on the one hand,

And Ukraine on the other hand,

Taking note of the outcome of negotiations on Ukraine’s accession to the Energy Community Treaty,

Having regard to the Decision of the Ministerial Council of the Energy Community of 18 December 2009 approving the accession of Ukraine to the Energy Community Treaty on the conditions set out herein (Decision 2009/04/MC-EnC),

AGREED ON THE FOLLOWING:

Article 1

1. Ukraine accedes to the Treaty establishing the Energy Community as a Contracting Party under the terms and conditions set out in the Decision of the Ministerial Council of the Energy Community of 18 December 2009 on the accession of Ukraine to the Energy Community Treaty (Decision 2009/04/MC-EnC), as laid down in this Protocol.

2. Unless specified otherwise in this Protocol, by date of accession, Ukraine is entitled to all rights granted to Contracting Parties and is subject to all obligations imposed on Contracting Parties by the Treaty and by all Decisions and Procedural Acts adopted in application of the Treaty since its entry into force.

Article 2

1. For the purposes of compliance with Title II of the Treaty establishing the Energy Community and its related Annexes, the timetable for implementation of the acquis communautaire is defined as follows:

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<tr>
<td>1775/2005 on conditions for access to the natural gas transmission networks</td>
<td>By 1st January 2012</td>
</tr>
<tr>
<td>2004/67/EC concerning measures to safeguard security of natural gas supply</td>
<td>By 1st January 2012</td>
</tr>
</tbody>
</table>

Done at Vienna, this seventeenth day of March in the year two thousand and ten.

For the Energy Community For the Republic of Moldova
3. In Article 19 of the Treaty, the reference “as from six months following the date of entry into force of this Treaty” shall be understood as meaning “as from six months following the date of accession of Ukraine”. In Article 22 of the Treaty, the reference “within one year of the adoption of the list” shall be understood as meaning “within one year of the date of accession of Ukraine”. In Article 29 of the Treaty, the reference “within one year of the date of entry into force of this Treaty” shall be understood as meaning “within one year of the date of accession of Ukraine”.

4. Article 15 of the Treaty shall apply to Ukraine as from two years following the date of accession of Ukraine.

Article 3

1. The contribution of Ukraine and of the other Parties to the budget of the Energy Community shall be set out in a Procedural Act to be adopted pursuant to Article 73 of the Treaty. The methodology to be applied shall be based on a pro-rata calculated in relation to GDP and Total Primary Energy Supply.

2. The first contribution of Ukraine shall be due for the first full budgetary year following accession.

Article 4

1. After adoption by the Ministerial Council of the Energy Community of its Decision on Ukraine’s accession to the Energy Community, Ukraine shall initiate its internal procedures required for entry into force of its accession to the Energy Community.

2. The accession to the Energy Community shall enter into force on the first day of the second month following the month of completion of the procedures provided in the first paragraph of this article.

Done at Skopje, this twenty fourth day of September in the year two thousand and ten.

For the Energy Community

For Ukraine

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2. Ukraine must ensure that the eligible customers within the meaning of EC Directives 2003/54/EC and 2003/55/EC are:

From 1 January 2012, all non-household customers; and
From 1 January 2015, all customers.

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| Directive | Date
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<td>By 1st July 2011</td>
</tr>
</tbody>
</table>
PART II
ACQUIS COMMUNAUTAIRE
ELECTRICITY


The adaptations made by Ministerial Council Decision 2011/02/MC-EnC are highlighted in bold and blue, the changes in the present Directive in comparison to Directive 2003/54/EC are highlighted in bold.

Whereas:

(1) The internal market in electricity, which has been progressively implemented throughout the Community 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.

(2) Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity has made a significant contribution towards the creation of such an internal market in electricity.

(3) 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.

(4) However, at present, there are obstacles to the sale of electricity 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.

(5) A secure supply of electricity is of vital importance for the development of European society, the implementation of a sustainable climate change policy, and the fostering of competitiveness within the internal market. To that end, cross-border interconnections should be further developed in order to secure the supply of all energy sources at the most competitive prices to consumers and industry within the Community.

(6) A well-functioning internal market in electricity should provide producers with the appropriate incentives for investing in new power generation, including in electricity from renewable energy sources, paying special attention to the most isolated countries and regions in the Community’s energy market. A well-functioning market should also provide consumers with adequate measures to promote the more efficient use of energy for which a secure supply of energy is a precondition.

(7) The Communication of the Commission of 10 January 2007 entitled “An Energy Policy for Europe” highlighted the importance of completing the internal market in electricity and of creating a level playing field for all electricity 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.

(8) In order to secure competition and the supply of electricity at the most competitive price, Member States and national regulatory authorities should facilitate cross-border access for new suppliers of electricity from different energy sources as well as for new providers of power generation.

(9) Without effective separation of networks from activities of generation and supply (effective unbundling), there is an inherent 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. The rules on legal and functional unbundling as provided for in Directive 2003/54/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 generation activities from network operations”.

(10) The setting up of a system operator or a transmission operator that is independent from supply and generation interests should enable a vertically integrated undertaking to maintain its ownership of network assets whilst ensuring 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.

(11) 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 referred to ownership unbundling at transmission level as the most effective tool by 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 generation 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 generation or supply undertaking. Within those limits, a generation or supply undertaking should be able to have a minority shareholding in a transmission system operator or transmission system.

(12) 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.


(14) 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.

(15) Under ownership unbundling, to ensure full independence of network operation from supply and generation 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 generation 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 generation or supply undertaking.

(16) The setting up of a system operator or a transmission operator that is independent from supply and generation interests should enable a vertically integrated undertaking to maintain its ownership of network assets whilst ensuring 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.

(17) Where, on 3 September 2009, an undertaking owning a transmission system is 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 generation interests.

(18) 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 generation undertaking, provided that the requirements resulting from ownership unbundling are complied with.

(19) 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 electricity 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.

(20) In order to develop competition in the internal market in electricity, large non-household customers should be able to choose their suppliers and enter into contracts with several suppliers to secure their electricity requirements. Such customers should be protected against exclusivity clauses the effect of which is to exclude competing or complementary offers.

(21) 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 generation 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.

(22) Under this Directive different types of market organisation will exist in the internal market in electricity. 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 law.

(23) 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 over 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 generation 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 generation and supply activities on the one hand and transmission activities on the other.

(24) Fully effective separation of network activities from supply and generation activities should apply throughout the Community to both Community and non-Community undertakings. To ensure that network activities and supply and generation activities throughout the Community 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, 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, and solidarity and energy security within the Community, 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.

(25) 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 electricity and the integration of the isolated electricity markets of Member States. Electricity can reach the citizens of the Union only through the network. Functioning electricity markets and, in particular, the networks and other assets associated with electricity 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 be allowed to control a transmission system or a transmission system operator only if they comply with the requirements of effective separation that apply inside the Community. Without prejudice to the international obligations of the Community, the Community considers that the electricity transmission system sector is of high importance to the Community and therefore additional safeguards are necessary regarding the preservation of the security of supply of energy to the Community to avoid any threats to public order and public security in the Community and the welfare of the citizens of the Union. The security of supply of energy to the Community requires, in particular, an assessment of the independence of network operation, the level of the Community'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 and the third country concerned. Where appropriate the Commission is encouraged to submit recommendations to negotiate relevant agreements with third countries addressing the security of supply of energy to the Community or to include the necessary issues in other negotiations with those third countries.

(26) 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 generation or supply interests are generally greater than at distribution level. Moreover, legal and functional unbundling of distribution system operators was required, pursuant to Directive 2003/54/EC, only from 1 July 2007 and its effects on the internal market in electricity 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.

(27) Member States should encourage the modernisation of distribution networks, such as through the introduction of smart grids, which should be built in a way that encourages decentralised generation and energy efficiency.

(28) In the case of small systems it may be necessary that the provision of ancillary services is ensured by transmission system operators interconnected with small systems.

(29) 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.

(30) 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.

(31) Authorisation procedures should not lead to an administrative burden disproportionate to the size and potential impact of electricity producers. Unduly lengthy authorisation procedures may constitute a barrier to access for new market entrants.

(32) Further measures should be taken in order to ensure transparent and non-discriminatory tariffs for access to networks. Those tariffs should be applicable to all system users on a non-discriminatory basis.

(33) Directive 2003/54/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.

(34) Energy regulators need to be able to take decisions in relation to all relevant regulatory issues if the internal market in electricity 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 laws 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 the autonomy in the implementation of the allocated budget of the regulatory authority should be implemented in 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.

(35) In order to ensure effective market access for all market players, including new entrants, nondiscriminatory and cost-reflective balancing mechanisms are necessary. As soon as the electricity market is sufficiently liquid, this should be achieved through the setting up of transparent market-based mechanisms for the supply and purchase of electricity, needed in the framework of balancing requirements. In the absence of such a liquid market, 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-put and off-take of electricity and not to endanger the system. Transmission system operators should facilitate participation of final customers and final customers’ aggregators in reserve and balancing markets.

(36) 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 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 distributed generation and demand-side management measures.

(37) Energy regulators should have the power to issue binding decisions in relation to electricity undertakings and to impose effective, proportionate and dissuasive penalties on electricity 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 electricity. The establishment of virtual power plants - electricity release programmes whereby electricity undertakings are obliged to sell or to make available a certain volume of electricity or to grant access to part of their generation capacity to interested suppliers for a certain period of time - 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 power to contribute to ensuring high standards of universal and 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.

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

(39) The internal market in electricity suffers from a lack of liquidity and transparency hindering the efficient allocation of resources, risk hedging and new entry. There is a need for enhancement of competition and security of supply through facilitated integration of new power plants into the electricity network in all Member States, in particular encouraging new market entrants. 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 electricity needs to be increased. Such requirements should be without prejudice to, and compatible with, existing Community 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 over the markets concerned.

(40) Prior to the adoption by the Commission of Guidelines defining further the record-keeping requirements, 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 (the “Agency”), and the Committee of European Securities Regulators (the “CESR”), established by Commission Decision 2009/77/EC, 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 electricity supply contracts and electricity derivatives should be subject to pre- or post-trade transparency requirements and, if so, what the content of those requirements should be.

(41) Member States or, where a Member State has so provided, the regulatory authority, should encourage the development of interruptible supply contracts.

(42) All Community industry and commerce, including small and medium-sized enterprises, and all citizens of the Union that enjoy the economic benefits of the internal market should also be able to enjoy high levels of consumer protection, and in particular household customers and, where Member States deem it appropriate, small enterprises should also be able to enjoy public service guarantees, in particular with regard to security of supply and reasonable tariffs, for reasons of fairness, competitiveness and, indirectly, to create employment. Those customers should also have access to choice, fairness, representation and dispute settlement mechanisms.

(43) Nearly all Member States have chosen to ensure competition in the electricity generation market through a transparent authorisation procedure. However, Member States should ensure the possibility to contribute to security of supply through the launching of a tendering procedure or an equivalent procedure in the event that sufficient electricity generation capacity is not built on the basis of the authorisation procedure. Member States should have the possibility, in the interests of environmental protection and the promotion of new infant technologies, of tendering for new capacity on the basis of published criteria. Such new capacity includes, inter alia, electricity from renewable energy sources and combined heat and power.

(44) 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 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 electricity supply. The maintenance and construction of the necessary network infrastructure, including interconnection capacity and decentralised electricity generation, are important elements in ensuring a stable electricity supply.
(45) Member States should ensure that household customers and, where Member States deem it appropriate, small enterprises, enjoy the right to be supplied with electricity of a specified quality at clearly comparable, transparent and reasonable prices. In order to ensure the maintenance of the high standards of public service in the Community, all measures taken by Member States to achieve the objective 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 take the necessary measures to protect vulnerable customers in the context of the internal market in electricity. Such measures may differ according to the particular circumstances in the Member States in question and may include specific measures relating to the payment of electricity bills, or more general measures taken in the social security system. Where universal service is also provided to small enterprises, measures to ensure that such universal service is provided may differ according to whether they are aimed at household customers or small enterprises.

(46) 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 consumer 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 law.

(47) It should be possible for Member States to appoint a supplier of last resort. That supplier may be the sales division of a vertically integrated undertaking, which also performs the functions of distribution, provided that it meets the unbundling requirements of this Directive.

(48) 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 tools. Such tools may include liability mechanisms to guarantee the necessary investment.

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

(50) The public service requirements, including as regards the universal service, and the common minimum standards that follow from them need to be further strengthened to make sure that all consumers, especially vulnerable ones, are able to benefit from competition and fair prices. The public service requirements should be defined at national level, taking into account national circumstances; Community law should, however, be respected by the Member States. The citizens of the Union and, where Member States deem it appropriate, small enterprises, should be able to enjoy public service obligations, in particular with regard to security of supply, and reasonable prices. A key aspect of 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. Consumers should also have the right to be properly informed about their energy consumption. Prepayments should reflect the likely consumption of electricity 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. In this respect, full implementation of Directive 2006/32/EC of the European Parliament and of the Council of 5 April 2006 on energy end-use efficiency and energy services will help consumers to reduce their energy costs.

(51) Consumer interests should be at the heart of this Directive and quality of service should be a central responsibility of electricity 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 benefit from a competitive market. Consumer rights should be enforced by Member States or, where a Member State has so provided, the regulatory authorities.

(52) Clear and comprehensible information should be made available to consumers concerning their rights in relation to the energy sector. The Commission should establish, after consulting relevant stakeholders including Member States, national regulatory authorities, consumer organisations and electricity undertakings, an accessible, user-friendly energy consumer checklist providing consumers with practical information about their rights. That checklist should be provided to all consumers and should be made publicly available.

(53) Energy poverty is a growing problem in the Community. Member States which are affected and which have not yet done so should therefore develop national action plans or other appropriate frameworks to tackle energy poverty, 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.

(54) 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.

(55) It should be possible to base the introduction of intelligent metering systems on an economic assessment. 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 electricity consumption, Member States should be able to take this into account when implementing intelligent metering systems.

(56) Market prices should give the right incentives for the development of the network and for investing in new electricity generation.

(57) Promoting fair competition and easy access for different suppliers and fostering capacity for new electricity generation 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 electricity.

(58) With a view to creating an internal market in electricity, Member States should foster the integration of their national markets and the cooperation of system operators at Community and regional level, also incorporating isolated systems forming electricity islands that persist in the Community.

(59) The development of a true internal market in electricity, through a network connected across the Community, 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.
(60) Securing common rules for a true internal market and a broad supply of electricity accessible to all 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 and for investments in new power generation while leading, in the long term, to price convergence.

(61) 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 electricity and its short, medium and long-term evolution, including aspects such as generation capacity, different sources of electricity generation, 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.

(62) Since the objective of this Directive, namely the creation of a fully operational internal electricity market, cannot be sufficiently achieved by the Member States and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. 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.

(63) Under Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity, the Commission may adopt Guidelines to achieve the necessary degree of harmonisation. Such Guidelines, 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.

(64) 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.

(65) 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.

(66) In accordance with point 34 of the Interinstitutional Agreement on better law-making, Member States are encouraged to draw up, for themselves and in the interest of the Community, their own tables, illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public.

(67) Given the scope of the amendments made to Directive 2003/54/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.

(68) This Directive respects the fundamental rights, and observes the principles, recognised in particular by the Charter of Fundamental Rights of the European Union.
for their own household use and includes producers and wholesale customers;
12. “eligible customer” means a customer who is free to purchase electricity from the supplier of his choice within the meaning of Article 33;
13. “interconnector” means equipment used to link electricity systems;
14. “interconnected system” means a number of transmission and distribution systems linked together by means of one or more interconnectors;
15. “direct line” means either an electricity line linking an isolated generation site with an isolated customer or an electricity line linking an electricity producer and an electricity supply undertaking to supply directly their own premises, subsidiaries and eligible customers;
16. “economic precedence” means the ranking of sources of electricity supply in accordance with economic criteria;
17. “ancillary service” means a service necessary for the operation of a transmission or distribution system;
18. “system user” means a natural or legal person supplying to, or being supplied by, a transmission or distribution system;
19. “supply” means the sale, including resale, of electricity to customers;
20. “integrated electricity undertaking” means a vertically or horizontally integrated undertaking;
21. “vertically integrated undertaking” means an electricity undertaking or a group of electricity 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 or distribution, and at least one of the functions of generation or supply of electricity;
22. “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 44(2)(g) of the Treaty on consolidated accounts, and/or associated undertakings, within the meaning of Article 33(1) of that Directive, and/or undertakings which belong to the same shareholders;
23. “horizontally integrated undertaking” means an undertaking performing at least one of the functions of generation for sale, or transmission, or distribution, or supply of electricity, and another non-electricity activity;
24. “tendering procedure” means the procedure through which planned additional requirements and replacement capacity are covered by supplies from new or existing generating capacity;
25. “long-term planning” means the planning of the need for investment in generation and transmission and distribution capacity on a long-term basis, with a view to meeting the demand of the system for electricity and securing supplies to customers;
26. “small isolated system” means any system with consumption of less than 3000 GWh in the year 2006, where less than 5% of annual consumption is obtained through interconnection with other systems;
27. “micro isolated system” means any system with consumption less than 500 GWh in the year 2006, where there is no connection with other systems;
28. “security” means both security of supply and provision of electricity, and technical safety;
29. “energy efficiency/demand-side management” means a global or integrated approach aimed at influencing the amount and timing of electricity consumption in order to reduce primary energy consumption and peak loads by giving precedence to investments in energy efficiency measures, or other measures, such as interruptible supply contracts, over investments to increase generation capacity, if the former are the most effective and economical option, taking into account the positive environmental impact of reduced energy consumption and the security of supply and distribution cost aspects related to it;
30. “renewable energy sources” means renewable non-fossil energy sources (wind, solar, geothermal, wave, tidal, hydropower, biomass, landfill gas, sewage treatment plant gas and biogases);
31. “distributed generation” means generation plants connected to the distribution system;
32. “electricity supply contract” means a contract for the supply of electricity, but does not include an electricity derivative;
33. “electricity 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, where that instrument relates to electricity;
34. “control” means 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;
35. “electricity undertaking” means any natural or legal person carrying out at least one of the following functions: generation, transmission, distribution, supply, or purchase of electricity, which is responsible for the commercial, technical or maintenance tasks related to those functions, but does not include final customers.

CHAPTER II
GENERAL RULES FOR THE ORGANISATION OF THE SECTOR

Article 3
Public service obligations and customer protection

1. Contracting Parties shall ensure, on the basis of their institutional organisation and with due regard to the principle of subsidiarity, that, without prejudice to paragraph 2, electricity undertakings are operated in accordance with the principles of this Directive with a view to achieving a competitive, secure and environmentally sustainable market in electricity, and shall not discriminate between those undertakings as regards either rights or obligations.
2. Having full regard to the relevant provisions of the Energy Community Treaty, in particular Annex III thereof, Contracting Parties may impose on undertakings operating in the electricity sector, in the general economic interest, public service obligations which may relate to security, including security of supply, regularity, quality and price of supplies and environmental protection, including energy efficiency, energy from renewable sources and climate protection. Such obligations
shall be clearly defined, transparent, non-discriminatory, verifiable and shall guarantee equality of access for electricity undertakings of the Energy Community to national consumers. In relation to security of supply, energy efficiency/demand-side management and for the fulfilment of environmental goals and goals for energy from renewable sources, as referred to in this paragraph, Contracting Parties may introduce the implementation of long-term planning, taking into account the possibility of third parties seeking access to the system.

3. Contracting Parties shall ensure that all household customers, and, where Contracting Parties deem it appropriate, small enterprises (namely enterprises with fewer than 50 occupied persons and an annual turnover or balance sheet not exceeding EUR 10 million), enjoy universal service, that is the right to be supplied with electricity of a specified quality within their territory at reasonable, easily and clearly comparable, transparent and non-discriminatory prices. To ensure the provision of universal service, Contracting Parties may appoint a supplier of last resort. Contracting Parties shall impose on distribution companies an obligation to connect customers to their network under terms, conditions and tariffs set in accordance with the procedure laid down in Article 37(6). Nothing in this Directive shall prevent Contracting Parties from strengthening the market position of the household, small and medium-sized consumers by promoting the possibilities of voluntary aggregation of representation for that class of consumers.

The first subparagraph shall be implemented in a transparent and non-discriminatory way and shall not impede the opening of the market provided for in Article 33.

4. Contracting Parties shall ensure that all customers are entitled to have their electricity provided by a supplier, subject to the supplier’s agreement, regardless of the Contracting Party in which the supplier is registered, as long as the supplier follows the applicable trading and balancing rules. In this regard, Contracting Parties shall take all measures necessary to ensure that administrative procedures do not discriminate against supply undertakings already registered in another Contracting Party.

5. Contracting Parties shall ensure that:

(a) where a customer, while respecting 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.

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

6. Where financial compensation, other forms of compensation and exclusive rights which a Contracting Party grants for the fulfilment of the obligations set out in paragraphs 2 and 3 are provided, this shall be done in a non-discriminatory and transparent way.

7. Contracting Parties 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 Contracting Party shall define the concept of vulnerable customers which may refer to energy poverty and, inter alia, to the prohibition of disconnection of electricity to such customers in critical times. Contracting Parties shall ensure that rights and obligations linked to vulnerable customers are applied. In particular, they shall take measures to protect final customers in remote areas. They shall ensure high levels of consumer protection, particularly with respect to transparency regarding contractual terms and conditions, general information and dispute settlement mechanisms. Contracting Parties 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.

8. Contracting Parties shall take appropriate measures, such as formulating national energy action plans, providing benefits in social security systems to ensure the necessary electricity 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 33 or market functioning and shall be notified to the Energy Community Secretariat, where relevant, in accordance with the provisions of paragraph 15 of this Article. Such notification may also include measures taken within the general social security system.

9. Contracting Parties shall ensure that electricity suppliers specify in or with the bills and in promotional materials made available to final customers:

(a) the contribution of each energy source to the overall fuel mix of the supplier over the preceding year in a comprehensible and, at a national level, clearly comparable manner;

(b) at least the reference to existing reference sources, such as web pages, where information on the environmental impact, in terms of at least CO₂ emissions and the radioactive waste resulting from the electricity produced by the overall fuel mix of the supplier over the preceding year is publicly available;

(c) information concerning their rights as regards the means of dispute settlement available to them in the event of a dispute.

As regards points (a) and (b) of the first subparagraph with respect to electricity obtained via an electricity exchange or imported from an undertaking situated outside the Energy Community, aggregate figures provided by the exchange or the undertaking in question over the preceding year may be used.

The regulatory authority or another competent national authority shall take the necessary steps to ensure that the information provided by suppliers to their customers pursuant to this Article is reliable and is provided, at a national level, in a clearly comparable manner.

10. Contracting Parties shall implement measures to achieve the objectives of social and economic cohesion and environmental protection, which shall include energy efficiency/demand-side management measures and means to combat climate change, and security of supply, where appropriate. Such measures may include, in particular, the provision of adequate economic incentives, using, where appropriate, all existing national and Energy Community tools, for the maintenance and construction of the necessary network infrastructure, including interconnection capacity.

11. In order to promote energy efficiency, Contracting Parties or, where a Contracting Party has so provided, the regulatory authority shall strongly recommend that electricity under-

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1 In Directive 2003/54/EC (applicable until 1 January 2015), the first sentence of the corresponding provision, Article 3(5), additionally includes: ‘including measures to help them avoid disconnection’.

2 In Directive 2003/54/EC (applicable until 1 January 2015), the corresponding provision, Article 3(5), reads ‘may’ instead of ‘shall’.

3 In Directive 2003/54/EC (applicable until 1 January 2015), this provision reads ‘Contracting Party’ instead of ‘The regulatory authority or another competent national authority’.
takings optimize the use of electricity, for example by providing energy management services, developing innovative pricing formulas, or introducing intelligent metering systems or smart grids, where appropriate.

12. Contracting Parties 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.

13. Contracting Parties 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.

14. Contracting Parties may decide not to apply the provisions of Articles 7, 8, 32 and/or 34 insofar as their application would obstruct the performance, in law or in fact, of the obligations imposed on electricity 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 Energy Community. The interests of the Energy Community include, inter alia, competition with regard to eligible customers in accordance with this Directive and Annex III of the Energy Community Treaty.

15. Contracting Parties shall, upon implementation of this Directive, inform the Energy Community Secretariat of all measures adopted to fulfil universal service and public service obligations, including consumer protection and environmental protection, and their possible effect on national and international competition, whether or not such measures require a derogation from this Directive. They shall inform the Energy Community Secretariat subsequently every two years of any changes to such measures, whether or not they require a derogation from this Directive.

16. Contracting Parties shall ensure that electricity 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 checklists established by the European Commission.

The checklists shall be adopted by the Permanent High Level Group, following the procedure laid down in Article 79 of the Treaty.

Article 4
Monitoring of security of supply

Contracting Parties shall ensure the monitoring of security of supply issues. Where Contracting Parties consider it appropriate, they may delegate that task to the regulatory authorities referred to in Article 35. Such monitoring shall, in particular, cover the balance of supply and demand on the national market, the level of expected future demand and envisaged additional capacity being planned or under construction, and the quality and level of maintenance of the networks, as well as measures to cover peak demand and to deal with shortfalls of one or more suppliers. The competent authorities shall publish every two years, by 31 July, a report outlining the findings resulting from the monitoring of those issues, as well as any measures taken or envisaged to address them and shall forward that report to the Energy Community Secretariat forthwith.

Article 5
Technical rules

The regulatory authorities where Contracting Parties have so provided or Contracting Parties 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 generating installations, distribution systems, directly connected consumers’ equipment, interconnector circuits and direct lines are developed and made public. Those technical rules shall ensure the interoperability of systems and shall be objective and non-discriminatory.

Article 6
Promotion of regional cooperation

1. Contracting Parties as well as the regulatory authorities shall cooperate with each other for the purpose of integrating their national markets at regional levels, as a first step towards the creation of a fully liberalized internal market. In particular, the regulatory authorities where Contracting Parties have so provided or Contracting Parties shall promote and facilitate the cooperation of transmission system operators at a regional level, including on cross-border issues, with the aim of creating a competitive internal market in electricity, foster the consistency of their legal, regulatory and technical framework and facilitate integration of the isolated systems forming electricity islands that persist in the Energy Community. Such regional cooperation shall concern cooperation in the geographical area defined under Title III of the Treaty establishing the Energy Community. It may cover other geographical areas.

2. The Energy Community Regulatory Board shall cooperate with national regulatory authorities and transmission system operators to ensure the compatibility of regulatory frameworks with other European regions with the aim of creating a competitive internal market in electricity that can be fully integrated with the EU internal market.

3. Contracting Parties 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 Contracting Parties 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 program 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 notified to the Energy Community Regulatory Board. Compliance with the programme shall be independently monitored by the compliance officers of the vertically integrated transmission system operators.

4 In addition, Article 25 of Decision 2011/02/MC-EnC reads: ‘Transmission system operators shall promote operational arrangements in order to ensure the optimum management of the Energy Community network and shall promote the development of energy exchanges, the coordinated allocation of cross-border capacity through non-discriminatory market-based solutions, paying due attention to the specific merits of implicit auctions for short-term allocations, and the integration of balancing and reserve power mechanisms.’
CHAPTER III

GENERATION

Article 7

Authorisation procedure for new capacity

1. For the construction of new generating capacity, Contracting Parties shall adopt an authorisation procedure, which shall be conducted in accordance with objective, transparent and non-discriminatory criteria.

2. Contracting Parties shall lay down the criteria for the grant of authorisations for the construction of generating capacity in their territory. In determining appropriate criteria, Contracting Parties shall consider:

(a) the safety and security of the electricity system, installations and associated equipment;
(b) the protection of public health and safety;
(c) the protection of the environment;
(d) land use and siting;
(e) the use of public ground;
(f) energy efficiency;
(g) the nature of the primary sources;
(h) the characteristics particular to the applicant, such as technical, economic and financial capabilities;
(i) compliance with measures adopted pursuant to Article 3;
(j) the contribution of the generating capacity to meeting the overall Energy Community target of at least a 20% share of energy from renewable sources in the Energy Community’s gross final consumption of energy in 2020 referred to in Article 3(1) of Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources; and
(k) the contribution of generating capacity to reducing emissions.

3. Contracting Parties shall ensure that specific authorisation procedures exist for small decentralised and/or distributed generation, which take into account their limited size and potential impact.4 Contracting Parties may set guidelines for that specific authorisation procedure. National regulatory authorities or other competent national authorities including planning authorities shall review those guidelines and may recommend amendments thereto.

4 In Directive 2003/54/EC (applicable until 1 January 2015), the corresponding provision reads, “these criteria may relate to” instead of “in determining appropriate criteria, Contracting Parties shall consider”.

5 Directive 2009/28/EC was incorporated to the Energy Community acquis and adapted by Decision 2012/04/MC-EnC of 18 October 2012. According to Article 4(1) of that Decision, the second sentence of Article 3(1) of Directive 2009/28/EC shall not be applicable in the Energy Community.

6 In Directive 2003/54/EC (applicable until 1 January 2015), the corresponding provision reads “Member States shall ensure that authorisation procedures for small and/or distributed generation take into account their limited size and potential impact.”

Where Contracting Parties have established particular land use permit procedures applying to major new infrastructure projects in generation capacity, Contracting Parties shall, where appropriate, include the construction of new generation capacity within the scope of those procedures and shall implement them in a non-discriminatory manner and within an appropriate time-frame.

4. The authorisation procedures and criteria shall be made public. Applicants shall be informed of the reasons for any refusal to grant an authorisation. Those reasons shall be objective, non-discriminatory, well-founded and duly substantiated. Appeal procedures shall be made available to the applicant.

Article 8

Tendering for new capacity

1. Contracting Parties shall ensure the possibility, in the interests of security of supply, of providing for new capacity or energy efficiency/demand-side management measures through a tendering procedure or any procedure equivalent in terms of transparency and non-discrimination, on the basis of published criteria. Those procedures may, however, be launched only where, on the basis of the authorisation procedure, the generating capacity to be built or the energy efficiency/demand-side management measures to be taken are insufficient to ensure security of supply.

2. Contracting Parties may ensure the possibility, in the interests of environmental protection and the promotion of infant new technologies, of tendering for new capacity on the basis of published criteria. Such tendering may relate to new capacity or to energy efficiency/demand-side management measures. A tendering procedure may, however, be launched only where, on the basis of the authorisation procedure the generating capacity to be built or the measures to be taken, are insufficient to achieve those objectives.

3. Details of the tendering procedure for means of generating capacity and energy efficiency/demand-side management measures shall be published in a dedicated section of the website of the Energy Community at least six months prior to the closing date for tenders.

The tender specifications shall be made available to any interested undertaking established in the territory of a Contracting Party so that it has sufficient time in which to submit a tender.

With a view to ensuring transparency and non-discrimination, the tender specifications shall contain a detailed description of the contract specifications and of the procedure to be followed by all tenderers and an exhaustive list of criteria governing the selection of tenderers and the award of the contract, including incentives, such as subsidies, which are covered by the tender. Those specifications may also relate to the fields referred to in Article 7(2).

4. In invitations to tender for the requisite generating capacity, consideration must also be given to electricity supply offers with long-term guarantees from existing generating units, provided that additional requirements can be met in this way.

5. Contracting Parties shall designate an authority or a public or private body independent from electricity generation, transmission, distribution and supply activities, which may be a regulatory authority referred to in Article 35(1), to be responsible for the organisation, monitoring and control of the tendering procedure referred to in paragraphs 1 to 4 of this Article. Where a transmission system operator is fully independent from other activities not relating to the transmission system in ownership terms, the transmission system operator may be designated as the body responsible for
organising, monitoring and controlling the tendering procedure. That authority or body shall take all necessary steps to ensure confidentiality of the information contained in the tenders.

CHAPTER IV
TRANSMISSION SYSTEM OPERATION

Article 9
Unbundling of transmission systems and transmission system operators

1. Contracting Parties shall ensure that from 1 June 2016:
(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 generation 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 generation or supply; and
(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 generation 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 another public body, two separate public bodies exercising control over a transmission system operator or over a transmission system; nor
(e) 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 generation or supply; and
(f) the same person or persons are entitled neither:
(i) directly or indirectly to exercise control over an undertaking performing any of the functions of generation 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 generation or supply.

2. In order to ensure the independence of the transmission system operator referred to in paragraph 1, the following minimum criteria shall apply:
(a) those persons responsible for the management of the transmission system operator may not participate in company structures of the integrated electricity undertaking responsible, directly or indirectly, for the day-to-day operation of the generation, distribution and supply of electricity;
(b) appropriate measures must be taken to ensure that the professional interests of the persons responsible for the management of the transmission system operator are taken into account in a manner that ensures that they are capable of acting independently;
(c) the transmission system operator shall have effective decision-making rights, independent from the integrated electricity undertaking, with respect to assets necessary to operate, maintain or develop the network. 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 23(2), 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 transmission 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 transmission lines, that do not exceed the terms of the approved financial plan, or any equivalent instrument;
(d) the transmission 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 programme shall set out the specific obligations of employees to meet this objective. 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 referred to in Article 23(1) and shall be published."
9. Where, on 6 October 2011, the transmission system belongs to a vertically integrated undertaking and there are arrangements in place which guarantee more effective independence of the transmission system operator than the provisions of Chapter V, a Contracting Party may decide not to apply paragraph 1.

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 10(4), (5) and (6) of this Directive and in Article 3 of Regulation (EC) No 714/2009, pursuant to which the Energy Community Secretariat, shall verify that the arrangements in place clearly guarantee more effective independence of the transmission system operator than the provisions of Chapter V.

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 generation 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 Contracting Parties which apply paragraph 1.

### Article 10

Designation and certification of transmission system operators

1. Before an undertaking is approved and designated as transmission system 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 714/2009.

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, pursuant to the certification procedure below, shall be approved and designated as transmission system operators by the Contracting Parties. The designation of transmission system operators shall be notified to the Energy Community Secretariat and published in a dedicated section of the website of the Energy Community.

3. Transmission system operators shall notify to the regulatory authority any planned transaction which may require a reassessment of their compliance with the requirements of Article 9.

4. Regulatory authorities shall monitor the continuing compliance of transmission system operators with the requirements of Article 9. They shall open a certification procedure to ensure such compliance:
   - (a) upon notification by the transmission system operator pursuant to paragraph 3;
   - (b) on their own initiative where they have knowledge that a planned change in rights or influence over transmission system owners or transmission system operators may lead to an infringement of Article 9, or where they have reason to believe that such an infringement may have occurred; or

5. The regulatory authorities shall adopt a decision on the certification of a transmission system operator within a period of four months from the date of the notification by the transmission system operator or from the date of the Energy Community Secretariat’s 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 Energy Community Secretariat by the regulatory authority, together with all the relevant information with respect to that decision. The Energy Community Secretariat shall act in accordance with the procedure laid down in Article 3 of Regulation (EC) No 714/2009.

7. The regulatory authorities and the Energy Community Secretariat may request from transmission system operators and undertakings performing any of the functions of generation or supply any information relevant for the fulfilment of their tasks under this Article.

8. Regulatory authorities and the Energy Community Secretariat shall preserve the confidentiality of commercially sensitive information.

### Article 11

Certification in relation to third countries

1. Where certification is requested by a transmission system owner or a transmission system operator which is controlled by a person or persons from a third country or third countries, the regulatory authority shall notify the Energy Community Secretariat.

The regulatory authority shall also notify to the Energy Community Secretariat 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.

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 within four months 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 9; and
   - (b) to the regulatory authority or to another competent authority designated by the Contracting Party that granting certification will not put at risk the security of energy supply of the Contracting Party and the and the Energy Community. In considering that question the regulatory authority or other competent authority so designated shall take into account:
     - (i) the rights and obligations of the Energy Community with respect to that third country arising under international law, including any agreement concluded with one or more third countries to which the Energy Community is a party and which addresses the issues of

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63 In Directive 2003/54/EC (applicable until 1 June 2016), the corresponding provision, Article 8 (“Designation of Transmission System Operators”) reads: “Member States shall designate, or shall require undertakings which own transmission 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 transmission system operators. Member States shall ensure that transmission system operators act in accordance with Articles 9 to 12.”

64 According to Article 3(1) of Decision 2011/02/MC-EnC, Article 11 shall apply as from 1 January 2017.
security of energy supply

(ii) the rights and obligations of the Contracting Party with respect to that third country arising under agreements concluded with it, insofar as they are in compliance with Energy Community law; and

(iii) other specific facts and circumstances of the case and the third country concerned.¹²

4. The regulatory authority shall notify the decision to the Energy Community Secretariat without delay, together with all the relevant information with respect to that decision.

5. Contracting Parties 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 Energy Community Secretariat on whether:

(a) the entity concerned complies with the requirements of Article 9; and

(b) granting certification will not put at risk the security of energy supply to the Energy Community.

6. The Energy Community Secretariat shall examine the request referred to in paragraph 5 as soon as it is received. Within a period of 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 its opinion, the Energy Community Secretariat shall request the views of the Energy Community Regulatory Board. It may also request the views of the Contracting Party concerned, and interested parties. In the event that the Energy Community Secretariat makes such a request, the two-month period shall be extended by two months.

In the absence of an opinion by the Energy Community Secretariat within the period referred to in the first and second subparagraphs, the Energy Community Secretariat shall be 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 Energy Community, the Energy Community Secretariat shall take into account:

(a) the specific facts of the case and the third country or third countries concerned; and

(b) the rights and obligations of the Energy Community with respect to that third country arising under international law, including any agreement concluded with one or more third countries to which the Energy Community is a party and which addresses the issues of security of energy supply.¹³

8. The national regulatory authority shall, within a period of 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 opinion of the Energy Community Secretariat. In any event Contracting Parties shall have the right to refuse certification where granting certification puts at risk the Contracting Party’s security of energy supply or the security of energy supply of another Contracting Party. Where the Contracting Party 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 national regulatory authority’s final decision and the opinion of the Energy Community Secretariat shall be published together. Where the final decision diverges from the Secretariat’s opinion, the Contracting Party concerned shall provide and publish, together with that decision, the reasoning underlying such decision.

9. Nothing in this Article shall affect the right of Contracting Parties to exercise, in compliance with Energy Community law, national legal controls to protect legitimate public security interests.

10. Not applicable

11. Not applicable

Article 12
Tasks of transmission system operators

Each transmission system operator shall be responsible for:

(a) ensuring the long-term ability of the system to meet reasonable demands for the transmission of electricity, operating, maintaining and developing under economic conditions secure, reliable and efficient transmission systems with due regard to the environment;

(b) ensuring adequate means to meet service obligations;

(c) contributing to security of supply through adequate transmission capacity and system reliability;

(d) managing electricity flows on the system, taking into account exchanges with other interconnected systems. To that end, the transmission system operator shall be responsible for ensuring a secure, reliable and efficient electricity system and, in that context, for ensuring the availability of all necessary ancillary services, including those provided by demand response, insofar as such availability is independent from any other transmission system with which its system is interconnected;

(e) providing to the operator of any other system with which its system is interconnected sufficient information to ensure the secure and efficient operation, coordinated development and interoperability of the interconnected system;

(f) ensuring non-discrimination as between system users or classes of system users, particularly in favour of its related undertakings;

(g) providing system users with the information they need for efficient access to the system; and

(h) collecting congestion rents and payments under the inter-transmission system operator compensation mechanism, in compliance with Article 13 of Regulation (EC) No 714/2009, granting and managing third-party access and giving reasoned explanations when it denies such access, which shall be monitored by the national regulatory authorities; in carrying out their tasks under this Article transmission system operators shall primarily facilitate market integration.

¹² According to Article 10(1) of Decision 2011/02/MC-EnC, “the regulatory authority or other competent authority designated shall also take into account the rights and obligations resulting from association or trade agreements between the Contracting Party and the European Union.”

¹³ Article 10(1) of Decision 2011/02/MC-EnC applies.
PART II ACQUIS COMMUNAUTAIRE / ELECTRICITY / Directive 2009/72/EC

Article 13

Independent system operator

1. Where the transmission system belongs to a vertically integrated undertaking on 6 October 2011, Contracting Parties may decide not to apply Article 9(1) and designate an independent system operator upon a proposal from the transmission system owner. Such designation shall be subject to the opinion of the Energy Community Secretariat.

2. The Contracting Party may approve and designate an independent system operator only where:

(a) the candidate operator has demonstrated that it complies with the requirements of Article 9(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 12;
(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 714/2009, including the cooperation of transmission system operators at European and regional level.

3. Undertakings which have been certified by the regulatory authority as having complied with the requirements of Article 11 and paragraph 2 of this Article shall be approved and designated as independent system operators by Contracting Parties. The certification procedure in either Article 10 of this Directive and Article 3 of Regulation (EC) No 714/2009, or in Article 11 of this Directive shall be applicable.

4. Each independent system operator shall be responsible for granting and managing third-party access, including the collection of access charges, congestion charges, and payments under the inter-transmission system operator compensation mechanism in compliance with Article 13 of Regulation (EC) No 714/2009, as well as for operating, maintaining and developing the transmission system, and 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 authorization 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.

5. 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 fulfillment 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 financial 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 the 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.

6. 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.

Article 14

Unbundling of transmission system owners

1. A transmission system owner, where an independent system operator has been appointed, which is part of a vertically integrated undertaking shall be independent at least in terms of its legal form, organization and decision making from other activities not relating to transmission.

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

(a) persons responsible for the management of the transmission system owner shall not participate in company structures of the integrated electricity undertaking responsible, directly or indirectly, for the day-to-day operation of the generation, distribution and supply of electricity;
(b) appropriate measures shall be taken to ensure that the professional interests of persons responsible for the management of the transmission system owner are taken into account in a manner that ensures that they are capable of acting independently; and
(c) the transmission system owner shall establish a compliance program, which sets out measures taken to ensure that discriminatory conduct is excluded, and ensure that observance of it is adequately monitored. The compliance program 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 program to the regulatory authority and shall be published.

3. …
Article 15
Dispatching and balancing

1. Without prejudice to the supply of electricity on the basis of contractual obligations, including those which derive from the tendering specifications, the transmission system operator shall, where it has such a function, be responsible for dispatching the generating installations in its area and for determining the use of interconnectors with other systems.

2. The dispatching of generating installations and the use of interconnectors shall be determined on the basis of criteria which shall be approved by national regulatory authorities where competent and which must be objective, published and applied in a non-discriminatory manner, ensuring the proper functioning of the internal market in electricity. The criteria shall take into account the economic precedence of electricity from available generating installations or interconnector transfers and the technical constraints on the system.

3. A Contracting Party shall¹ require system operators to act in accordance with Article 16 of Directive 2009/28/EC, when dispatching generating installations using renewable energy sources. They also may require the system operator to give priority when dispatching generating installations producing combined heat and power.

4. A Contracting Party may, for reasons of security of supply, direct that priority be given to the dispatch of generating installations using indigenous primary energy fuel sources, to an extent not exceeding, in any calendar year, 15% of the overall primary energy necessary to produce the electricity consumed in the system.

5. The regulatory authorities where Contracting Parties have so provided or Contracting Parties shall require transmission system operators to comply with minimum standards for the maintenance and development of the transmission system, including interconnection capacity.

6. Transmission system operators shall procure the energy they use to cover energy losses and revenue capacity in their system according to transparent, non-discriminatory and market-based procedures, whenever they have such a function.

7. Rules adopted by transmission system operators for balancing the electricity system shall be objective, transparent and non-discriminatory, including rules for charging system users of their networks for energy imbalance. The terms and conditions, including the rules and tariffs, for the provision of such services by transmission system operators shall be established pursuant to a methodology compatible with Article 37(6) in a non-discriminatory and cost-reflective way and shall be published.

Article 16
Confidentiality for transmission system operators and transmission system owners

1. Without prejudice to Article 30 or any other legal duty to disclose information, each transmission 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, Contracting Parties shall ensure that the transmission system owner 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 system operators shall not, in the context of sales or purchases of electricity 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 preserving the confidentiality of commercially sensitive information.

CHAPTER V
INDEPENDENT TRANSMISSION OPERATOR

Article 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 electricity transmission, in particular:

(a) assets that are necessary for the activity of electricity transmission, including the transmission system, shall be owned by the transmission system operator;

(b) personnel, necessary for the activity of electricity 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 generation 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 20, 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 electricity transmission shall include at least the following tasks in addition to those listed in Article 12:

(a) the representation of the transmission system operator and contacts to third parties

¹ In Directive 2003/54/EC (applicable until 1 January 2015), the corresponding provision, Article 11, reads 'may' instead of 'shall'.

[37x43]of
[37x53]14
[37x66]in a discriminatory manner.
[37x90]mercially advantageous from being disclosed
[37x102]mercially sensitive information obtained in the course of carrying out its activities, and shall prevent
[37x126]tion system operator shall, where it has such a function, be responsible for dispatching the generating installations in its area and for determining the use of interconnectors with other systems.
[37x153]dispatching generating installations using renewable energy sources. They also may require the system operator to give priority when dispatching generating installations producing combined heat and power.
[37x184]dispatching generating installations using indigenous primary energy fuel sources, to an extent not exceeding, in any calendar year, 15% of the overall primary energy necessary to produce the electricity consumed in the system.
[37x217]shall require transmission system operators to comply with minimum standards for the maintenance and development of the transmission system, including interconnection capacity.
[37x238]they have such a function.
[37x269]shall procure the energy they use to cover energy losses and revenue capacity in their system according to transparent, non-discriminatory and market-based procedures, whenever they have such a function.
[37x294]rules adopted by transmission system operators for balancing the electricity system shall be objective, transparent and non-discriminatory, including rules for charging system users of their networks for energy imbalance. The terms and conditions, including the rules and tariffs, for the provision of such services by transmission system operators shall be established pursuant to a methodology compatible with Article 37(6) in a non-discriminatory and cost-reflective way and shall be published.
[37x321]Article 16 of Directive 2009/28/EC, when dispatching generating installations using renewable energy sources. They also may require the system operator to give priority when dispatching generating installations producing combined heat and power.
[37x352]criteria which shall be approved by national regulatory authorities where competent and which must be objective, published and applied in a non-discriminatory manner, ensuring the proper functioning of the internal market in electricity. The criteria shall take into account the economic precedence of electricity from available generating installations or interconnector transfers and the technical constraints on the system.
[37x383]require system operators to act in accordance with Article 16 of Directive 2009/28/EC, when dispatching generating installations using renewable energy sources. They also may require the system operator to give priority when dispatching generating installations producing combined heat and power.
[37x414]may, for reasons of security of supply, direct that priority be given to the dispatch of generating installations using indigenous primary energy fuel sources, to an extent not exceeding, in any calendar year, 15% of the overall primary energy necessary to produce the electricity consumed in the system.
[37x445]by related undertakings, misuse commercially sensitive information obtained from third parties in the context of providing or negotiating access to the system.
[37x476]shall ensure that the transmission system owner and the remaining part of the undertaking do not use joint services, such as joint legal services, apart from purely administrative or IT functions.
[37x507]information necessary for effective competition and the efficient functioning of the market shall be made public. That obligation shall be without prejudice to preserving the confidentiality of commercially sensitive information.
[37x538]nations, apart from purely administrative or IT functions.
[37x569]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 generation 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 20, 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 electricity transmission shall include at least the following tasks in addition to those listed in Article 12:

(a) the representation of the transmission system operator and contacts to third parties

1 In Directive 2003/54/EC (applicable until 1 January 2015), the corresponding provision, Article 11, reads ‘may’ instead of ‘shall’.
and the regulatory authorities;

(b) …

c) granting and managing third-party access on a non-discriminatory basis between sys-
tem 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 purchasing of services (balancing costs, energy for losses);

e) the operation, maintenance and development of a secure, efficient and economic trans-
mission 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, power exchanges, and the other relevant actors pursuing the objectives 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 organized in a legal form as referred to in Article 1 of Council Directive 88/151/EEC.

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 or any part thereof.

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 18

Independence of the transmission system operator

1. Without prejudice to the decisions of the Supervisory Body under Article 20, the trans-
mission system operator shall have:

(a) effective decision-making rights, independent from the vertically integrated undertak-
ing, 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 de-
velop and maintain an efficient, secure and economic transmission system.

3. Subsidiaries of the vertically integrated undertaking performing functions of genera-
tion 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 share-
holding in any subsidiary of the vertically integrated undertaking performing functions of generation 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 sys-
tem 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 22.

5. In fulfilling their tasks in Article 12 and Article 17(2) of this Directive, and in complying with Articles 14, 15 and 16 of Regulation (EC) No 714/2009, transmission system operators shall not discriminate against different persons or entities and shall not restrict, distort or prevent competition in generation or supply.

6. Any commercial and financial relations between the vertically integrated undertaking and the transmission system operator, including loans from the transmission system op-
erator 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 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 prejudic-
ing 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 verti-
cally integrated undertaking in fulfilling those obligations.

10. An undertaking which has been certified by the regulatory authority as being in compli-
ance with the requirements of this Chapter shall be approved and designated as a trans-
mission system operator by the Contracting Party concerned. The certification procedure in either Article 10 of this Directive and Article 3 of Regulation (EC) No 714/2009, or in Article 11 of this Directive shall apply.
Article 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 20.

2. The identity 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 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 20

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.

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 Contracting Party so provides, members representing other interested parties such as employees of the transmission system operator.

3. The first subparagraph of Article 19(2) and Article 19(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 19(2) shall apply to all the members of the Supervisory Body.

Article 21
Compliance programme and compliance officer

1. Contracting Parties 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 19(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 22.

6. The conditions governing the mandate or the employment conditions of the compliance officer, including the duration of its mandate, shall be subject to approval by the regulatory authority. Those conditions shall ensure the independence of the compliance officer, including by providing him with all the resources necessary for fulfilling 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 714/2009, 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 interconnection and connection investments;
(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 16.

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.

Article 22
Network development and powers to make investment decisions

1. Every year, 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.

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

3. When elaborating the ten-year network development plan, the transmission system operator shall make reasonable assumptions about the evolution of the generation, supply, consumption and exchanges with other countries, taking into account investment plans for...
Article 23
Decision-making powers regarding the connection of new power plant to the transmission system

1. The transmission system operator shall establish and publish transparent and efficient procedures for non-discriminatory connection of new power plants to the transmission system. Those procedures shall be subject to the approval of national regulatory authorities.

2. The transmission system operator shall not be entitled to refuse the connection of a new power plant on the grounds of possible future limitations to available network capacities, such as congestion in distant parts of the transmission system. The transmission system operator shall supply necessary information.

3. The transmission system operator shall not be entitled to refuse a new connection point, on the ground that it will lead to additional costs linked with necessary capacity increase of system elements in the close-up range to the connection point.

CHAPTER VI
DISTRIBUTION SYSTEM OPERATION

Article 24
Designation of distribution system operators

Contracting Parties shall designate or shall require undertakings that own or are responsible for distribution systems to designate, for a period of time to be determined by Contracting Parties having regard to considerations of efficiency and economic balance, one or more distribution system operators.

Contracting Parties shall ensure that distribution system operators act in accordance with Articles 25, 26 and 27.

Article 25
Tasks of distribution system operators

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

2. In any event, it must not discriminate between system users or classes of system users, particularly in favour of its related undertakings.

3. The distribution system operator shall provide system users with the information they need for efficient access to, including use of, the system.

4. A Contracting Party may require the distribution system operator, when dispatching generating installations, to give priority to generating installations using renewable energy sources or waste or regional and Energy Community-wide 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 ... . The regulatory authority may require the transmission system operator to amend its ten-year network development plan.

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, 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, Contracting Parties 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 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.
producing combined heat and power.
5. Each distribution system operator shall procure the energy it uses to cover energy losses and reserve capacity in its system according to transparent, non-discriminatory and market based procedures, whenever it has such a function. That requirement shall be without prejudice to using electricity acquired under contracts concluded before 1 January 2006.
6. 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 of their networks for energy imbalance. Terms and conditions, including rules and tariffs, for the provision of such services by distribution system operators shall be established in accordance with Article 37(6) in a non-discriminatory and cost-reflective way and shall be published.
7. When planning the development of the distribution network, energy efficiency/demand-side management measures or distributed generation that might supplant the need to upgrade or replace electricity capacity shall be considered by the distribution system operator.

Article 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 operator 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 electricity undertaking responsible, directly or indirectly, for the day-to-day operation of the generation, transmission or supply of electricity;
   (b) appropriate measures must be taken to ensure that the professional interests of the 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 electricity 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, physical and financial 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 37(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 35(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 Contracting Parties 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. Contracting Parties may decide not to apply paragraphs 1, 2 and 3 to integrated electricity undertakings serving less than 100000 connected customers, or serving small isolated systems.

Article 27
Confidentiality obligation of distribution system operators

Without prejudice to Article 30 or any other legal duty to disclose information, the distribution system operator must preserve the confidentiality of commercially sensitive information obtained in the course of carrying out its business, and shall prevent information about its own activities which may be commercially advantageous being disclosed in a discriminatory manner.

Article 28
Closed distribution systems

1. Contracting Parties may provide for national regulatory authorities or other competent authorities to classify a system which distributes electricity 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 electricity primarily to the owner or operator of the system or their related undertakings.
2. Contracting Parties may provide for national regulatory authorities to exempt the operator of a closed distribution system from:
(a) the requirement under Article 25(5) to procure the energy it uses to cover energy losses and reserve capacity in its system according to transparent, non-discriminatory and market based procedures;

(b) the requirement under Article 32(1) that tariffs, or the methodologies underlying their calculation, are approved prior to their entry into force in accordance with Article 37.

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 37 upon request by a user of the closed 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.

Article 29

Combined operator

Article 26(1) shall not prevent the operation of a combined transmission and distribution system operator provided that operator complies with Articles 9(1), or 13 and 14, or Chapter V or falls under Article 44(2).

15 In Directive 2003/54/EC (applicable until 1 January 2015), the corresponding provision, Article 17 (Combined operator'), reads 'The rules in Articles 10(1) and 15(1) do not prevent the operation of a combined transmission and distribution system operator, which is independent in terms of its legal form, organisation and decision making from other activities not relating to transmission or distribution system operation and which meets the requirements set out in points (a) to (d). These rules shall not create an obligation to separate the ownership of assets of the combined system from the vertically integrated undertaking:

(a) those persons responsible for the management of the combined system operator may not participate in company structures of the integrated electricity undertaking responsible, directly or indirectly, for the day-to-day operation of the generation, or supply of electricity;

(b) appropriate measures must be taken to ensure that the professional interests of the persons responsible for the management of the combined system operator are taken into account in a manner that ensures that they are capable of acting independently;

(c) the combined system operator shall have effective decision-making rights, independent from the integrated electricity undertaking, with respect to assets necessary to operate, maintain and develop the network. 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 23(2), 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 combined 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 transmission and distribution lines, that do not exceed the terms of the approved financial plan, or any equivalent instrument;

(d) the combined 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 programme shall set out the specific obligations of employees to meet this objective. 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 referred to in Article 23(1) and published.'
CHAPTER VIII

ORGANISATION OF ACCESS TO THE SYSTEM

Article 32
Third-party access

1. Contracting Parties shall ensure the implementation of a system of third party access to the transmission and distribution systems based on published tariffs, applicable to all eligible customers and applied objectively and without discrimination between system users. Contracting Parties shall ensure that those tariffs, or the methodologies underlying their calculation, are approved prior to their entry into force in accordance with Article 37 and that those tariffs, and the methodologies - where only methodologies are approved - are published prior to their entry into force.

2. The transmission or distribution system operator may refuse access where it lacks the necessary capacity. Duly substantiated reasons must be given for such refusal, in particular having regard to Article 3, and based on objective and technically and economically justified criteria. The regulatory authorities where Contracting Parties have so provided or Contracting Parties shall ensure that those criteria are consistently applied and that the system user who has been refused access can make use of a dispute settlement procedure. The regulatory authorities shall also ensure, where appropriate and when refusal of access takes place, that the transmission or distribution system operator provides relevant information on measures that would be necessary to reinforce the network. The party requesting such information may be charged a reasonable fee reflecting the cost of providing such information.

Article 33
Market opening and reciprocity

1. Contracting Parties shall ensure that the eligible customers comprise:

(a) ...;
(b) from 1 January 2008, all non-household customers;
(c) from 1 January 2015, all customers.

2. To avoid imbalance in the opening of electricity markets:

(a) contracts for the supply of electricity with an eligible customer in the system of another Contracting Party shall not be prohibited if the customer is considered as eligible in both systems involved; and
(b) ...

3. By way of derogation from paragraph 1 of this Article, a Contracting Party 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 Contracting Party of which it is part. This derogation shall be without prejudice to the appointment of one senior representative for representation and contact purposes at Energy Community level.

4. Contracting Parties shall guarantee the independence of the regulatory authority and shall ensure that it exercises its powers impartially and transparently. For this purpose, Contracting Party shall ensure that, when carrying out the regulatory tasks conferred upon it by this Directive and related legislation, the regulatory authority:

1. Contracting Parties shall take the measures necessary to enable:

(a) all eligible customers to supply their own premises, subsidiaries and eligible customers through a direct line; and
(b) all eligible customers within their territory to be supplied through a direct line by a producer and supply undertakings.

2. Contracting Parties shall lay down the criteria for the grant of authorisations for the construction of direct lines in their territory. Those criteria shall be objective and non-discriminatory.

3. The possibility of supplying electricity through a direct line as referred to in paragraph 1 of this Article shall not affect the possibility of contracting electricity in accordance with Article 32.

4. Contracting Parties may issue an authorisation to construct a direct line subject either to the refusal of system access on the basis, as appropriate, of Article 32 or to the opening of a dispute settlement procedure under Article 37.

5. Contracting Parties may refuse to authorise a direct line if the granting of such an authorisation would obstruct the provisions of Article 3. Duly substantiated reasons shall be given for such refusal.

CHAPTER IX

NATIONAL REGULATORY AUTHORITIES

Article 35
Designation and independence of regulatory authorities

1. Each Contracting Party 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 Contracting Parties, provided that there is one senior representative for representation and contact purposes at Energy Community level.

3. By way of derogation from paragraph 1 of this Article, a Contracting Party 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 Contracting Party of which it is part. This derogation shall be without prejudice to the appointment of one senior representative for representation and contact purposes at Energy Community level.

4. Contracting Parties shall ensure the implementation of a system of third party access to the transmission and distribution systems based on published tariffs, applicable to all eligible customers and applied objectively and without discrimination between system users. Contracting Parties shall ensure that those tariffs, or the methodologies underlying their calculation, are approved prior to their entry into force in accordance with Article 37 and that those tariffs, and the methodologies - where only methodologies are approved - are published prior to their entry into force.

5. The transmission or distribution system operator may refuse access where it lacks the necessary capacity. Duly substantiated reasons must be given for such refusal, in particular having regard to Article 3, and based on objective and technically and economically justified criteria. The regulatory authorities where Contracting Parties have so provided or Contracting Parties shall ensure that those criteria are consistently applied and that the system user who has been refused access can make use of a dispute settlement procedure. The regulatory authorities shall also ensure, where appropriate and when refusal of access takes place, that the transmission or distribution system operator provides relevant information on measures that would be necessary to reinforce the network. The party requesting such information may be charged a reasonable fee reflecting the cost of providing such information.

6. The transmission or distribution system operator may refuse access where it lacks the necessary capacity. Duly substantiated reasons must be given for such refusal, in particular having regard to Article 3, and based on objective and technically and economically justified criteria. The regulatory authorities where Contracting Parties have so provided or Contracting Parties shall ensure that those criteria are consistently applied and that the system user who has been refused access can make use of a dispute settlement procedure. The regulatory authorities shall also ensure, where appropriate and when refusal of access takes place, that the transmission or distribution system operator provides relevant information on measures that would be necessary to reinforce the network. The party requesting such information may be charged a reasonable fee reflecting the cost of providing such information.

7. The transmission or distribution system operator may refuse access where it lacks the necessary capacity. Duly substantiated reasons must be given for such refusal, in particular having regard to Article 3, and based on objective and technically and economically justified criteria. The regulatory authorities where Contracting Parties have so provided or Contracting Parties shall ensure that those criteria are consistently applied and that the system user who has been refused access can make use of a dispute settlement procedure. The regulatory authorities shall also ensure, where appropriate and when refusal of access takes place, that the transmission or distribution system operator provides relevant information on measures that would be necessary to reinforce the network. The party requesting such information may be charged a reasonable fee reflecting the cost of providing such information.

8. The transmission or distribution system operator may refuse access where it lacks the necessary capacity. Duly substantiated reasons must be given for such refusal, in particular having regard to Article 3, and based on objective and technically and economically justified criteria. The regulatory authorities where Contracting Parties have so provided or Contracting Parties shall ensure that those criteria are consistently applied and that the system user who has been refused access can make use of a dispute settlement procedure. The regulatory authorities shall also ensure, where appropriate and when refusal of access takes place, that the transmission or distribution system operator provides relevant information on measures that would be necessary to reinforce the network. The party requesting such information may be charged a reasonable fee reflecting the cost of providing such information.
(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. This 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 37.

5. In order to protect the independence of the regulatory authority, Contracting Parties 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
(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 for a fixed term of five up to seven years, renewable once.

In regard to point (b) of the first subparagraph, Contracting Parties 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.

Article 36
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 37, in close consultation with other relevant national authorities including competition authorities, as appropriate, and without prejudice to their competencies:
(a) promoting, in close cooperation with the Energy Community Regulatory Board, regulatory authorities of other Contracting Parties and the Energy Community Secretariat, a competitive, secure and environmentally sustainable internal market in electricity within the Energy Community, and effective market opening for all customers and suppliers in the Energy Community and ensuring appropriate conditions for the effective and reliable operation of electricity networks, taking into account long-term objectives;
(b) developing competitive and properly functioning regional markets within the Energy Community in view of the achievement of the objectives referred to in point (a);
(c) eliminating restrictions on trade in electricity between Contracting Parties, including developing appropriate cross-border transmission capacities to meet demand and enhancing the integration of national markets which may facilitate electricity flows across the

Energy Community;
(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 with general energy policy objectives, energy efficiency as well as the integration of large and small-scale production of electricity from renewable energy sources and distributed generation in both transmission and distribution networks;
(e) facilitating access to the network for new generation capacity, in particular removing barriers that could prevent access for new market entrants and of electricity 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 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 universal and public service in electricity supply, contributing to the protection of vulnerable customers and contributing to the compatibility of necessary data exchange processes for customer switching.

Article 37
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;
(b) ensuring compliance of transmission and distribution system operators and, where relevant, system owners, as well as of any electricity undertakings, with their obligations under this Directive and other relevant Energy Community legislation, including as regards cross-border issues;
(c) cooperating in regard to cross-border issues with the regulatory authority or authorities of the Contracting Parties concerned and with the Energy Community Regulatory Board;
(d) complying with, and implementing, any relevant legally binding decisions of the Energy Community Regulatory Board …;
(e) reporting annually on its activity and the fulfilment of its duties to the relevant authorities of the Contracting Parties, Energy Community Regulatory Board and the Energy Community Secretariat. Such reports shall cover the steps taken and the results obtained as regards each of the tasks listed in this Article;
(f) ensuring that there are no cross-subsidies between transmission, distribution, and supply activities;
(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 …; such assessment may, which may include recommendations to amend those investment plans;
(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;

(i) monitoring the level of transparency, including of wholesale prices, and ensuring compliance of electricity undertakings with transparency obligations;

(j) monitoring the level and effectiveness of market opening and competition at wholesale and retail levels, including on electricity 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;

(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;

(l) respecting contractual freedom with regard to interruptible supply contracts and with regard to long-term contracts provided that they are compatible with Energy Community law;

(m) monitoring the time taken by transmission and distribution system operators to make connections and repairs;

(n) helping to ensure, together with other relevant authorities, that the consumer protection measures, including those set out in Annex I, are effective and enforced;

(o) publishing recommendations, at least annually, in relation to compliance of supply prices with Article 3, and providing these to the competition authorities, where appropriate;

(p) ensuring 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 under point (h) of Annex I;

(q) monitoring the implementation of rules relating to the roles and responsibilities of transmission system operators, distribution system operators, suppliers and customers and other market parties pursuant to Regulation (EC) No 714/2009;

(r) monitoring investment in generation capacities in relation to security of supply;

(s) monitoring technical cooperation between Energy Community and third-country transmission system operators;

(t) monitoring the implementation of safeguards measures as referred to in Article 42; and

(u) contributing to the compatibility of data exchange processes for the most important market processes at regional level.

2. Where a Contracting Party 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 transmission system 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 Energy Community Regulatory Board 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 ... .

3. In addition to the duties conferred upon it under paragraph 1 of this Article, when an independent system operator has been designated under Article 13, the regulatory authority shall:

(a) monitor the transmission system owner’s and the independent system 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 so as to ensure compliance of the independent system 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 in respect of any complaint submitted by either party pursuant to paragraph 11;

(c) without prejudice to the procedure under Article 13(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;

(d) ensure that network access tariffs collected by the independent system operator 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;

(e) have the powers to carry out inspections, including unannounced inspections, at the premises of transmission system owner and independent system operator; and

(f) monitor the use of congestion charges collected by the independent system operator in accordance with Article 16(6) of Regulation (EC) No 714/2009.

4. Contracting Parties shall ensure that regulatory authorities are granted the powers enabling them to carry out the duties referred to in paragraphs 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 electricity undertakings;

(b) to carry out investigations into the functioning of the electricity markets, and to decide upon and impose any necessary and proportionate measures to promote effective competition and ensure the proper functioning of the market. Where appropriate, the regulatory authority shall also have the power to cooperate with the national competition authority and the financial market regulators or the Energy Community Secretariat in conducting an investigation relating to competition law;

(c) to require any information from electricity undertakings relevant for the fulfilment of its tasks, including the justification for any refusal to grant third-party access, and any in-
formation on measures necessary to reinforce the network;
(d) to impose effective, proportionate and dissuasive penalties on electricity undertakings not complying with their obligations under this Directive or any relevant legally binding decisions of the regulatory authority or the Energy Community Regulatory Board, or to propose that a competent court 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 on the transmission system operator or of up to 10% of the annual turnover of the vertically integrated undertaking 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 a transmission system operator has been designated in accordance with Chapter V, 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 and the vertically integrated undertaking so as to ensure compliance of the transmission system operator with its obligations;
(c) to act as dispute settlement authority between the vertically integrated undertaking and the transmission system 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;
(e) to approve all commercial and financial agreements between the vertically integrated undertaking and the transmission system 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 21(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 ones, on the premises of the vertically integrated undertaking and the transmission system operator; and
(h) to assign all or specific tasks of the transmission system operator to an independent system operator appointed in accordance with Article 13 in case of a persistent breach by the transmission system 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 networks, including transmission and distribution tariffs or their methodologies. Those tariffs or methodologies shall allow the necessary investments in the networks to be carried out in a manner allowing those investments to ensure the viability of the networks;
(b) the provision of balancing services which shall be performed in the most economic manner possible 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
(c) 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 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 electricity systems including interconnectors, and the implementation of congestion management rules. To that end, transmission system operators or market operators shall submit their congestion management rules, including capacity allocation, to the national regulatory authorities. National regulatory authorities may request amendments to those rules.

10. Regulatory authorities shall have the authority to require transmission and distribution system operators, if necessary, to modify the terms and conditions, including tariffs or methodologies referred to in this Article, to ensure that they are proportionate and applied in a non-discriminatory manner. In the event of delay in the fixing of transmission and distribution tariffs, regulatory authorities shall have the power to fix or approve provisional transmission and distribution tariffs or methodologies and to decide on the appropriate compensatory measures if the final transmission and distribution tariffs or methodologies deviate from those provisional tariffs or methodologies.

11. Any party having a complaint against a transmission or distribution system 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 authority. 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.

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 Contracting Parties, following publication of the decision or proposal for a decision, submit a complaint for review. Such a complaint shall not have suspensive effect.

13. Contracting Parties 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 the provisions of the
14. **Contracting Parties** 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.

15. Complaints referred to in paragraphs 11 and 12 shall be without prejudice to the exercise of rights of appeal under national law.

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.

17. **Contracting Parties** 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 38**  
Regulatory regime for cross-border issues

1. Regulatory authorities shall closely consult and cooperate with each other, and shall provide each other and the **Energy Community Regulatory Board** 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 electricity exchanges and the allocation of cross-border capacity, and to enable an adequate level of interconnection capacity, including through new interconnection 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 **Contracting Parties**;
   (b) coordinate the development of all network codes for the relevant transmission system operators and other market actors; and
   (c) coordinate the development of the rules governing the management of congestion.

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. ...
CHAPTER X

RETAIL MARKETS

Article 41
Retail markets

In order to facilitate the emergence of well functioning and transparent retail markets in the Energy Community, Contracting Parties shall ensure that the roles and responsibilities of transmission system operators, distribution system operators, supply undertakings and customers and if necessary other market participants 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.

Large non-household customers shall have the right to contract simultaneously with several suppliers.

CHAPTER XI

FINAL PROVISIONS

Article 42
Safeguard measures

In the event of a sudden crisis in the energy market and where the physical safety or security of persons, apparatus or installations or system integrity is threatened, a Contracting Party may temporarily take the necessary safeguard measures.

Instead of the second and third subparagraphs, Articles 36 to 39 of the Energy Community Treaty apply.

Article 43
Level playing field

1. Measures that the Contracting Parties may take pursuant to this Directive in order to ensure a level playing field shall be compatible with the Treaty, notably Article 30 thereof, and with Energy Community law.

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 the Energy Community Secretariat, which shall issue an opinion.

3. The Energy Community Secretariat 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 Energy Community Secretariat has not acted within that two-month period, it shall be deemed not to have raised objections to the notified measures.

Article 44
Derogations

1. Not applicable

2. ... For the purposes of Article 9(1)(b), the notion “undertaking performing any of the functions of generation or supply” shall not include final customers who perform any of the functions of generation and/or supply of electricity, either directly or via undertakings over which they exercise control, either individually or jointly, provided that the final customers including their shares of the electricity produced in controlled undertakings are, on an annual average, net consumers of electricity and provided that the economic value of the electricity they sell to third parties is insignificant in proportion to their other business operations.

Article 45
Review procedure

... 

Article 46
Committee

... 

Article 47
Reporting

1. The Secretariat shall monitor and review application of this Decision in the Contracting Parties.

2. The Secretariat shall submit an overall progress report to the Ministerial Council for the first time by 30 June 2012, and thereafter on an annual basis. The progress report shall reflect the progress made on creating a complete and fully operational internal market in electricity and gas and the obstacles that remain in this respect, including aspects of market dominance, market concentration, predatory or anti-competitive behaviour and the effect thereof in terms of market distortion. It shall in particular consider:

   – the implementation by each Contracting Party of the provisions on unbundling, certification and on independence of the national regulatory authorities and application of these provisions in practice,

   – the existence of non-discriminatory network access,

\[22\] The text displayed here corresponds to Article 31 of Decision 2011/02/MC-EnC.
24. The text displayed here corresponds to Article 32 of Decision 2011/02/MC-EnC.

3. The Secretariat shall present a report to the Ministerial Council for the first time by 30 June 2012, and thereafter on an annual basis, summarising the opinions issued by the Secretariat in application of the acts referred to in Article 1, as adapted by this Decision.

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**Article 48**

**Repeal**

...  

**Article 49**

**Implementation of the energy acquis**

1. Each Contracting Party shall bring into force the laws, regulations and administrative provisions necessary to comply with Directive 2009/72/EC..., as adapted by this Decision, by 1 January 2015. They shall forthwith inform the Energy Community Secretariat thereof. The Contracting Parties shall apply the measures referred to in the previous paragraph with effect from 1 January 2015 with the following exceptions:

   – Article 11 of Directive 2009/72/EC, which they shall apply from 1 January 2017;

   – ...

2. The Contracting Parties shall communicate to the Energy Community Secretariat the text of the main provisions of national law which they adopt in the field covered by this Decision.

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23 The text displayed here corresponds to Article 3 of Decision 2011/02/MC-EnC.

25 The text displayed here corresponds to Article 32 of Decision 2011/02/MC-EnC.
ANNEX I

MEASURES ON CONSUMER PROTECTION

1. Without prejudice to Energy Community rules on consumer protection ... the measures referred to in Article 3 are to ensure that customers:
   (a) have a right to a contract with their electricity service provider that specifies:
      - the identity and address of the supplier,
      - the services provided, the service quality levels offered, as well as the time for the initial connection,
      - the types of maintenance service offered,
      - the means by which up-to-date information on all applicable tariffs and maintenance charges may be obtained,
      - the duration of the contract, the conditions for renewal and termination of services and of the contract and whether withdrawal from the contract without charge is permitted,
      - any compensation and the refund arrangements which apply if contracted service quality levels are not met, including inaccurate and delayed billing,
      - the method of initiating procedures for settlement of disputes in accordance with point (f),
      - information relating to consumer rights, including on the complaint handling and all of the information referred to in this point, clearly communicated through billing or the electricity undertaking's website.

   Conditions shall be fair and well-known in advance. In any case, this information should 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 point shall also be provided prior to the conclusion of the contract;
   
   (b) are given adequate notice of any intention to modify contractual conditions and are informed about their right of withdrawal when the notice is given. Service providers shall notify their subscribers directly of any increase in charges, at an appropriate time no later than one normal billing period after the increase comes into effect in a transparent and comprehensible manner. The Contracting Parties shall ensure that customers are free to withdraw from contracts if they do not accept the new conditions notified to them by their electricity service provider;
   
   (c) receive transparent information on applicable prices and tariffs and on standard terms and conditions, in respect of access to and use of electricity services;
   
   (d) are offered a wide choice of payment methods, which do not unduly discriminate between customers. Prepayment systems shall be fair and adequately reflect likely consumption. Any difference in terms and conditions shall reflect the costs to the supplier of the different payment systems. General terms and conditions shall be fair and transparent. They shall be given in clear and comprehensible language and shall not include non-contractual barriers to the exercise of customers' rights, for example excessive contractual documentation. Customers shall be protected against unfair or misleading selling methods;
   
   (e) are not charged for changing supplier;
   
   (f) benefit from transparent, simple and inexpensive procedures for dealing with their complaints. In particular, all consumers shall have the right to a good standard of service and complaint handling by their electricity service provider. Such out-of-court dispute settlements procedures shall enable disputes to be settled fairly and promptly, preferably within three months, with provision, where warranted, for a system of reimbursement and/or compensation. They should, wherever possible, be in line with the principles set out in Commission Recommendation 98/257/EC of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes;
   
   (g) when having access to universal service under the provisions adopted by Contracting Parties pursuant to Article 3(3), are informed about their rights regarding universal service; 
   
   (h) have at their disposal their consumption data, and shall be able to, by explicit agreement and free of charge, give any registered supply undertaking access to its metering data. The party responsible for data management shall be obliged to give those data to the undertaking. Contracting Parties shall define a format for the data and a procedure for suppliers and consumers to have access to the data. No additional costs shall be charged to the consumer for that service;
   
   (i) are properly informed of actual electricity consumption and costs frequently enough to enable them to regulate their own electricity consumption. That information shall be given by using a sufficient time frame, which takes account of the capability of customer’s metering equipment and the electricity product in question. Due account shall be taken of the cost-efficiency of such measures. No additional costs shall be charged to the consumer for that service;
   
   (j) receive a final closure account following any change of electricity supplier no later than six weeks after the change of supplier has taken place.

2. Contracting Parties shall ensure the implementation of intelligent metering systems that shall assist the active participation of consumers in the electricity supply market. The implementation of those metering systems may be subject to an economic assessment of all the long-term costs and benefits to the market and the individual consumer or which form of intelligent metering is economically reasonable and cost-effective and which timeframe is feasible for their distribution.

   Such assessment shall take place by 1 January 2014.

   Subject to that assessment, Contracting Parties or any competent authority they designate shall prepare a timetable with a target of up to 10 years for the implementation of intelligent metering systems.

   Where roll-out of smart meters is assessed positively, at least 80% of consumers shall be equipped with intelligent metering systems by 2020.

   The Contracting Parties, or any competent authority they designate, shall ensure the interoperability of those metering systems to be implemented within their territories and shall have due regard to the use of appropriate standards and best practice and the importance of the development of the internal market in electricity.
PART II ACQUIS COMMUNAUTAIRE / ELECTRICITY / Regulation 714/2009


The adaptations made by Ministerial Council Decision 2011/02/MC-EnC are highlighted in **bold and blue**, the changes in the present Regulation in comparison to Regulation (EC) No 1228/2003 are highlighted in **bold**.

Whereas:

1. The internal market in electricity, which has been progressively implemented since 1999, aims to deliver real choice for all consumers in the Community, 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.
3. However, at present, there are obstacles to the sale of electricity on equal terms, without discrimination or disadvantage in the Community. In particular, non-discriminatory network access and an equally effective level of regulatory supervision do not yet exist in each Member State, and isolated markets persist.
4. The Communication of the Commission of 10 January 2007 entitled “An Energy Policy for Europe” highlighted the importance of completing the internal market in electricity and creating a level playing field for all electricity undertakings 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)” demonstrated that the present rules and measures neither provide the necessary framework nor provide for the creation of interconnection capacities to achieve the objective of a well-functioning, efficient and open internal market.
5. In addition to thoroughly implementing the existing regulatory framework, the regulatory framework for the internal market in electricity set out in Regulation (EC) No 1228/2003 should be adapted in line with those communications.
6. In particular, increased cooperation and coordination among transmission system operators is required to create network codes for providing and managing effective and transparent access to the transmission networks across borders, and to ensure coordinated and sufficiently forward-looking planning and sound technical evolution of the transmission system in the Community, including the creation of interconnection capacities, with due regard to the environment. Those network codes should be in line with framework guidelines, which are non-binding in nature (framework guidelines) and which are developed by 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 (the Agency). The Agency should have a role in reviewing, based on matters of fact, draft network codes, including their compliance with the framework guidelines, and it should be enabled to recommend them for adoption by the Commission. The Agency should assess proposed amendments to the network codes and it should be enabled to recommend them for adoption by the Commission. Transmission system operators should operate their networks in accordance with those network codes.

(7) In order to ensure optimal management of the electricity transmission network and to allow trading and supplying electricity across borders in the Community, a European Network of Transmission System Operators for Electricity (the ENTSO for Electricity), should be established. The tasks of the ENTSO for Electricity should be carried out in compliance with Community competition rules which remain applicable to the decisions of the ENTSO for Electricity. The tasks of the ENTSO for Electricity should be well-defined and its working method should ensure efficiency, transparency and the representative nature of the ENTSO for Electricity. The network codes prepared by the ENTSO for Electricity are not intended to replace the necessary national network codes for non-cross-border issues. Given that more effective progress may be achieved through an approach at regional level, transmission system operators should set up regional structures within the overall cooperation structure, whilst ensuring that results at regional level are compatible with network codes and non-binding ten-year network development plans at Community level. Member States should promote cooperation and monitor the effectiveness of the network at regional level. Cooperation at regional level should be compatible with progress towards a competitive and efficient internal market in electricity.

(8) All market participants have an interest in the work expected of the ENTSO for Electricity. An effective consultation process is therefore essential and existing structures that are set up to facilitate and streamline the consultation process, such as the Union for the Coordination of Transmission of Electricity, national regulators or the Agency, should play an important role.

(9) In order to ensure greater transparency regarding the entire electricity transmission network in the Community, the ENTSO for Electricity should draw up, publish and regularly update a non-binding Community-wide ten-year network development plan (Community-wide network development plan). Viable electricity transmission networks and necessary regional interconnections, relevant from a commercial or security of supply point of view, should be included in that network development plan.

(10) This Regulation should lay down basic principles with regard to tariffation and capacity allocation, whilst providing for the adoption of Guidelines detailing further relevant principles and methodologies, in order to allow rapid adaptation to changed circumstances.

(11) In an open, competitive market, transmission system operators should be compensated for costs incurred as a result of hosting cross-border flows of electricity on their networks by the operators of the transmission systems from which cross-border flows originate and the systems where those flows end.

(12) Payments and receipts resulting from compensation between transmission system operators should be taken into account when setting national network tariffs.

(13) The actual amount payable for cross-border access to the system can vary considerably, depending on the transmission system operator involved and as a result of differences in the structure of the tariffation systems applied in Member States. A certain degree of harmonisation is therefore necessary in order to avoid distortions of trade.

(14) A proper system of long-term locational signals is necessary, based on the principle that the level of the network access charges should reflect the balance between generation and consumption of the region concerned, on the basis of a differentiation of the network access charges on producers and/or consumers.

(15) It would not be appropriate to apply distance-related tariffs or, provided appropriate locational signals are in place, a specific tariff to be paid only by exporters or importers in addition to the general charge for access to the national network.

(16) The precondition for effective competition in the internal market in electricity is non-discriminatory and transparent charges for network use including interconnecting lines in the transmission system. The available capacity of those lines should be set at the maximum levels consistent with the safety standards of secure network operation.

(17) It is important to avoid distortion of competition resulting from the differing safety, operational and planning standards used by transmission system operators in Member States. Moreover, there should be transparency for market participants concerning available transfer capacities and the security, planning and operational standards that affect the available transfer capacities.

(18) Market monitoring undertaken over recent years by the national regulatory authorities and by the Commission has shown that current transparency requirements and rules on access to infrastructure are not sufficient to secure a genuine, well-functioning, open and efficient internal market in electricity.

(19) Equal access to information on the physical status and efficiency of the system is necessary to enable all market participants to assess the overall demand and supply situation and identify the reasons for movements in the wholesale price. This includes more precise information on electricity generation, supply and demand including forecasts, network and interconnection capacity, flows and maintenance, balancing and reserve capacity.

(20) To enhance trust in the market, its participants need to be sure that those engaging in abusive behaviour can be subject to effective, proportionate and dissuasive penalties. The competent authorities should be given the competence to investigate effectively allegations of market abuse. To that end, it is necessary that competent authorities have access to data that provides information on operational decisions made by supply undertakings. In the electricity market, many relevant decisions are made by the generators, which should keep information in relation thereto available to and easily accessible by the competent authorities for a fixed period of time. The competent authorities should, furthermore, regularly monitor the compliance of the transmission system operators with the rules. Small generators with no real ability to distort the market should be exempt from that obligation.

(21) There should be rules on the use of revenues flowing from congestion-management procedures, unless the specific nature of the interconnector concerned justifies an exemption from those rules.

(22) The management of congestion problems should provide correct economic signals to transmission system operators and market participants and should be based on market mechanisms.

(23) Investments in major new infrastructure should be promoted strongly while ensuring the proper functioning of the internal market in electricity. In order to enhance the positive effect of exempted direct current interconnectors on competition and security of supply, market interest during the project-planning phase should be tested and congestion-management rules should be adopted.
Where direct current interconnectors are located in the territory of more than one Member State, 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, undertakings with supply and production interests should be able to benefit from a temporary derogation from the full unbundling rules for the projects concerned. Exemptions granted under Regulation (EC) No 1228/2003 continue to apply until the scheduled expiry date as decided in the granted exemption decision.

(24) To ensure the smooth functioning of the internal market in electricity, provision should be made for procedures which allow the adoption of decisions and Guidelines with regard, inter alia, to tariffication and capacity allocation by the Commission whilst ensuring the involvement of Member States’ regulatory authorities in that process, where appropriate through their European association. Regulatory authorities, together with other relevant authorities in the Member States, have an important role to play in contributing to the proper functioning of the internal market in electricity.

(25) National regulatory authorities should ensure compliance with the rules contained in this Regulation and the Guidelines adopted pursuant thereto.

(26) The Member States and the competent national authorities should be required to provide relevant information to the Commission. Such information should be treated confidentially by the Commission. Where necessary, the Commission should have an opportunity to request relevant information directly from undertakings concerned, provided that the competent national authorities are informed.

(27) Member States should lay down rules on penalties applicable to infringements of the provisions of this Regulation and ensure that they are implemented. Those penalties must be effective, proportionate and dissuasive.

(28) The measures necessary for the implementation of this Regulation 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.

(29) In particular, the Commission should be empowered to establish or adopt the Guidelines necessary for providing the minimum degree of harmonisation required to achieve the aims of this Regulation. If transmission networks of two or more Member States form part, entirely or partly, of a single control block, for the purpose of the inter-transmission system operator (TSO) compensation mechanism referred to in Article 3 only, the control block as a whole shall be considered as forming part of the transmission network of one of the Member States concerned, in order to avoid flows within control blocks being considered as cross-border flows and giving rise to compensation payments under Article 3. The regulatory authorities of the Member States concerned may decide which of the Member States concerned shall be the one of which the control block as a whole shall be considered to form part of.

(30) Since the objective of this Regulation, namely the provision of a harmonised framework for cross-border exchanges in electricity, cannot be sufficiently achieved by the Member States and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with Council Decision 1999/468/EC.

(31) Given the scope of the amendments that are being made herein to Regulation (EC) No 1228/2003, 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 Regulation.

### Article 1

**Subject-matter and scope**

This Regulation aims at:

(a) setting fair rules for cross-border exchanges in electricity, thus enhancing competition within the internal market in electricity, taking into account the particular characteristics of national and regional markets. This will involve the establishment of a compensation mechanism for cross-border flows of electricity and the setting of harmonised principles on cross-border transmission charges and the allocation of available capacities of interconnections between national transmission systems;

(b) facilitating the emergence of a well-functioning and transparent wholesale market with a high level of security of supply in electricity. It provides for mechanisms to harmonise the rules for cross-border exchanges in electricity.

### Article 2

**Definitions**

1. For the purpose of this Regulation, the definitions contained in Article 2 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 apply, with the exception of the definition of “interconnector” which shall be replaced by the following:

- “interconnector” means a transmission line which crosses or spans a border between Contracting Parties and which connects the national transmission systems of the Contracting Parties.

2. The following definitions shall apply:

(a) “regulatory authorities” means the regulatory authorities referred to in Article 35(1) of Directive 2009/72/EC;

(b) “cross-border flow” means a physical flow of electricity on a transmission network of a Contracting Party that results from the impact of the activity of producers and/or consumers outside that Contracting Party on its transmission network;

(c) “congestion” means a situation in which an interconnection linking national transmission networks cannot accommodate all physical flows resulting from international trade requested by market participants, because of a lack of capacity of the interconnectors and/or the national transmission systems concerned;

(d) “declared export” means the dispatch of electricity in one Contracting Party on the basis of an underlying contractual arrangement to the effect that the simultaneous corresponding take-up (declared import) of electricity will take place in another Contracting Party or a third country;

(e) “declared transit” means a circumstance where a declared export of electricity occurs and where

In Regulation (EC) 1228/2003 (applicable until 1 January 2015), Article 2(2)(b) contains the following second and third sentences:

“If transmission networks of two or more Member States form part, entirely or partly, of a single control block, for the purpose of the inter-transmission system operator (TSO) compensation mechanism referred to in Article 3 only, the control block as a whole shall be considered as being part of the transmission network of one of the Member States concerned, in order to avoid flows within control blocks being considered as cross-border flows and giving rise to compensation payments under Article 3. The regulatory authorities of the Member States concerned may decide which of the Member States concerned shall be the one of which the control block as a whole shall be considered to form part of.”
the nominated path for the transaction involves a country in which neither the dispatch nor the simultaneous corresponding take-up of the electricity will take place;

(f) “declared import” means the take-up of electricity in a Contracting Party or a third country simultaneously with the dispatch of electricity (declared export) in another Contracting Party;

(g) “new interconnector” means an interconnector not completed by 1 July 2007.

For the purpose of the inter-transmission system operator compensation mechanism referred to in Article 13 only, where transmission networks of two or more Contracting Parties form part, in whole or in part, of a single control block, the control block as a whole shall be considered as forming part of the transmission network of one of the Contracting Parties concerned, in order to avoid flows within control blocks being considered as cross-border flows under point (b) of the first subparagraph of this paragraph and giving rise to compensation payments under Article 13. The regulatory authorities of the Contracting Parties concerned may decide which of the Contracting Parties concerned shall be that of which the control block as a whole is to be considered to form part.

Article 3
Certification of transmission system operators

1. The Energy Community Secretariat shall examine any notification of a decision on the certification of a transmission system operator as laid down in Article 10(6) of Directive 2009/72/EC as soon as it is received. Within four months of the day of receipt of such notification, the Energy Community Secretariat shall deliver its opinion to the relevant national regulatory authority as to its compatibility with Article 10(2) or Article 11, and Article 9 of Directive 2009/72/EC.

When preparing the opinion referred to in the first subparagraph, the Secretariat shall request the Energy Community Regulatory Board to provide its opinion on the national regulatory authority's decision.

In the absence of an opinion by the Energy Community Secretariat within the periods referred to in the first subparagraph, the Energy Community Secretariat shall be deemed not to raise objections to the regulatory authority's decision.

2. Within two months of receiving an opinion of the Energy Community Secretariat, the national regulatory authority shall adopt its final decision regarding the certification of the transmission system operator, taking the utmost account of that opinion. The regulatory authority's decision and the Energy Community Secretariat's opinion shall be published together.

3. At any time during the procedure, regulatory authorities and/or the Energy Community Secretariat may request from a transmission system operator and/or an undertaking performing any of the functions of generation or supply any information relevant to the fulfilment of their tasks under this Article.

4. Regulatory authorities and the Energy Community Secretariat shall preserve the confidentiality of commercially sensitive information.

5. ... 

6. Where the Energy Community Secretariat has received notification of the certification of a transmission system operator under Article 9(10) of Directive 2009/72/EC, the Secretariat shall issue an opinion relating to certification. The regulatory authority shall take the utmost account of that opinion. Where the final decision diverges from the Secretariat's opinion, the regulatory authority concerned shall provide and publish, together with that decision, the reasoning underlying such decision. Diverting decisions shall be included in the agenda of the first meeting of the Ministerial Council following the date of the decision, for information and discussion.

Article 4
European network of transmission system operators for electricity

... 

Article 5
Establishment of the ENTSO for Electricity

... 

Article 6
Establishment of network codes

1. The Energy Community shall endeavour to apply the network codes developed at European Union level ...

2. The relevant network codes shall be adopted by the Permanent High Level Group, following the procedure laid down in Article 79 of the Treaty. Before taking a decision, the Permanent High Level Group shall seek the opinion of the Energy Community Regulatory Board.

3. The Permanent High Level Group shall adopt a procedural act on application of this Article.

Article 7
Amendments of network codes

... 

Article 8
Tasks of the ENTSO for Electricity

... 

Article 9
Monitoring by the Agency

... 

2 The following text corresponds to Article 28 of Decision 2011/02/MC-EnC.

3 Procedural Act No 01/2012 PHLG-EnC of the Permanent High Level Group of the Energy Community of 21 June 2012 laying down the rules governing the adoption of Guidelines and Network Codes in the Energy Community was adopted on 21 June 2012, see page 519.
Transmission system operators shall promote operational arrangements in order to ensure the optimum management of the Energy Community network and shall promote the development of energy exchanges, the coordinated allocation of cross-border capacity through non-discriminatory market-based solutions, paying due attention to the specific merits of implicit auctions for short-term allocations, and the integration of balancing and reserve power mechanisms.

Article 12: Regional cooperation of transmission system operators

1. Transmission system operators shall receive compensation for costs incurred as a result of hosting cross-border flows of electricity on their networks.
2. The compensation referred to in paragraph 1 shall be paid by the operators of national transmission systems from which cross-border flows originate and the systems where those flows end.
3. Compensation payments shall be made on a regular basis with regard to a given period of time in the past. Ex-post adjustments of compensation paid shall be made where necessary, to reflect costs actually incurred.

... 4 ...

5. The magnitude of cross-border flows hosted and the magnitude of cross-border flows designated as originating and/or ending in national transmission systems shall be determined on the basis of the physical flows of electricity actually measured during a given period of time.
6. The costs incurred as a result of hosting cross-border flows shall be established on the basis of the forward-looking long-run average incremental costs, taking into account losses, investment in new infrastructure, and an appropriate proportion of the cost of existing infrastructure, in so far as such infrastructure is used for the transmission of cross-border flows, in particular taking into account the need to guarantee security of supply. When establishing the costs incurred, recognized standard-costing methodologies shall be used. Benefits that a network incurs as a result of hosting cross-border flows shall be taken into account to reduce the compensation received.

Article 14: Charges for access to networks

1. Charges applied by network operators for access to networks shall be transparent, take into account the need for network security and reflect actual costs incurred insofar as they correspond to those of an efficient and structurally comparable network operator and are applied in a non-discriminatory manner. Those charges shall not be distance-related.
2. Where appropriate, the level of the tariffs applied to producers and/or consumers shall provide locational signals at Energy Community level, and take into account the amount of network losses and congestion caused, and investment costs for infrastructure. 5
3. When setting the charges for network access, the following shall be taken into account:
   (a) payments and receipts resulting from the inter-transmission system operator compensation mechanism;
   (b) actual payments made and received as well as payments expected for future periods of time, estimated on the basis of past periods.
4. Setting the charges for network access under this Article shall be without prejudice to charges on declared exports and declared imports resulting from congestion management referred to in Article 16. 6
5. There shall be no specific network charge on individual transactions for declared transits of electricity.

Article 15: Provision of information

1. Transmission system operators shall put in place coordination and information exchange mechanisms to ensure the security of the networks in the context of congestion management.
2. The safety, operational and planning standards used by transmission system operators shall be made public. The information published shall include a general scheme for the calculation of the total transfer capacity and the transmission reliability margin based upon the electrical and physical features of the network. Such schemes shall be subject to the approval of the regulatory authorities.

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4 In accordance with Article 7(3) of Decision 2011/02/MC-EnC, Article 25 of that Decision is displayed here.
5 Not applicable in accordance with Article 12(1) of Decision 2011/02/MC-EnC. According to Article 12(2) of that Decision, “(the Energy Community shall endeavour to adopt as soon as possible Commission Regulation (EU) No 774/2010 of 2 September 2010 on laying down guidelines relating to inter-transmission system operator compensation and a common regulatory approach to transmission charging.”
6 In Regulation (EC) 1228/2003 (applicable until 1 January 2015), Article 4(2) reads as follows: “Producers and consumers ("load") may be charged for access to networks. The proportion of the total amount of network charges borne by producers shall, subject to the need to provide appropriate and efficient locational signals, be lower than the proportion borne by consumers. Where appropriate, the level of the tariffs applied to producers and/or consumers shall provide locational signals at European level, and take into account the amount of network losses and congestion caused, and investment costs for infrastructure. This shall not prevent Member States from providing locational signals within their territory or from applying mechanisms to ensure that network access charges borne by consumers ("load") are uniform throughout their territory.”
7 In Regulation (EC) 1228/2003 (applicable until 1 January 2015), Article 4(4) reads as follows: “Providing that appropriate and efficient locational signals are in place, in accordance with paragraph 2, charges for access to networks applied to producers and consumers shall be applied regardless of the countries of destination and, origin, respectively, of the electricity, as specified in the underlying commercial arrangement. This shall be without prejudice to charges on declared exports and declared imports resulting from congestion management referred to in Article 6.”
3. Transmission system operators shall publish estimates of available transfer capacity for each day, indicating any available transfer capacity already reserved. Those publications shall be made at specified intervals before the day of transport and shall include, in any event, week-ahead and month-ahead estimates, as well as a quantitative indication of the expected reliability of the available capacity.

4. Transmission system operators shall publish relevant data on aggregated forecast and actual demand, on availability and actual use of generation and load assets, on availability and use of the networks and interconnections, and on balancing power and reserve capacity. For availability and actual use of small generation and load units, aggregated estimate data may be used.

5. The market participants concerned shall provide the transmission system operators with the relevant data.

6. Generation undertakings which own or operate generation assets, where at least one generation asset has an installed capacity of at least 250 MW, shall keep at the disposal of the national regulatory authority, the national competition authority and the Energy Community Secretariat, for five years all hourly data per plant that is necessary to verify all operational dispatching decisions and the bidding behaviour at power exchanges, interconnection auctions, reserve markets and over-the-counter-markets. The per-plant and per hour information to be stored shall include, but shall not be limited to, data on available generation capacity and committed reserves, including allocation of those committed reserves on a per-plant level, at the times the bidding is carried out and when production takes place.

**Article 16**

**General principles of congestion management**

1. Network congestion problems shall be addressed with non-discriminatory market-based solutions which give efficient economic signals to the market participants and transmission system operators involved. Network congestion problems shall preferentially be solved with non-transaction based methods, i.e. methods that do not involve a selection between the contracts of individual market participants.

2. Transaction curtailment procedures shall only be used in emergency situations where the transmission system operator must act in an expeditious manner and re-dispatching or countertrading is not possible. Any such procedure shall be applied in a non-discriminatory manner. Except in cases of force majeure, market participants who have been allocated capacity shall be compensated for any curtailment.

3. The maximum capacity of the interconnections and/or the transmission networks affecting cross-border flows shall be made available to market participants, complying with safety standards of secure network operation.

4. Market participants shall inform the transmission system operators concerned a reasonable time in advance of the relevant operational period whether they intend to use allocated capacity. Any allocated capacity that will not be used shall be reattributed to the market, in an open, transparent and non-discriminatory manner.

5. Transmission system operators shall, as far as technically possible, net the capacity requirements of any power flows in opposite direction over the congested interconnection line in order to use that line to its maximum capacity. Having full regard to network security, transactions that relieve the congestion shall never be denied.

6. Any revenues resulting from the allocation of interconnection shall be used for the following purposes:

   (a) guaranteeing the actual availability of the allocated capacity; and/or
   (b) maintaining or increasing interconnection capacities through network investments, in particular in new interconnectors.

If the revenues cannot be efficiently used for the purposes set out in points (a) and/or (b) of the first subparagraph, they may be used, subject to approval by the regulatory authorities of the Contracting Parties concerned, up to a maximum amount to be decided by those regulatory authorities, as income to be taken into account by the regulatory authorities when approving the methodology for calculating network tariffs and/or fixing network tariffs.

The rest of revenues shall be placed on a separate internal account line until such time as it can be spent on the purposes set out in points (a) and/or (b) of the first subparagraph. The regulatory authority shall inform the Energy Community Secretariat of the approval referred to in the second subparagraph.

**Article 17**

**New interconnectors**

1. New direct current interconnectors may, upon request, be exempted, for a limited period of time, from the provisions of Article 16(6) of this Regulation and Articles 9, 32 and Article 37(6) and (10) of Directive 2009/72/EC under the following conditions:

   (a) the investment must enhance competition in electricity supply;
   (b) the level of risk attached to the investment is such that the investment would not take place unless an exemption is granted;
   (c) the interconnector must be owned by a natural or legal person which is separate at least in terms of its legal form from the system operators in whose systems that interconnector will be built;
   (d) charges are levied on users of that interconnector;
   (e) since 1 July 2007, no part of the capital or operating costs of the interconnector has been recovered from any component of charges made for the use of transmission or distribution systems linked by the interconnector; and
   (f) the exemption must not be to the detriment of competition or the effective functioning of the internal market in electricity, or the efficient functioning of the regulated system to which the interconnector is linked.

2. Paragraph 1 shall also apply, in exceptional cases, to alternating current interconnectors provided that the costs and risks of the investment in question are particularly high when compared with the

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*a* In Regulation (EC) 1228/2003 (applicable until 1 January 2015), Article 6(6)(c) reads as follows: “(c) as an income to be taken into account by regulatory authorities when approving the methodology for calculating network tariffs, and/or in assessing whether tariffs should be modified.”
costs and risks normally incurred when connecting two neighbouring national transmission systems by an alternating current interconnector.

3. Paragraph 1 shall also apply to significant increases of capacity in existing interconnectors.

4. The decision on the exemption under paragraphs 1, 2 and 3 shall be taken on a case-by-case basis by the regulatory authorities of the Contracting Parties concerned. An exemption may cover all or part of the capacity of the new interconnector, or of the existing interconnector with significantly increased capacity.

Within two months from the date on which the request for exemption was received by the last of the regulatory authorities concerned, the Energy Community Regulatory Board may submit an advisory opinion to those regulatory authorities which could provide a basis for their decision.

In deciding to grant an exemption, consideration shall be given, on a case-by-case basis, to the need to impose conditions regarding the duration of the exemption and non-discriminatory access to the interconnector. When deciding those conditions, account shall, in particular, be taken of additional capacity to be built or the modification of existing capacity, the time-frame of the project and national circumstances.

Before granting an exemption, the regulatory authorities of the Contracting Parties concerned shall decide upon the rules and mechanisms for management and allocation of capacity.

Congestion-management rules shall include the obligation to offer unused capacity on the market and users of the facility shall be entitled to trade their contracted capacities on the secondary market. In the assessment of the criteria referred to in points (a), (b) and (f) of paragraph 1, the results of the capacity-allocation procedure shall be taken into account.

Where all the regulatory authorities concerned have reached agreement on the exemption decision within six months, they shall inform the Energy Community Regulatory Board of that decision. The exemption decision, including any conditions referred to in the second subparagraph of this paragraph, shall be duly reasoned and published.\(^*\)

5. The decision referred to in paragraph 4 shall be taken by the Energy Community Regulatory Board:

(a) where all the regulatory authorities concerned have not been able to reach an agreement within six months from the date the exemption was requested before the last of those regulatory authorities; or

(b) upon a joint request from the regulatory authorities concerned.

Before taking such a decision, the Energy Community Regulatory Board shall consult the regulatory authorities concerned and the applicants.

6. Notwithstanding paragraphs 4 and 5, Contracting Parties may provide for the regulatory authority or the Energy Community Regulatory Board, as the case may be, to submit, for formal decision, to the relevant body in the Contracting Party, its opinion on the request for an exemption. That opinion shall be published together with the decision.

7. A copy of every request for exemption shall be transmitted for information without delay by the regulatory authorities to the Energy Community Regulatory Board and to the Energy Community Secretariat on receipt. The decision shall be notified, without delay, by the regulatory authorities concerned or by the Energy Community Regulatory Board (notifying bodies), to the Energy Community Secretariat, together with all the relevant information with respect to the decision. That information may be submitted to the Energy Community Secretariat in aggregate form, enabling the Energy Community Secretariat to reach a well-founded decision. In particular, the information shall contain:

(a) the detailed reasons on the basis of which the exemption was granted or refused, including the financial information justifying the need for the exemption;

(b) the analysis undertaken of the effect on competition and the effective functioning of the internal market in electricity resulting from the grant of the exemption;

(c) the reasons for the time period and the share of the total capacity of the interconnector in question for which the exemption is granted; and

(d) the result of the consultation of the regulatory authorities concerned.

8. Within a period of two months from the day following receipt of notification under paragraph 7, the Energy Community Secretariat may issue an opinion inviting the notifying bodies to amend or withdraw the decision to grant an exemption. That two-month period may be extended by an additional period of two months where further information is sought by the Energy Community Secretariat. That additional period shall begin on the day following receipt of the complete information. The initial two-month period may also be extended by consent of both the Energy Community Secretariat and the notifying bodies.

When the requested information is not provided within the period set out in the request, the notification shall be deemed to be withdrawn unless, before the expiry of that period, either the period is extended by consent of both the Secretariat and the notifying bodies, or the notifying bodies, in a duly reasoned statement, inform the Secretariat that they consider the notification to be complete.

The notifying bodies shall take the utmost account of a Secretariat opinion that recommends amending or withdrawing the exemption decision. Where the final decision diverges from the Secretariat’s opinion, the regulatory authority concerned shall provide and publish, together with that decision, the reasoning underlying such decision. Diverting decisions shall be included in the agenda of the first meeting of the Ministerial Council following the date of the decision, for information and discussion.

The Energy Community Secretariat shall preserve the confidentiality of commercially sensitive information.
The Energy Community Secretariat’s opinion on an exemption decision shall expire two years after the date of its adoption in the event that construction of the interconnector has not yet started by that date, and five years after the date of its adoption if the interconnector has not become operational by that date, unless the Energy Community Secretariat considers that any delay is due to major obstacles beyond the control of the person to whom the exemption has been granted. 9. ...

Article 18
Guidelines

The Energy Community shall endeavour to apply the Guidelines adopted by the European Commission under ... Regulation (EC) No 714/2009 ... .

These Guidelines, which may need to be adapted to the institutional framework of the Energy Community, shall be adopted by the Permanent High Level Group, following the procedure laid down in Article 79 of the Treaty.

The Permanent High Level Group shall adopt a Procedural Act on the application of this article. 11

Article 19
Regulatory authorities

The regulatory authorities, when carrying out their responsibilities, shall ensure compliance with this Regulation and the Guidelines adopted pursuant to Article 18. 11

Where appropriate to fulfill the aims of this Regulation the regulatory authorities shall cooperate with each other, with the Energy Community Secretariat and the Energy Community Regulatory Board in compliance with Chapter IX of Directive 2009/72/EC.

Article 20
Provision of information and confidentiality

1. Contracting Parties and the regulatory authorities shall, on request, provide to the Energy Community Secretariat all information necessary for the purposes of ... Article 18. 11

In particular, for the purposes of Article 13 ... (6), regulatory authorities shall, on a regular basis, provide information on the actual costs incurred by national transmission system operators, as well as data and all relevant information relating to the physical flows in transmission system operators’ networks and the cost of the networks.

The Energy Community Secretariat shall fix a reasonable time limit within which the information is to be provided, taking into account the complexity of the information required and the urgency with which the information is needed.

2. If the Contracting Party or the regulatory authority concerned does not provide the information referred to in paragraph 1 within the given time-limit pursuant to paragraph 1 of this Article, the Energy Community Secretariat may request all information necessary for the purpose of ... Article 18 directly from the undertakings concerned.

When sending a request for information to an undertaking, the Energy Community Secretariat shall at the same time forward a copy of the request to the regulatory authorities of the Contracting Party in whose territory the seat of the undertaking is situated.

3. In its request for information under paragraph 1, the Energy Community Secretariat shall state the legal basis of the request, the time-limit within which the information is to be provided, the purpose of the request ... 11 The Energy Community Secretariat shall fix a reasonable time-limit taking into account the complexity of the information required and the urgency with which the information is needed.

4. The owners of the undertakings or their representatives and, in the case of legal persons, the persons authorised to represent them by law or by their instrument of incorporation, shall supply the information requested. Where lawyers duly authorised so to act supply the information on behalf of their clients, the client shall remain fully responsible in the event that the information supplied is incomplete, incorrect or misleading.

5. ...

6. The information referred to in paragraphs 1 and 2 shall be used only for the purposes of ... Article 18.

The Energy Community Secretariat shall not disclose information acquired pursuant to this Regulation of the kind covered by the obligation of professional secrecy.

The Energy Community Secretariat shall fix a reasonable time limit within which the information is to be provided, taking into account the complexity of the information required and the urgency with which the information is needed.

Article 21
Right of Contracting Parties to provide for more detailed measures

This Regulation shall be without prejudice to the rights of Contracting Parties to maintain or introduce measures that contain more detailed provisions than those set out herein or in the Guidelines referred to in Article 18. 11

9. The text displayed here corresponds to Article 27 of Decision 2011/02/MC-EnC.

11 Procedural Act No 01/2012 PHLG-EnC of the Permanent High Level Group of the Energy Community of 21 June 2012 laying down the rules governing the adoption of Guidelines and Network Codes in the Energy Community was adopted on 21 June 2012, see page 519.

12 As adopted by the Permanent High Level Group under Procedural Act No 01/2012 PHLG-EnC of the Permanent High Level Group.

13 As adopted by the Permanent High Level Group under Procedural Act No 01/2012 PHLG-EnC of the Permanent High Level Group.

14 According to Article 19(2) of Decision 2011/02/MC-EnC, Article 22(2) of Regulation (EC) No 714/2009 shall not be applicable.

15 As adopted by the Permanent High Level Group under Procedural Act No 01/2012 PHLG-EnC.
1. Contracting Parties shall lay down rules on penalties applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that those provisions are implemented. The penalties provided for must be effective, proportionate and dissuasive. Contracting Parties shall notify these provisions to the Secretariat by 1 January 2015 and shall notify the Secretariat without delay of any subsequent amendment affecting them.

2. ... 

3. Penalties provided for pursuant to paragraph 1 shall not be of a criminal law nature.

Article 23
Committee procedure ...

Article 24
Secretariat report

The Contracting Parties shall communicate to the Energy Community Secretariat the text of the main provisions of national law which they adopt in the field covered by this Decision.

The text displayed here corresponds to Article 31 of Decision 2011/02/MC-EnC.

PART II ACQUIS COMMUNAUTAIRE / ELECTRICITY / Regulation 714/2009

1. The Secretariat shall monitor and review the application of this Decision in the Contracting Parties.

2. The Secretariat shall submit an overall progress report to the Ministerial Council for the first time by 30 June 2012, and thereafter on an annual basis. The progress report shall reflect the progress made on creating a complete and fully operational internal market in electricity and gas and the obstacles that remain in this respect, including aspects of market dominance, market concentration, predatory or anti-competitive behaviour and the effect thereof in terms of market distortion. It shall in particular consider:

– the implementation by each Contracting Party of the provisions on unbundling, certification and on independence of the national regulatory authorities and application of these provisions in practice,

– the existence of non-discriminatory network access,

– effective regulation,

– the development of interconnection infrastructure and the security of supply situation in the Energy Community,

– the extent to which the full benefits of the opening of markets are accruing to small enterprises and household customers, notably with respect to public service and universal service standards,

– the extent to which markets are in practice open to effective competition, including aspects of market dominance, market concentration and predatory or anti-competitive be-

As adapted by Article 19 of Decision 2011/02/MC-EnC.

The text displayed here corresponds to Article 30 of Decision 2011/02/MC-EnC.
ANNEX I

GUIDELINES ON THE MANAGEMENT AND ALLOCATION OF AVAILABLE TRANSFER CAPACITY OF INTERCONNECTIONS BETWEEN NATIONAL SYSTEMS


1.1. Transmission system operators (TSOs) shall endeavour to accept all commercial transactions, including those involving cross-border-trade.

1.2. When there is no congestion, there shall be no restriction of access to the interconnection. Where this is usually the case, there need be no permanent general allocation procedure for access to a cross-border transmission service.

1.3. Where scheduled commercial transactions are not compatible with secure network operation, the TSOs shall alleviate congestion in compliance with the requirements of network operational security while endeavouring to ensure that any associated costs remain at an economically efficient level. Curative re-dispatching or countertrading shall be envisaged in case lower cost measures cannot be applied.

1.4. If structural congestion appears, appropriate congestion-management methods and arrangements defined and agreed upon in advance shall be implemented immediately by the TSOs. The congestion-management methods shall ensure that the physical power flows associated with all allocated transmission capacity comply with network security standards.

1.5. The methods adopted for congestion management shall give efficient economic signals to market participants and TSOs, promote competition and be suitable for regional and Community-wide application.

1.6. No transaction-based distinction shall be applied in congestion management. A particular request for transmission service shall be denied only when the following cumulative conditions are fulfilled:

(a) the incremental physical power flows resulting from the acceptance of that request imply that secure operation of the power system may no longer be guaranteed, and

(b) the monetary value of the request in the congestion-management procedure is lower than all other requests intended to be accepted for the same service and conditions.

1.7. When defining appropriate network areas in and between which congestion management is to apply, TSOs shall be guided by the principles of cost-effectiveness and minimisation of negative impacts on the internal market in electricity. Specifically, TSOs shall not limit interconnection capacity in order to solve congestion inside their own control area, save for the abovementioned reasons and reasons of operational security [1]. If such a situation occurs, this shall be described and transparently presented by the TSOs to all the system users. Such a situation shall be tolerated only until a long-term solution is found. The methodology and projects for achieving the long-term solution shall be described and transparently presented by the TSOs to all the system users.

1.8. When balancing the network inside the control area through operational measures in the network and through re-dispatching, the TSO shall take into account the effect of those measures on neighbouring control areas.

1.9. By 31 December 2009[1], mechanisms for the in-day congestion management of interconnector capacity shall be established in a coordinated way and under secure operational conditions, in order to maximise opportunities for trade and to provide for cross-border balancing.

1.10. The national regulatory authorities shall regularly evaluate the congestion-management methods, paying particular attention to compliance with the principles and rules established in this Regulation and those Guidelines and with the terms and conditions set by the regulatory authorities themselves under those principles and rules. Such evaluation shall include consultation of all market participants and dedicated studies.

2. Congestion-management methods

2.1. Congestion-management methods shall be market-based in order to facilitate efficient cross-border trade. For that purpose, capacity shall be allocated only by means of explicit (capacity) or implicit (capacity and energy) auctions. Both methods may coexist on the same interconnection. For intra-day trading, continuous trading may be used.

2.2. Depending on competition conditions, the congestion-management mechanisms may need to allow for both long and short-term transmission capacity allocation.

2.3. Each capacity-allocation procedure shall allocate a prescribed fraction of the available interconnection capacity plus any remaining capacity not previously allocated and any capacity released by capacity holders from previous allocations.

2.4. TSOs shall optimise the degree to which capacity is firm, taking into account the obligations and rights of the TSOs involved and the obligations and rights of market participants, in order to facilitate effective and efficient competition. A reasonable fraction of capacity may be offered to the market at a reduced degree of firmness, but the exact conditions for transport over cross-border lines shall, at all times, be made known to market participants.

2.5. The access rights for long and medium-term allocations shall be firm transmission capacity rights. They shall be subject to the use-it-or-lose-it or use-it-or-sell-it principles at the time of nomination.

2.6. TSOs shall define an appropriate structure for the allocation of capacity between different time-frames. This may include an option for reserving a minimum percentage of interconnection capacity for daily or intra-daily allocation. Such an allocation structure shall be subject to review by the respective regulatory authorities. In drawing up their proposals, the TSOs shall take into account:

(a) the characteristics of the markets;

(b) the operational conditions, such as the implications of netting firmly declared schedules;

(c) the level of harmonisation of the percentages and timeframes adopted for the different capacity-allocation mechanisms in place.

2.7. Capacity allocation shall not discriminate between market participants that wish to use their rights to make use of bilateral supply contracts or to bid into power exchanges. The highest value bids, whether implicit or explicit in a given timeframe, shall be successful.

2.8. In regions where forward financial electricity markets are well developed and have shown their efficiency, all interconnection capacity may be allocated through implicit auctioning.

2.9. Other than in the case of new interconnectors which benefit from an exemption under Article 7 of Regulation (EC) No 1228/2003 or Article 17 of this Regulation, establishing reserve prices in...
capacity-allocation methods shall not be allowed.

2.10. In principle, all potential market participants shall be permitted to participate in the allocation process without restriction. To avoid creating or aggravating problems related to the potential use of dominant position of any market player, the relevant regulatory and/or competition authorities, where appropriate, may impose restrictions in general or on an individual company on account of market dominance.

2.11. Market participants shall firmly nominate their use of the capacity to the TSOs by a defined deadline for each timeframe. That deadline shall be such that TSOs are able to reallocate unused capacity for reallocation in the next relevant timeframe - including intra-day sessions.

2.12. Capacity shall be freely tradable on a secondary basis, provided that the TSO is informed sufficiently in advance. Where a TSO refuses any secondary trade (transaction), this must be clearly and transparently communicated and explained to all the market participants by that TSO and notified to the regulatory authority.

2.13. The financial consequences of failure to honour obligations associated with the allocation of capacity shall be attributed to those who are responsible for such a failure. Where market participants fail to use the capacity that they have committed to use, or, in the case of explicitly auctioned capacity, fail to trade on a secondary basis or give the capacity back in due time, they shall lose the rights to such capacity and pay a cost-reflective charge. Any cost-reflective charges for the non-use of capacity shall be justified and proportionate. Likewise, if a TSO does not fulfil its obligation, it shall be liable to compensate the market participant for the loss of capacity rights. No consequential losses shall be taken into account for that purpose. The key concepts and methods for the determination of liabilities that accrue upon failure to honour obligations shall be set out in advance in respect of the financial consequences, and shall be subject to review by the relevant national regulatory authority or authorities.

3. Coordination

3.1. Capacity allocation at an interconnection shall be coordinated and implemented using common allocation procedures by the TSOs involved. In cases where commercial exchanges between two countries (TSOs) are expected to affect physical flow conditions in any third-country (TSO) significant congestion-management methods shall be coordinated between all the TSOs so affected through a common congestion-management procedure. National regulatory authorities and TSOs shall ensure that no congestion-management procedure with significant effects on physical electric power flows in other networks is devised unilaterally.

3.2.20

1. For the territories referred to in paragraph 1, the common coordinated congestion management method and procedure for the allocation of capacity to the market at least yearly, monthly and day-ahead shall be applied by not later than 31 December 2009.

2. The implementation of the common coordinated congestion management method and procedure for the allocation of capacity to the market, as foreseen at Article 3 paragraph 2 of the Annex to Regulation (EC) No 1228/2003, shall cover the following territories:

- The territories of the Adhering Parties, the territory under the jurisdiction of the United Nations Interim Administration Mission in Kosovo;

- The territories of the Republic of Bulgaria, of the Hellenic Republic, of the Republic of Hungary, of Romania and of the Republic of Slovenia;

- The territory of the Republic of Italy with regard to the interconnections between the Italian Republic and the territories of the Adhering Parties.

At an interconnection involving countries belonging to more than one region, the congestion-management method applied may differ in order to ensure the compatibility with the methods applied in the other regions to which those countries belong. In that case, the relevant TSOs shall propose the method which shall be subject to review by the relevant regulatory authorities.

3.3. The regions referred to in point 2.8. may allocate all interconnection capacity through day-ahead allocation.

3.4. Compatible congestion-management procedures shall be defined in all those seven regions with a view to forming a truly integrated internal market in electricity. Market participants shall not be confronted with incompatible regional systems.

3.5. With a view to promoting fair and efficient competition and cross-border trade, coordination between TSOs within the regions set out in point 3.2. shall include all the steps from capacity calculation and optimisation of allocation to secure operation of the network, with clear assignments of responsibility. Such coordination shall include, in particular:

(a) the use of a common transmission model dealing efficiently with interdependent physical loop-flows and having regard to discrepancies between physical and commercial flows,

(b) allocation and nomination of capacity to deal efficiently with interdependent physical loop-flows,

(c) identical obligations on capacity holders to provide information on their intended use of the capacity, i.e. nomination of capacity (for explicit auctions),

(d) identical timeframes and closing times,

(e) identical structure for the allocation of capacity among different timeframes (for example, 1 day, 3 hours, 1 week, etc.) and in terms of blocks of capacity sold (amount of power in MW, MWh, etc.),

(f) consistent contractual framework with market participants,

(g) verification of flows to comply with the network security requirements for operational planning and for real-time operation,

(h) accounting and settlement of congestion-management actions.

3.6. Coordination shall also include the exchange of information between TSOs. The nature, time and frequency of information exchange shall be compatible with the activities set out in point 3.5 and the functioning of the electricity markets. That information exchange shall, in particular, enable the TSOs to make the best possible forecast of the global network situation in order to assess the flows in their network and the available interconnection capacities. Any TSO collecting information on behalf of other TSOs shall give back to the participating TSO the results of the collection of data.

4. Timetable for market operations

4.1. The allocation of the available transmission capacity shall take place sufficiently in advance. Prior to each allocation, the involved TSOs shall, jointly, publish the capacity to be allocated, taking into account where appropriate the capacity released from any firm transmission rights and, where relevant, associated netted nominations, along with any time periods during which the capacity will be reduced or not available (for the purpose of maintenance, for example).

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20 Adapted by Article 2(1) and (2) of Decision 2008/02/MC-EnC of 27 June 2008.
4.2. Having full regard to network security, the nomination of transmission rights shall take place sufficiently in advance, before the day-ahead sessions of all the relevant organised markets and before the publication of the capacity to be allocated under the day-ahead or intra-day allocation mechanism. Nominations of transmission rights in the opposite direction shall be netted in order to make efficient use of the interconnection.

4.3. Successive intra-day allocations of available transmission capacity for day D shall take place on days D-1 and D, after the issuing of the indicated or actual day-ahead production schedules.

4.4. When preparing day-ahead network operation, the TSOs shall exchange information with neighbouring TSOs, including their forecast network topology, the availability and forecasted production of generation units, and load flows in order to optimise the use of the overall network through operational measures in compliance with the rules for secure network operation.

5. Transparency

5.1. TSOs shall publish all relevant data related to network availability, network access and network use, including a report on where and why congestion exists, the methods applied for managing the congestion and the plans for its future management.

5.2. TSOs shall publish a general description of the congestion-management method applied under different circumstances for maximising the capacity available to the market, and a general scheme for the calculation of the interconnection capacity for the different timeframes, based upon the electrical and physical realities of the network. Such a scheme shall be subject to review by the regulatory authorities of the Contracting Parties concerned.

5.3. The congestion management and capacity-allocation procedures in use, together with the times and procedures for applying for capacity, a description of the products offered and the obligations and rights of both the TSOs and the party obtaining the capacity, including the liabilities that accrue upon failure to honour obligations, shall be described in detail and made available in a transparent manner to all potential network users by TSOs.

5.4. The operational and planning security standards shall form an integral part of the information that TSOs publish in an open and public document. That document shall also be subject to review by the national regulatory authorities.

5.5. TSOs shall publish all relevant data concerning cross-border trade on the basis of the best possible forecast. In order to fulfil that obligation the market participants concerned shall provide the TSOs with the relevant data. The manner in which such information is published shall be subject to review by the regulatory authorities. TSOs shall publish at least:

(a) annually: information on the long-term evolution of the transmission infrastructure and its impact on cross-border transmission capacity;
(b) monthly: month- and year-ahead forecasts of the transmission capacity available to the market, taking into account all relevant information available to the TSO at the time of the forecast calculation (for example, impact of summer and winter seasons on the capacity of lines, maintenance of the network, availability of production units, etc.);
(c) weekly: week-ahead forecasts of the transmission capacity available to the market, taking into account all relevant information available to the TSOs at the time of calculation of the forecast, such as the weather forecast, planned network maintenance work, availability of production units, etc.;
(d) daily: day-ahead and intra-day transmission capacity available to the market for each market time unit, taking into account all netted day-ahead nominations, day-ahead production schedules, demand forecasts and planned network maintenance work;
(e) total capacity already allocated, by market time unit, and all relevant conditions under which that capacity may be used (for example, auction clearing price, obligations on how to use the capacity, etc.), so as to identify any remaining capacity;
(f) allocated capacity as soon as possible after each allocation, as well as an indication of prices paid;
(g) total capacity used, by market time unit, immediately after nomination;
(h) as closely as possible to real time: aggregated realised commercial and physical flows, by market time unit, including a description of the effects of any corrective actions taken by the TSOs (such as curtailment) for solving network or system problems;
(i) ex-ante information on planned outages and ex-post information for the previous day on planned and unplanned outages of generation units larger than 100 MW.

5.6. All relevant information shall be available for the market in due time for the negotiation of all transactions (such as the time of negotiation of annual supply contracts for industrial customers or the time when bids have to be sent into organised markets).

5.7. The TSO shall publish the relevant information on forecast demand and on generation according to the timeframes referred to in points 5.5 and 5.6. The TSO shall also publish the relevant information necessary for the cross-border balancing market.

5.8. When forecasts are published, the ex post realised values for the forecast information shall also be published in the time period following that to which the forecast applies or at the latest on the following day (D + 1).

5.9. All information published by the TSOs shall be made freely available in an easily accessible form. All data shall also be accessible through adequate and standardised means of information exchange, to be defined in close cooperation with market participants. The data shall include information on past time periods with a minimum of two years, so that new market entrants may also have access to such data.

5.10. TSOs shall exchange regularly a set of sufficiently accurate network and load flow data in order to enable load flow calculations for each TSO in their relevant area. The same set of data shall be made available to the regulatory authorities and to the Energy Community Secretariat upon request. The regulatory authorities and the Energy Community Secretariat shall ensure the confidential treatment of that set of data, by themselves and by any consultant carrying out analytical work for them on the basis of those data.\(^{21}\)

6. Use of congestion income

6.1. Congestion-management procedures associated with a pre-specified timeframe may generate revenue only in the event of congestion which arises for that timeframe, except in the case of new interconnectors which benefit from an exemption under Article 7 of Regulation (EC) No 1228/2003 or Article 17 of this Regulation. The procedure for the distribution of those revenues shall be subject to review by the regulatory authorities and shall neither distort the allocation process in favour of any party requesting capacity or energy nor provide a disincentive to reduce congestion.

6.2. National regulatory authorities shall be transparent regarding the use of revenues resulting from

\(^{21}\) Adapted by Article 2(3) of Decision 2008/02/MC-EnC.
the allocation of interconnection capacity.

6.3. The congestion income shall be shared among the TSOs involved in accordance with criteria agreed between the TSOs involved and reviewed by the respective regulatory authorities.

6.4. TSOs shall clearly establish beforehand the use they will make of any congestion income they may obtain and report on the actual use of that income. Regulatory authorities shall verify that such use complies with this Regulation and those Guidelines, and that the total amount of congestion income resulting from the allocation of interconnection capacity is devoted to one or more of the three purposes set out in Article 16(6) of this Regulation.

6.5. On an annual basis, and by 31 July each year, the regulatory authorities shall publish a report setting out the amount of revenue collected for the 12-month period up to 30 June of the same year and the use made of the revenues in question, together with verification that that use complies with this Regulation and those Guidelines, and that the total amount of congestion income is devoted to one or more of the three prescribed purposes.

6.6. The use of congestion income for investment to maintain or increase interconnection capacity shall preferably be assigned to specific predefined projects which contribute to relieving the existing associated congestion and which may also be implemented within a reasonable time, particularly as regards the authorisation process.

[1] Operational security means “keeping the transmission system within agreed security limits”.

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22 As adopted by the Permanent High Level Group under Procedural Act No 01/2012 PHLG-EnC.
23 As adopted by the Permanent High Level Group under Procedural Act No 01/2012 PHLG-EnC.
Directive 2005/89/EC of 18 January 2006 concerning measures to safeguard security of electricity supply and infrastructure investment


The adaptations made by Ministerial Council Decision 2007/06/MC-EnC are highlighted in bold and blue.

Whereas:

(1) Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity, has made a very important contribution towards the creation of the internal market for electricity. The guarantee of a high level of security of electricity supply is a key objective for the successful operation of the internal market and that Directive gives the Member States the possibility of imposing public service obligations on electricity undertakings, inter alia, in relation to security of supply. Those public service obligations should be defined as precisely and strictly as possible, and should not result in the creation of generation capacity that goes beyond what is necessary to prevent undue interruption of distribution of electricity to final customers.

(2) Demand for electricity is usually forecast over a medium-term period on the basis of scenarios elaborated by transmission system operators or by other organisations capable of constructing them at the request of a Member State.

(3) A competitive single EU electricity market necessitates transparent and non-discriminatory policies on security of electricity supply compatible with the requirements of such a market. The absence of such policies in individual Member States, or significant differences between the policies of the Member States would lead to distortions of competition. The definition of clear roles and responsibilities of the competent authorities, as well as of Member States themselves and all relevant market actors, is therefore crucial in safeguarding security of electricity supply and the proper functioning of the internal market while at the same time avoiding creating obstacles to market entrants, such as companies generating or supplying electricity in a Member State that have recently started their operations in that Member State, and avoiding creating distortions of the internal market for electricity or significant difficulties for market actors, including companies with small market shares, such as generators or suppliers with a very small share in the relevant Community market.


(5) When promoting electricity from renewable energy sources, it is necessary to ensure the availability of associated back-up capacity, where technically necessary, in order to maintain the reliability and security of the network.

(6) In order to meet the Community’s environmental commitments and to reduce its dependence on imported energy, it is important to take account of the long-term effects of growth of electricity demand. (7) Cooperation between national transmission system operators in issues relating to network se-
Security of electricity supply. This report should cover short, medium and long-term factors relevant to the development of a well-functioning internal market and could be further improved. A lack of coordination regarding network security is detrimental to the development of equal conditions for competition.

(8) The main intention of the relevant technical rules and recommendations, such as those contained in the Union for the Coordination of Transmission of Electricity (UCTE) Operation handbook, similar rules and recommendations developed by Nordel, the Baltic Grid Code and those for the United Kingdom and Irish systems, is to provide support for the technical operation of the interconnected network, thus contributing to meeting the need for continued operation of the network in the event of system failure at an individual point or points in the network and minimising the costs related to mitigating such supply disruption.

(9) Transmission and distribution system operators should be required to deliver a high level of service to final customers in terms of the frequency and duration of interruptions.

(10) Measures which may be used to ensure that appropriate levels of generation reserve capacity are maintained should be market-based and non-discriminatory and could include measures such as contractual guarantees and arrangements, capacity options or capacity obligations. These measures could also be supplemented by other non-discriminatory instruments such as capacity payments.

(11) In order to ensure that appropriate prior information is available, Member States should publish measures taken to maintain the balance between supply and demand among actual and potential investors in generation and among electricity consumers.

(12) Without prejudice to Articles 86, 87 and 88 of the Treaty, it is important for Member States to lay down an unambiguous, appropriate and stable framework which will facilitate security of electricity supply and is conducive to investments in generation capacity and demand management techniques. It is also important that appropriate measures are taken to ensure a regulatory framework that encourages investment in new transmission interconnection, especially between Member States.

(13) The European Council in Barcelona on 15 and 16 March 2002 agreed on a level of interconnection between Member States. Low levels of interconnection have the effect of fragmenting the market and are an obstacle to the development of competition. The existence of adequate physical transmission interconnection capacity, whether cross-border or not, is crucial but it is not a sufficient condition for competition to be fully effective. In the interest of final customers, the relation between the potential benefits of new interconnection projects and the costs for such projects should be reasonably balanced.

(14) While it is important to determine the maximum available transfer capacities without breaching the requirements of secure network operation, it is also important to ensure full transparency of the capacity calculation and allocation procedure in the transmission system. In this way, it could be possible to make better use of existing capacity, and no false shortage signals will be given to the market, which will support the achievement of a fully competitive internal market as envisaged in Directive 2003/54/EC.

(15) Transmission and distribution system operators need an appropriate and stable regulatory framework for investment, and for maintenance and renewal of the networks.

(16) Article 4 of Directive 2003/54/EC requires Member States to monitor and submit a report on security of electricity supply. This report should cover short, medium and long-term factors relevant for security of supply including transmission system operators’ intention to invest in the network. In compiling such a report, Member States will be expected to refer to information and assessments already being undertaken by transmission system operators both on an individual and collective basis, including at European level.

(17) Member States should ensure the effective implementation of this Directive.

(18) Since the objectives of the proposed action, namely secure electricity supplies based on fair competition and the creation of a fully operational internal electricity market, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principles of subsidiarity as set out in Article 5 of the Treaty. 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 those objectives.

Article 1
Scope

1. This Directive establishes measures aimed at safeguarding security of electricity supply so as to ensure the proper functioning of the internal market for electricity and to ensure:
(a) an adequate level of generation capacity;
(b) an adequate balance between supply and demand; and
(c) an appropriate level of interconnection between Contracting Parties for the development of the internal market.

2. It establishes a framework within which Contracting Parties are to define transparent, stable and non-discriminatory policies on security of electricity supply compatible with the requirements of a competitive internal market for electricity.

Article 2
Definitions

For the purposes of this Directive, the definitions contained in Article 2 of Directive 2003/54/EC shall apply. In addition, the following definitions shall apply:
(a) “regulatory authority” means the regulatory authorities in Contracting Parties, as designated in accordance with Article 23 of Directive 2003/54/EC;
(b) “security of electricity supply” means the ability of an electricity system to supply final customers with electricity, as provided for under this Directive;
(c) “operational network security” means the continuous operation of the transmission and, where appropriate, the distribution network under foreseeable circumstances;
(d) “balance between supply and demand” means the satisfaction of foreseeable demands of consumers to use electricity without the need to enforce measures to reduce consumption.
Article 3
General provisions

1. Contracting Parties shall ensure a high level of security of electricity supply by taking the necessary measures to facilitate a stable investment climate and by defining the roles and responsibilities of competent authorities, including regulatory authorities where relevant, and all relevant market actors and publishing information thereon. The relevant market actors include, inter alia, transmission and distribution system operators, electricity generators, suppliers and final customers.

2. In implementing the measures referred to in paragraph 1, Contracting Parties shall take account of:
(a) the importance of ensuring continuity of electricity supplies;
(b) the importance of a transparent and stable regulatory framework;
(c) the internal market and the possibilities for cross-border cooperation in relation to security of electricity supply;
(d) the need for regular maintenance and, where necessary, renewal of the transmission and distribution networks to maintain the performance of the network;
(f) the need to ensure sufficient transmission and generation reserve capacity for stable operation; and
(g) the importance of encouraging the establishment of liquid wholesale markets.

3. In implementing the measures referred to in paragraph 1, Contracting Parties may also take account of:
(a) the degree of diversity in electricity generation at national or relevant regional level;
(b) the importance of reducing the long-term effects of the growth of electricity demand;
(c) the importance of encouraging energy efficiency and the adoption of new technologies, in particular demand management technologies, renewable energy technologies and distributed generation; and
(d) the importance of removing administrative barriers to investments in infrastructure and generation capacity.

4. Contracting Parties shall ensure that any measures adopted in accordance with this Directive are non-discriminatory and do not place an unreasonable burden on the market actors, including market entrants and companies with small market shares. Contracting Parties shall also take into account, before their adoption, the impact of the measures on the cost of electricity to final customers.

5. In ensuring an appropriate level of interconnection between Contracting Parties, as referred to in Article 1(1)(c), special consideration shall be given:
(a) each Contracting Party’s specific geographical situation;
(b) maintaining a reasonable balance between the costs of building new interconnectors and the benefit to final customers; and
(c) ensuring that existing interconnectors are used as efficiently as possible.

Article 4
Operational network security

1. (a) Contracting Parties or the competent authorities shall ensure that transmission system operators set the minimum operational rules and obligations on network security.

Before setting such rules and obligations, they shall consult with the relevant actors in the countries with which interconnection exists;
(b) notwithstanding the first subparagraph of point (a), Contracting Parties may require transmission system operators to submit such rules and obligations to the competent authority for approval;
(c) Contracting Parties shall ensure that transmission and, where appropriate, distribution system operators comply with the minimum operational rules and obligations on network security;
(d) Contracting Parties shall require transmission system operators to maintain an appropriate level of operational network security.

To that effect, transmission system operators shall maintain an appropriate level of technical transmission reserve capacity for operational network security and cooperate with the transmission system operators concerned to which they are interconnected.

The level of foreseeable circumstances in which security shall be maintained is defined in the operational network security rules;
(e) Contracting Parties shall, in particular, ensure that interconnected transmission and, where appropriate, distribution system operators exchange information relating to the operation of networks in a timely and effective fashion in line with the minimum operational requirements. The same requirements shall, where appropriate, apply to transmission and distribution system operators that are interconnected with system operators outside the Energy Community.

2. Contracting Parties or the competent authorities shall ensure that transmission and, where appropriate, distribution system operators set and meet quality of supply and network security performance objectives. These objectives shall be subject to approval by the Contracting Parties or competent authorities and their implementation shall be monitored by them. They shall be objective, transparent and non-discriminatory and shall be published.

4. Contracting Parties shall ensure that curtailment of supply in emergency situations shall be based on predefined criteria relating to the management of imbalances by transmission system operators. Any safeguard measures shall be taken in close consultation with other relevant transmission system operators, respecting relevant bilateral agreements, including agreements on the exchange of information.

Article 5
Maintaining balance between supply and demand

1. Contracting Parties shall take appropriate measures to maintain a balance between the demand for electricity and the availability of generation capacity. In particular, Contracting Parties shall:
(a) without prejudice to the particular requirements of small isolated systems, encourage the establishment of a wholesale market framework that provides suitable price signals for generation and consumption;
(b) require transmission system operators to ensure that an appropriate level of generation reserve capacity is available for balancing purposes and/or to adopt equivalent market based measures.
2. Without prejudice to Articles 87 and 88 of the Treaty, Contracting Parties may also take additional measures, including but not limited to the following:
(a) provisions facilitating new generation capacity and the entry of new generation companies to the market;
(b) removal of barriers that prevent the use of interruptible contracts;
(c) removal of barriers that prevent the conclusion of contracts of varying lengths for both producers and customers;
(d) encouragement of the adoption of real-time demand management technologies such as advanced metering systems;
(e) encouragement of energy conservation measures;
(f) tendering procedures or any procedure equivalent in terms of transparency and non-discrimination in accordance with Article 7(1) of Directive 2003/54/EC.
3. Contracting Parties shall publish the measures to be taken pursuant to this Article and shall ensure the widest possible dissemination thereof.

Article 6
Network investment

1. Contracting Parties shall establish a regulatory framework that:
(a) provides investment signals for both the transmission and distribution system network operators to develop their networks in order to meet foreseeable demand from the market; and
(b) facilitates maintenance and, where necessary, renewal of their networks.
2. Without prejudice to Regulation (EC) No 1228/2003, Contracting Parties may allow for merchant investments in interconnection.

Contracting Parties shall ensure that decisions on investments in interconnection are taken in close cooperation between relevant transmission system operators.

Article 7
Reporting

1. Contracting Parties shall ensure that the report referred to in Article 4 of Directive 2003/54/EC covers the overall adequacy of the electricity system to supply current and projected demands for electricity, comprising:
(a) operational network security;
(b) the projected balance of supply and demand for the next five-year period;
(c) the prospects for security of electricity supply for the period between five and 15 years from the date of the report; and
(d) the investment intentions, for the next five or more calendar years, of transmission system operators and those of any other party of which they are aware, as regards the provision of cross-border interconnection capacity.
2. Contracting Parties or the competent authorities shall prepare the report in close cooperation with transmission system operators. Transmission system operators shall, if appropriate, consult with neighbouring transmission system operators.
3. The section of the report relating to interconnection investment intentions, referred to in paragraph 1(d), shall take account of:
(a) the principles of congestion management, as set out in Regulation (EC) No 1228/2003;
(b) existing and planned transmission lines;
(c) expected patterns of generation, supply, cross-border exchanges and consumption, allowing for demand management measures, and
(d) regional, national and European sustainable development objectives, including those projects forming part of the Axes for priority projects set out in Annex I to Decision No 1229/2003/EC.

Contracting Parties shall ensure that transmission system operators provide information on their investment intentions or those of any other party of which they are aware as regards the provision of cross-border interconnection capacity.

Contracting Parties may also require transmission system operators to provide information on investments related to the building of internal lines that materially affect the provision of cross-border interconnection.

4. Contracting Parties or the competent authorities shall ensure that the necessary means for access to the relevant data are facilitated to the transmission system operators and/or to the competent authorities where relevant in the development of this task. The non-disclosure of confidential information shall be ensured.
5. On the basis of the information referred to in paragraph 1(d), received from the competent authorities, the Commission shall report to the Contracting Parties, the competent authorities and the European Regulators Group on Electricity and Gas established by Commission Decision 2003/796/EC.
EC [8] on the investments planned and their contribution to the objectives set out in Article 1(1). This report may be combined with the reporting provided for in point (c) of Article 28(1) of Directive 2003/54/EC and shall be published.

**Article 8**

**Transposition**

Each Contracting Parties shall implement Directive 2005/89/EC concerning measures to safeguard security of electricity supply and infrastructure investment before 31 December 2009.¹

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

**Article 9**

**Reporting**

The Secretariat shall monitor and review the implementation of Directive 2005/89/EC in the Contracting Parties and shall submit a progress report to the Permanent High Level Group by 30 June 2010.

**Articles 10 and 11**

**Entry into force and Addressees**

This Decision [2007/06/MC-EnC] enters into force on the day of its adoption and is addressed to the Contracting Parties.

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¹ The text displayed here corresponds to Article 1(1) of Decision 2007/06/MC-EnC. For the Republic of Moldova, the corresponding date is 31 December 2010 and for Ukraine 1 January 2012.

² The text displayed here corresponds to Article 1(3) of Decision 2007/06/MC-EnC.

³ The text displayed here corresponds to Article 4 of Decision 2007/06/MC-EnC.
ACQUIS COMMUNAUTAIRE

GAS


The adaptations made by Ministerial Council Decision 2011/02/MC-EnC are highlighted in **bold and blue**, the changes in the present Directive in comparison to Directive 2003/55/EC are highlighted in **bold**.

Whereas:

(1) The internal market in natural gas, which has been progressively implemented throughout the Community 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.


(3) 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.

(4) 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.

(5) 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.

(6) 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.

(7) 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”.

(8) 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 referred to ownership unbundling at transmission level as the most effective tool by 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.

(9) 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.


(11) 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.

(12) 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.

(13) 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.

(14) Where, on 3 September 2009, an undertaking owning a transmission system is 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.

(15) 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.

(16) 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.

(17) In order to develop competition in the internal market in gas, large non-household customers 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.

(18) 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.

(19) Under this Directive 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 law.

(20) 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.

(21) Fully effective separation of network activities from supply and production activities should apply throughout the Community to both Community and non-Community undertakings. To ensure that network activities and supply and production activities throughout the Community 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 consis-
tent application of those rules across the Community, 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 and solidarity and energy security within the Community, 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.

(22) 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. Without prejudice to the international obligations of the Community, the Community considers that the gas transmission system sector is of high importance to the Community and therefore additional safeguards are necessary regarding the preservation of the security of supply of energy to the Community to avoid any threats to public order and public security in the Community and the welfare of the citizens of the Union. The security of supply of energy to the Community requires, in particular, an assessment of the independence of network operation, the level of the Community’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 and the third country concerned. Where appropriate the Commission is encouraged to submit recommendations to negotiate relevant agreements with third countries addressing the security of supply of energy to the Community or to include the necessary issues in other negotiations with those third countries.

(23) 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.

(24) 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.

(25) 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.

(26) 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.

(27) 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.

(28) 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.

(29) 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.

(30) 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.
(31) 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 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-put and off-take of gas and not to endanger the system.

(32) 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.

(33) 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.

(34) 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.

(35) Investments in major new infrastructure should be strongly promoted while ensuring the proper functioning of the internal market 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 (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 transporting gas from third countries into the Community. Exemptions granted under Directive 2003/55/EC continue to apply until the scheduled expiry date as decided in the granted exemption decision.

(36) 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 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.

(37) Natural gas is mainly, and increasingly, imported into the Community from third countries. Community 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.

(38) 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, 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.

(39) Member States or, where a Member State has so provided, the regulatory authority, should encourage the development of interruptible supply contracts.

(40) 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 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.

(41) 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.

(42) Long-term contracts will continue to be 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, 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.

(43) In order to ensure the maintenance of high standards of public service in the 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 at household customers or small and medium-sized enterprises.

(44) 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 law.

(45) 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 tools. It should be possible for such tools to include liability mechanisms to guarantee the necessary investment.

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

(47) 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 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. 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. Consumers should also have the right to be properly informed about their energy consumption. Prepayments should 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.

(48) 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 benefit from a competitive market. Consumer rights should be enforced by Member States or, where a Member State has so provided, the regulatory authorities.

(49) Clear and comprehensible information should be made available to consumers concerning their rights in relation to the energy sector. The Commission should establish, 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 provided to all consumers and should be made publicly available.

(50) Energy poverty is a growing problem in the Community. Member States which are affected and which have not yet done so should, therefore, develop national action plans or other appropriate frameworks to tackle energy poverty, 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.

(51) 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.

(52) It should be possible to base the introduction of intelligent metering systems on an economic assessment. 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 gas consumption, Member States should be able to take this into account when implementing intelligent metering systems.

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

(54) 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.

(55) 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.

(56) 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 and regional level, also incorporating the isolated systems forming gas islands that persist in the Community.

(57) The development of a true internal market in natural gas, through a network connected across the Community, 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.

(58) 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.

(59) The regulatory authorities should also provide information on the market to permit the Commis-
tion 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.

(60) 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 level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. 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.

(61) 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, the Commission may adopt Guidelines to achieve the necessary degree of harmonisation. Such Guidelines, 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.

(62) 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.

(63) 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.

(64) In accordance with point 34 of the Interinstitutional Agreement on better law-making, Member States are encouraged to draw up, for themselves and in the interest of the Community, their own tables, illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public.

(65) 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.

(66) This Directive respects the fundamental rights, and observes the principles, recognised in particular by the Charter of Fundamental Rights of the European Union.

CHAPTER I

SUBJECT MATTER, SCOPE AND DEFINITIONS

Article 1

Subject matter and scope

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, access to the market, the criteria and procedures applicable to the granting of authorisations for transmission, distribution, supply and storage of natural gas and the operation of systems.

2. 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.

Article 2

Definitions

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

(1) "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;

(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 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;

(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 gas;

(5) “distribution” means the transport of natural gas through local or regional pipeline networks with a view to its delivery to customers, but not including supply;

(6) “distribution system operator” means a natural or legal person who carries out the function of distribution and is responsible for operating, ensuring the maintenance of, and, if necessary, developing the distribution system in a given area and, 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;
(7) “supply” means the sale, including resale, of natural gas, including LNG, to customers;

(8) “supply undertaking” means any natural or legal person who carries out the function of supply;

(9) “storage facility” means a facility used for the stocking of natural gas and owned and/or operated by a natural gas undertaking, including the part of LNG facilities used for storage but excluding the portion used for production operations, and excluding facilities reserved exclusively for transmission system operators in carrying out their functions;

(10) “storage system operator” means a natural or legal person who carries out the function of storage and is responsible for operating a storage facility;

(11) “LNG facility” means a terminal which is used for the liquefaction of natural gas or the 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;

(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;

(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;

(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;

(15) “linepack” means the storage of gas by compression in gas transmission and distribution systems, but not including facilities reserved for transmission system operators carrying out their functions;

(16) “interconnected system” means a number of systems which are linked with each other;

(17) “interconnector” means a transmission line which crosses or spans a border between Contracting Parties for the sole purpose of connecting the national transmission systems of those Contracting Parties;

(18) “direct line” means a natural gas pipeline complementary to the interconnected system;

(19) “integrated natural gas undertaking” means a vertically or horizontally integrated undertaking;

(20) “vertically integrated undertaking” means a natural gas undertaking or a group of natural gas 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 storage, and at least one of the functions of production or supply of natural gas;

(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-gas activity;

(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) of the Treaty on consolidated accounts 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;

(23) “system user” means a natural or legal person supplying to, or being supplied by, the system;

(24) “customer” means a wholesale or final customer of natural gas or a natural gas undertaking which purchases natural gas;

(25) “household customer” means a customer purchasing natural gas for his own household consumption;

(26) “non-household customer” means a customer purchasing natural gas which is not for his own household use;

(27) “final customer” means a customer purchasing natural gas for his own use;

(28) “eligible customer” means a customer who is free to purchase gas from the supplier of his choice, within the meaning of Article 37;

(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 Contracting Party 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;

(33) “new infrastructure” means an infrastructure not completed by 1 July 2007;

(34) “gas supply contract” means a contract for the supply of natural gas, but does not include a gas derivative;


(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.
CHAPTER II

GENERAL RULES FOR THE ORGANISATION OF THE SECTOR

Article 3

Public service obligations and customer protection

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

2. Having full regard to the relevant provisions of the Energy Community Treaty, in particular Article 19 thereof, Contracting Parties may impose on undertakings operating in the gas sector, in the general economic interest, public service obligations which may relate to security, including security of supply, regularity, quality and price of supplies, and environmental protection, including energy efficiency, energy from renewable sources and climate protection. Such obligations shall be clearly defined, transparent, non-discriminatory, verifiable and shall guarantee equality of access for natural gas undertakings of the Energy Community to national consumers. In relation to security of supply, energy efficiency/demand-side management and for the fulfilment of environmental goals and goals for energy from renewable sources, as referred to in this paragraph, Contracting Parties may introduce the implementation of long-term planning, taking into account the possibility of third parties seeking access to the system.

3. Contracting Parties 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 Contracting Party 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. Contracting Parties 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. Contracting Parties 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. Contracting Parties 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. Contracting Parties 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 Energy Community Secretariat, where relevant, in accordance with paragraph 11 of this Article. Such notification shall not include measures taken within the general social security system.

5. Contracting Parties 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 Contracting Party 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, Contracting Parties shall take all measures necessary to ensure that administrative procedures do not constitute a barrier for supply undertakings already registered in another Contracting Party.

6. Contracting Parties 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.

Contracting Parties 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. Contracting Parties 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 tools, as well as financing from the international donors, for the maintenance and construction of necessary network infrastructure, including interconnection capacity.

8. In order to promote energy efficiency, Contracting Parties or, where a Contracting Party 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. Contracting Parties 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.

Contracting Parties 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. Contracting Parties 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 Energy Community. The interests of the Energy Community include, inter alia, competition with regard to eligible customers in accordance with this Directive and Annex III of the Energy Community Treaty.

1 In Directive 2003/55/EC (applicable until 1 January 2015), the first sentence of the corresponding provision, Article 3(3), additionally includes: "including appropriate measures to help them avoid disconnection".

2 In Directive 2003/55/EC (applicable until 1 January 2015), the corresponding provision, Article 3(3), reads ‘may’ instead of ‘shall’.
11. Contracting Parties shall, upon implementation of this Directive, inform the Energy Community Secretariat 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 Energy Community Secretariat subsequently every two years of any changes to such measures, whether or not they require a derogation from this Directive.

12. Contracting Parties 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 checklists established by the European Commission ... .

The checklists shall be adopted by the Permanent High Level Group, following the procedure laid down in Article 79 of the Treaty.

Article 4
Authorisation procedure

1. In circumstances where an authorisation (for example, licence, permission, concession, consent or approval) is required for the construction or operation of natural gas facilities, the Contracting Parties 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. Contracting Parties 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 Contracting Parties 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. Contracting Parties shall ensure that authorisation procedures for facilities, pipelines and associated equipment take into account the importance of the project for the internal market in natural gas where appropriate.

3. Contracting Parties 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 Energy Community Secretariat for information. Contracting Parties shall establish a procedure enabling the applicant to appeal against such refusals.

4. For the development of newly supplied areas and efficient operation generally, and without prejudice to Article 38, Contracting Parties 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.

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4 Replaced by Article 6 of Decision 2011/02/MC-EnC.
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 Energy Community. ...

2. The Energy Community Regulatory Board shall cooperate with national regulatory authorities and transmission system operators to ensure the compatibility of regulatory frameworks with other European regions with the aim of creating a competitive internal market in natural gas. ...

3. Contracting Parties 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 Contracting Parties 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 notified to the Energy Community Regulatory Board. Compliance with the programme shall be independently monitored by the compliance officers of the vertically integrated transmission system operators.

Article 8
Technical rules

The regulatory authorities where Contracting Parties have so provided or Contracting Parties shall ensure that technical safety criteria are defined and that technical rules establishing the minimum technical design and operational requirements for the connection to the system of LNG facilities, storage facilities, other transmission or distribution systems, and direct lines, are developed and made public. Those technical rules shall ensure the interoperability of systems and shall be objective and non-discriminatory. ...
(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, as adapted under Article 24 of the Energy Community Treaty, and the terms “transmission system operator” and “transmission system” shall include “transmission system operator” and “transmission system” within the meaning of that Directive.

4. Contracting Parties may allow for derogations from points (b) and (c) of paragraph 1 until 1 June 2017, 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 Contracting Parties for the transmission systems concerned. No other undertaking may be part of the joint venture, unless it has been approved under Article 14 as an independent system operator or as an independent transmission operator for the purposes of 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 Contracting Party 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. Contracting Parties shall ensure that neither commercially sensitive information referred to in Article 16 held by a transmission system operator which was part of a vertically integrated undertaking, nor the staff of such a transmission system operator, is transferred to undertakings performing any of the functions of production and supply.

8. Where on 6 October 2011, the transmission system belongs to a vertically integrated undertaking a Contracting Party may decide not to apply paragraph 1.

In such case, the Contracting Party concerned shall either:
   (a) designate an independent system operator in accordance with Article 14, or
   (b) comply with the provisions of Chapter IV.

9. Where on 6 October 2011, the transmission system belongs to a vertically integrated undertaking and there are arrangements in place which guarantee more effective independence of the transmission system operator than the provisions of Chapter IV, a Contracting Party may decide not to apply paragraph 1.

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 10(4), (5) and (6) of this Directive and in Article 3 of Regulation (EC) No 715/2009, as adapted under Article 24 of the Energy Community Treaty, pursuant to which the Energy Community Secretariat 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 Contracting Parties which apply paragraph 1.

**Article 10**

**Designation and certification of transmission system operators**

1. Before an undertaking is approved and designated as transmission system 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, as adapted under Article 24 of the Energy Community Treaty.

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, pursuant to the certification procedure, shall be approved and designated as transmission system operators by Contracting Parties. The designation of transmission system operators shall be notified to the Energy Community Secretariat and published in a dedicated section of the website of the Energy Community.

3. Transmission system operators shall notify to the regulatory authority any planned transaction which may require a reassessment of their compliance with the requirements of Article 9.

4. The regulatory authorities shall monitor the continuing compliance of transmission system operators with the requirements of Article 9. They shall open a certification procedure to ensure such compliance:
   (a) upon notification by the transmission system operator pursuant to paragraph 3;
   (b) on their own initiative where they have knowledge that a planned change in rights or influence over transmission system owners or transmission system operators may lead to an infringement of Article 9, or where they have reason to believe that such an infringement may have occurred; or
   (c) upon a reasoned request from the Energy Community Secretariat.

5. The regulatory authorities shall adopt a decision on the certification of a transmission system operator within a period of four months from the date of the notification by the transmission system operator or from the date of the Energy Community Secretariat re-
quest. 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 Energy Community Secretariat by the regulatory authority, together with all the relevant information with respect to that decision. The Energy Community Secretariat shall act in accordance with the procedure laid down in Article 3 of Regulation (EC) No 715/2009, as adapted under Article 24 of the Energy Community Treaty.

7. The regulatory authorities and the Energy Community Secretariat may request from transmission system operators and undertakings performing any of the functions of producers in the energy sector, the information relevant for the fulfillment of their tasks under this Article.

8. The regulatory authorities and the Energy Community Secretariat shall preserve the confidentiality of commercially sensitive information.

Article 11
Certification in relation to third countries

1. Where certification is requested by a transmission system owner or a transmission system operator which is controlled by a person or persons from a third country or third countries, the regulatory authority shall notify the Energy Community Secretariat.

The regulatory authority shall also notify to the Energy Community Secretariat 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.

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 within four months 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 9; and

(b) to the regulatory authority or to another competent authority designated by the Contracting Party that granting certification will not put at risk the security of energy supply of the Contracting Party and the Energy Community. In considering that question the regulatory authority or other competent authority so designated shall take into account:

(i) the rights and obligations of the Energy Community with respect to that third country arising under international law, including any agreement concluded with one or more third countries to which the Energy Community is a party and which addresses the issues of security of energy supply

(ii) the rights and obligations of the Contracting Party with respect to that third country arising under agreements concluded with it, insofar as they are in compliance with Energy Community 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 Energy Community Secretariat without delay, together with all the relevant information with respect to that decision.

5. Contracting Parties 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 Energy Community Secretariat on whether:

(a) the entity concerned complies with the requirements of Article 9; and

(b) granting certification will not put at risk the security of energy supply to the Energy Community.

6. The Energy Community Secretariat shall examine the request referred to in paragraph 5 as soon as it is received. Within a period of 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 its opinion, the Secretariat shall request the views of the Energy Community Regulatory Board. It may also request the views of the Contracting Party concerned and interested parties. In the event that the Energy Community Secretariat makes such a request, the two-month period shall be extended by two months.

In the absence of an opinion by the Energy Community Secretariat within the period referred to in the first and second subparagraphs, the Energy Community Secretariat 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 Energy Community, the Energy Community Secretariat shall take into account:

(a) the specific facts of the case and the third country or third countries concerned; and

(b) the rights and obligations of the Energy Community with respect to that third country arising under international law, including any agreement concluded with one or more third countries to which the Energy Community is a party and which addresses the issues of security of energy supply.

The national regulatory authority shall, within a period of 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 the Energy Community Secretariat’s opinion. In any event Contracting Parties shall have the right to refuse certification where granting certification puts at risk the Contracting Party’s security of energy supply or the security of energy supply of another Contracting Party. Where the Contracting Party 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...

footnotes:
7 According to Article 3(1) of Decision 2011/02/Mc-EnC, Article 11 shall apply as from 1 January 2017.
8 According to Article 10(1) of Decision 2011/02/Mc-EnC, “the regulatory authority or other competent authority designated shall also take into account the rights and obligations resulting from association or trade agreements between the Contracting Party and the European Union”.
9 Article 10(1) of Decision 2011/02/Mc-EnC applies.
authority's final decision and the opinion of the Energy Community Secretariat shall be published together. Where the final decision diverges from the Energy Community Secretariat’s opinion, the Contracting Party concerned shall provide and publish, together with that decision, the reasoning underlying such decision.

9. Nothing in this Article shall affect the right of Contracting Parties to exercise, in compliance with Energy Community law, national legal controls to protect legitimate public security interests.

10. ...

11. ...

**Article 12**

**Designation of storage and LNG system operators**

Contracting Parties shall designate, or shall require natural gas undertakings which own storage or LNG facilities to designate, for a period of time to be determined by Contracting Parties, having regard to considerations of efficiency and economic balance, one or more storage and LNG system operators.

**Article 13**

**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.

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.

4. The regulatory authorities where Contracting Parties have so provided or Contracting Parties may require transmission system operators to comply with minimum standards for the maintenance and development of the transmission system, including interconnection capacity.

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 14**

**Independent system operators**

1. Where the transmission system belongs to a vertically integrated undertaking on 6 October 2011, Contracting Parties may decide not to apply Article 9(1) and designate an independent system operator upon a proposal from the transmission system owner. Such designation shall be subject to the opinion of the Energy Community Secretariat.

2. The Contracting Party may approve and designate an independent system operator only where:

   (a) the candidate operator has demonstrated that it complies with the requirements of Article 9(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, as adapted under Article 24 of the Energy Community Treaty, including the cooperation of transmission system operators at regional level.

3. Undertakings which have been certified by the regulatory authority as having complied with the requirements of Article 11 and of paragraph 2 of this Article shall be approved and designated as independent system operators by Contracting Parties. The certification procedure in either Article 10 of this Directive and Article 3 of Regulation (EC) No 715/2009, as adapted under Article 24 of the Energy Community Treaty, or in Article 11 of this Directive shall be applicable.

4. 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.

5. 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 fulfillment 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.

6. 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.

Article 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 41(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. ...

Article 16

Confidentiality for transmission system operators and transmission system owners

1. Without prejudice to Article 30 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, Contracting Parties 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.
CHAPTER IV

INDEPENDENT TRANSMISSION OPERATOR

Article 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 20, 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 13:
(a) the representation of the transmission system operator and contacts to third parties and the regulatory authorities;
(b) ...
(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.
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 18

Independence of the transmission system operator

1. Without prejudice to the decisions of the Supervisory Body under Article 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 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 22.
5. In fulfilling their tasks in Article 13 and Article 17(2) of this Directive, and in complying with Article 13(1), Article 14(1)(a), Article 16(2), (3) and (5), Article 18(6) and Article 21(1) of Regulation (EC) No 715/2009, as adapted under Article 24 of the Energy Community Treaty, 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 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.

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 Contracting Party concerned. The certification procedure in either Article 10 of this Directive and Article 3 of Regulation (EC) No 715/2009, as adapted under Article 24 of the Energy Community Treaty, or in Article 11 of this Directive shall apply.

**Article 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 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 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 20**

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 22.

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 Contracting Party so provides, members representing other interested parties such as employees of the transmission system operator.

3. The first subparagraph of Article 19(2) and Article 19(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 19(2) shall apply to all the members of the Supervisory Body.

Article 21
Compliance programme and compliance officer

1. Contracting Parties 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 19(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 22.

6. The conditions governing the mandate or the employment conditions of the compliance officer, including the duration of 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 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, as adapted under Article 24 of the Energy Community Treaty, 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 16.

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 fulfillment 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.
Article 22

Network development and powers to make investment decisions

1. Every year, 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.

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

3. When elaborating the ten-year network development plan, 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 Energy 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. The regulatory authority may require the transmission system operator to amend its ten-year network development plan.

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, 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, Contracting Parties 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 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 23

Decision-making powers regarding the connection of storage facilities, LNG regasification facilities and industrial customers to the transmission system

1. The transmission system operator shall establish and publish transparent and efficient procedures and tariffs for non-discriminatory connection of storage facilities, LNG regasification facilities and industrial customers to the transmission system. Those procedures shall be subject to approval by the regulatory authority.

2. The transmission system operator shall not be entitled to refuse the connection of a new storage facility, LNG regasification facility 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 shall ensure sufficient entry and exit capacity for the new connection.

CHAPTER V

DISTRIBUTION AND SUPPLY

Article 24

Designation of distribution system operators

Contracting Parties 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 Contracting Parties, 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 25, 26 and 27.
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.

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.

3. 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.

4. Each distribution system operator shall provide system users with the information they need for efficient access to, including use of, the system.

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 41(6) in a non-discriminatory and cost-reflective way and shall be published.

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 fulfill 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 41(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 39(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 fulfill his task.

3. Where the distribution system operator is part of a vertically integrated undertaking, the Contracting Parties 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. Contracting Parties may decide not to apply paragraphs 1, 2 and 3 to integrated natural gas undertakings serving less than 100000 connected customers.

Confidentiality obligations of distribution system operators

1. Without prejudice to Article 30 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 28
Closed distribution systems

1. Contracting Parties may provide for national regulatory authorities or other competent authorities to classify a system which distributes 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 gas primarily to the owner or operator of the system or to their related undertakings.

2. Contracting Parties may provide for national regulatory authorities to exempt the operator of a closed distribution system from the requirement under Article 32(1) that tariffs, or the methodologies underlying their calculation, are approved prior to their entry into force in accordance with Article 41.

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 41 upon request by a user of the closed 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.

Article 29
Combined operator

12 In Directive 2003/55/EC (applicable until 1 January 2015), the corresponding provision, Article 15 (‘Combined operator’), reads: ‘The rules in Articles 9(1) and 13(1) shall not prevent the operation of a combined transmission and distribution system operator, which is independent in terms of its legal form, organisation and decision making from other activities not relating to transmission, LNG, storage or distribution system operation and which meets the requirements set out in points (a) to (d). These rules shall not create an obligation to separate the ownership of the assets of the combined system from the vertically integrated undertaking: (a) those persons responsible for the management of the combined system operator may not participate in company structures of the integrated natural gas undertaking responsible, directly or indirectly, for the day-to-day operation of the generation, or supply of natural gas; (b) appropriate measures must be taken to ensure that the professional interests of the persons responsible for the management of the combined system operator are taken into account in a manner that ensures that they are capable of acting independently; (c) the combined system operator shall have effective decision-making rights, independent from the integrated natural gas undertaking, with respect to assets necessary to operate, maintain and develop the network. 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 directly in accordance with Article 25(2), 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 combined 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 transmission and distribution lines, that do not exceed the terms of the approved financial plan, or any equivalent instrument; (d) the combined 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 programme shall set out the specific obligations of employees to meet this objective. 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 referred to in Article 25(1) and shall be published.’

Article 26(1) shall not prevent the operation of a combined transmission, LNG, storage and distribution system operator provided that operator complies with Articles 9(1), or 14 and 15, or Chapter IV or falls under Article 49(6).

CHAPTER VI
UNBUNDLING AND TRANSPARENCY OF ACCOUNTS

Article 30
Right of access to accounts

1. Contracting Parties or any competent authority they designate, including the regulatory authorities referred to in Article 39(1) and the dispute settlement authorities referred to in Article 34(3) shall, insofar as necessary to carry out their functions, have right of access to the accounts of natural gas undertakings as set out in Article 31.

2. Contracting Parties and any designated competent authority, including the regulatory authorities referred to in Article 39(1) and the dispute settlement authorities, shall preserve the confidentiality of commercially sensitive information. Contracting Parties may provide for the disclosure of such information where this is necessary in order for the competent authorities to carry out their functions.

Article 31
Unbundling of accounts

1. Contracting Parties 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 which should comply with the Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 44(2)(g) of the Treaty on the annual accounts of certain types of companies. 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 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 keep accounts, which may be consolidated, for other gas activities not relating to transmission, distribution, LNG and storage. Until 1 January 2015, 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, referred to in paragraph 2, 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.

CHAPTER VII
ORGANISATION OF ACCESS TO THE SYSTEM

Article 32
Third-party access

1. **Contracting Parties** 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. **Contracting Parties** shall ensure that those tariffs, or the methodologies underlying their calculation are approved prior to their entry into force in accordance with Article 41 by a regulatory authority referred to in Article 39(1) and that those tariffs - and the methodologies, where only methodologies are approved - are published prior to their entry into force.

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.

3. The provisions of this Directive shall not prevent the conclusion of long-term contracts in so far as they comply with Energy Community competition rules.

Article 33
Access to storage

1. 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, Contracting Parties 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 **Contracting Parties** have so provided or **Contracting Parties** 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 Contracting Parties in the first subparagraph.

2. 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.

3. In the case of negotiated access, **Contracting Parties** or, where **Contracting Parties** 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 **Contracting Parties** have so provided or **Contracting Parties** 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 1 January 2007 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.

4. In the case of regulated access, the regulatory authorities where **Contracting Parties** have so provided or **Contracting Parties** 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 **Contracting Parties** have so provided or **Contracting Parties** 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.

Article 34
Access to upstream pipeline networks

1. **Contracting Parties** 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 Energy Community Secretariat.
2. The access referred to in paragraph 1 shall be provided in a manner determined by the Contracting Party in accordance with the relevant legal instruments. Contracting Parties 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:

(a) the need to refuse access where there is an incompatibility of technical specifications which cannot reasonably be overcome;
(b) 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;
(c) the need to respect the duly substantiated reasonable needs of the owner or operator of the upstream pipeline network for the transport and processing of gas and the interests of all other users of the upstream pipeline network or relevant processing or handling facilities who may be affected; and
(d) the need to apply their laws and administrative procedures, in conformity with Energy Community law, for the grant of authorisation for production or upstream development.

3. Contracting Parties 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 Contracting Party having jurisdiction over the upstream pipeline network which refuses access shall be applied. Where, in cross-border disputes, more than one Contracting Party covers the network concerned, the Contracting Parties concerned shall consult each other with a view to ensuring that the provisions of this Directive are applied consistently.

Article 35
Refusal of access

1. Natural gas undertakings may refuse access to the system on the basis of lack of capacity or where the access to the system would prevent them from carrying out the public service obligations referred to in Article 3(2) which are assigned to them or on the basis of serious economic and financial difficulties with take-or-pay contracts having regard to the criteria and procedures set out in Article 48 and the alternative chosen by the Contracting Party in accordance with paragraph 1 of that Article. Duly substantiated reasons shall be given for any such refusal.

2. Contracting Parties may take the measures necessary to ensure that the natural gas undertaking refusing access to the system on the basis of lack of capacity or a lack of connection 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 Contracting Parties apply Article 4(4), Contracting Parties shall take such measures.

Article 36
New infrastructure

1. Major new gas infrastructure, i.e. interconnectors, LNG and storage facilities, may, upon request, be exempted, for a defined period of time, from the provisions of Articles 9, 32, 33 and 34 and Article 41(6), (8) and (10) under the following conditions:

(a) the investment must enhance competition in gas supply and enhance security of supply;
(b) the level of risk attached to the investment must be such that the investment would not take place unless an exemption was granted;
(c) the infrastructure must be owned by a natural or legal person which is separate at least in terms of its legal form from the system operators in whose systems that infrastructure will be built;
(d) charges must be levied on users of that infrastructure; and
(e) the exemption must not be detrimental to competition or the effective functioning of the internal market in natural gas, or the efficient functioning of the regulated system to which the infrastructure is connected.

2. Paragraph 1 shall also apply to significant increases in capacity in existing infrastructure and to modifications of such infrastructure which enable the development of new sources of gas supply.

3. The regulatory authority referred to in Chapter VIII may, on a case-by-case basis, decide on the exemption referred to in paragraphs 1 and 2.

4. Where the infrastructure in question is located in the territory of more than one Contracting Party, the Energy Community Regulatory Board may submit an advisory opinion to the regulatory authorities of the Contracting Parties concerned, which may be used as a basis for their decision, within two months from the date on which the request for exemption was received by the last of those regulatory authorities.

Where all the regulatory authorities concerned agree on the request for exemption within six months of the date on which it was received by the last of the regulatory authorities, they shall inform the Energy Community Regulatory Board of their decision. The Energy Community Regulatory Board shall exercise the tasks conferred on the regulatory authorities of the Contracting Parties concerned by the present Article:

(a) where all regulatory authorities concerned have not been able to reach an agreement within a period of six months from the date on which the request for exemption was received by the last of those regulatory authorities; or
(b) upon a joint request from the regulatory authorities concerned.

All regulatory authorities concerned may, jointly, request that the period referred to in point (a) of the third subparagraph is extended by up to three months.

5. Before taking a decision, the Energy Community Regulatory Board shall consult the relevant regulatory authorities and the applicants.

6. An exemption may cover all or part of the capacity of the new infrastructure, or of the existing infrastructure with significantly increased capacity.

In deciding to grant an exemption, consideration shall be given, on a case-by-case basis, to the need to impose conditions regarding the duration of the exemption and non-discriminatory access to the
infrastructure. When deciding on those conditions, account shall, in particular, be taken of the additional capacity to be built or the modification of existing capacity, the time horizon of the project and national circumstances.

Before granting an exemption, the regulatory authority shall decide upon the rules and mechanisms for management and allocation of capacity. The rules shall require that all potential users of the infrastructure are invited to indicate their interest in contracting capacity before capacity allocation in the new infrastructure, including for own use, takes place. The regulatory authority shall require congestion management rules to include the obligation to offer unused capacity on the market, and shall require users of the infrastructure to be entitled to trade their contracted capacities on the secondary market. In its assessment of the criteria referred to in points (a), (b) and (e) of paragraph 1, the regulatory authority shall take into account the results of that capacity allocation procedure.

The exemption decision, including any conditions referred to in the second subparagraph of this paragraph, shall be duly reasoned and published.

7. Notwithstanding paragraph 3, Contracting Parties may provide that their regulatory authority or the Energy Community Regulatory Board, as the case may be, shall submit, for the purposes of the formal decision, to the relevant body in the Contracting Party its opinion on the request for an exemption. That opinion shall be published together with the decision.

8. The regulatory authority shall transmit to the Energy Community Secretariat, without delay, a copy of every request for exemption as of its receipt. The decision shall be notified, without delay, by the competent authority to the Energy Community Secretariat, together with all the relevant information with respect to the decision. That information may be submitted to the Energy Community Secretariat in aggregate form, enabling the Energy Community Secretariat to reach a well-founded decision. In particular, the information shall contain:

(a) the detailed reasons on the basis of which the regulatory authority, or Contracting Party, granted or refused the exemption together with a reference to paragraph 1 including the relevant point or points of that paragraph on which such decision is based, including the financial information justifying the need for the exemption;

(b) the analysis undertaken of the effect on competition and the effective functioning of the internal market in natural gas resulting from the grant of the exemption;

(c) the reasons for the time period and the share of the total capacity of the gas infrastructure in question for which the exemption is granted;

(d) in case the exemption relates to an interconnector, the result of the consultation with the regulatory authorities concerned, and

(e) the contribution of the infrastructure to the diversification of gas supply.

9. Within a period of two months from the day following the receipt of a notification, the Energy Community Secretariat may issue an opinion inviting the regulatory authority to amend or withdraw the decision to grant an exemption. That two-month period may be extended by an additional period of two months where further information is sought by the Energy Community Secretariat. That additional period shall begin on the day following the receipt of the complete information. The initial two-month period may also be extended with the consent of both the Energy Community Secretariat and the regulatory authority.

Where the requested information is not provided within the period set out in the request, the notification shall be deemed to be withdrawn unless, before the expiry of that period, either the period has been extended with the consent of both the Energy Community Secretariat and the regulatory authority, or the regulatory authority, in a duly reasoned statement, has informed the Energy Community Secretariat that it considers the notification to be complete.

The notifying bodies shall take the utmost account of a Secretariat opinion that recommends to amend or withdraw the exemption decision. Where the final decision diverges from the Energy Community Secretariat’s opinion, the regulatory authority concerned shall provide and publish, together with that decision, the reasoning underlying such decision. Diverting decisions shall be included in the agenda of the first meeting of the Ministerial Council following the date of the decision, for information and discussion.

The Energy Community Secretariat shall preserve the confidentiality of commercially sensitive information.

The Energy Community Secretariat’s opinion on an exemption decision shall lose its effect two years from its adoption in the event that construction of the infrastructure has not yet started, and five years from its adoption in the event that the infrastructure has not become operational unless the Energy Community Secretariat considers that any delay is due to major obstacles beyond control of the person to whom the exemption has been granted.

10. ...

Article 37
Market opening and reciprocity

1. Contracting Parties shall ensure that the eligible customers comprise:

(a) ...;

(b) from 1 January 2008, all non-household customers;

(c) from 1 January 2015, 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 Contracting Party shall not be prohibited if the customer is eligible in both systems involved; and

(b) ....

According to Article 17(2) of Decision D/2011/02/MC-EnC, the following deadlines ‘shall apply without prejudice to special deadlines agreed in the Protocols of Accession to the Energy Community’.
PART II ACQUIS COMMUNAUTAIRE / GAS / Directive 2009/73/EC

**Article 38**

**Direct lines**

1. **Contracting Parties** 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 **Contracting Parties** 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. **Contracting Parties** 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.

**CHAPTER VIII**

**NATIONAL REGULATORY AUTHORITIES**

**Article 39**

**Designation and independence of regulatory authorities**

1. Each **Contracting Party** 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 **Contracting Parties**, provided that there is one senior representative for representation and contact purposes at **Energy Community** level.

3. By way of derogation from paragraph 1 of this Article, a **Contracting Party** 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 **Contracting Party** of which it is part. That derogation shall be without prejudice to the appointment of one senior representative for representation and contact purposes at **Energy Community** level.

4. **Contracting Parties** shall guarantee the independence of the regulatory authority and shall ensure that it exercises its powers impartially and transparently. For this purpose, **Contracting Parties** 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, **Contracting Parties** 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

   (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 for a fixed term of five up to seven years, renewable once.

In regard to point (b) of the first subparagraph, **Contracting Parties** 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 fulfill the conditions set out in this Article or have been guilty of misconduct under national law.

**Article 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 41, in close consultation with other relevant national authorities, including competition authorities, as appropriate, and without prejudice to their competencies:

(a) promoting, in close cooperation with the **Energy Community Regulatory Board**, regulatory authorities of other **Contracting Parties** and the **Energy Community Secretariat**, a competitive, secure and environmentally sustainable internal market in natural gas within the **Energy Community**, and effective market opening for all customers and suppliers in the **Energy Community**, and ensuring appropriate conditions for the effective and reliable operation of gas networks, taking into account long-term objectives;

(b) developing competitive and properly functioning regional markets within the **Energy Community** in view of the achievement of the objectives referred to in point (a);

(c) eliminating restrictions on trade in natural gas between **Contracting Parties**, including developing appropriate cross-border transmission capacities to meet demand and enhancing the integration of national markets which may facilitate natural gas flow across the **Energy Community**;

(d) helping to achieve, in the most cost-effective way, the development of secure, reli-
able and efficient non-discriminatory systems that are consumer oriented, and promoting system adequacy and, in line 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;
(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 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 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 41
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;
(b) ensuring compliance of transmission and distribution system operators, and where relevant, system owners, as well as of any natural gas undertakings, with their obligations under this Directive and other relevant Energy Community legislation, including as regards cross-border issues;
(c) cooperating in regard to cross-border issues with the regulatory authority or authorities of the Contracting Parties concerned and with the Energy Community Regulatory Board;
(d) complying with, and implementing, any relevant legally binding decisions of the Energy Community Secretariat, of the Energy Community Regulatory Board or of the Energy Community Treaty;
(e) reporting annually on its activity and the fulfillment of its duties to the relevant authorities of the Contracting Parties, to the Energy Community Regulatory Board and the Energy Community Secretariat. Such reports shall cover the steps taken and the results obtained as regards each of the tasks listed in this Article;
(f) ensuring that there are no cross-subsidies between transmission, distribution, storage, LNG and supply activities;
(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 ...; which may include recommendations to amend those investment plans;
(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;
(i) monitoring the level of transparency, including of wholesale prices, and ensuring compliance of natural gas undertakings with transparency obligations;
(j) monitoring the level and effectiveness of market opening and competition at wholesale and retail levels, including on natural gas 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;
(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;
(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 Energy Community law;
(m) monitoring the time taken by transmission and distribution system operators to make connections and repairs;
(n) monitoring and reviewing the access conditions to storage, linepack and other ancillary services as provided for in Article 33. In the event that the access regime to storage is defined according to Article 33(3), that task shall exclude the reviewing of tariffs;
(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;
(p) publishing recommendations, at least annually, in relation to compliance of supply prices with Article 3, and providing those to the competition authorities, where appropriate;
(q) ensuring 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 under point (h) of Annex I;
(r) monitoring the implementation of rules relating to the roles and responsibilities of transmission system operators, distribution system operators, suppliers and customers and other market parties pursuant to Regulation (EC) No 715/2009, as adapted under Article 24 of the Energy Community Treaty;
(s) monitoring the correct application of the criteria that determine whether a storage facility falls under Article 33(3) or (4); and
(t) monitoring the implementation of safeguards measures as referred to in Article 46;
(u) contributing to the compatibility of data exchange processes for the most important market processes at regional level.
2. Where a Contracting Party 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 transmission system 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 Energy Community Regulatory Board 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 ... .

3. In addition to the duties conferred upon it under paragraph 1 of this Article, when an independent system operator has been designated under Article 14, the regulatory authority shall:

(a) monitor the transmission system owner's and the independent system 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 so as to ensure compliance of the independent system 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 in respect of any complaint submitted by either party pursuant to paragraph 11;

(c) without prejudice to the procedure under Article 14(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;

(d) ensure that network access tariffs collected by the independent system operator 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.

4. Contracting Parties 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 undertakings;

(b) to carry out investigations into the functioning of the gas markets, and to decide upon and impose any necessary and proportionate measures to promote effective competition and ensure the proper functioning of the market. Where appropriate, the regulatory authority shall also have the power to cooperate with the national competition authority and the financial market regulators or the Energy Community Secretariat in conducting an investigation relating to competition law;

(c) to require any information from natural gas undertakings relevant for the fulfillment 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 undertakings not complying with their obligations under this Directive or any relevant legally bind-

ing decisions of the regulatory authority or of the Energy Community Regulatory Board, 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 or of up to 10% of the annual turnover of the vertically integrated undertaking on the transmission system operator 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 a transmission system operator has been designated in accordance with Chapter IV, 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 and the vertically integrated undertaking so as to ensure compliance of the transmission system operator with its obligations;

(c) to act as dispute settlement authority between the vertically integrated undertaking and the transmission system 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;

(e) to approve all commercial and financial agreements between the vertically integrated undertaking and the transmission system 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 214. 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; and

(h) to assign all or specific tasks of the transmission system operator to an independent system operator appointed in accordance with Article 14 in case of a persistent breach by the transmission system 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 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;
(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
(c) 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 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 including interconnectors, and the implementation of congestion management rules. To that end, transmission system operators or market operators shall submit their congestion management rules, including capacity allocation, to the national regulatory authorities. National regulatory authorities may request amendments to those rules.

10. Regulatory authorities shall have the authority to require transmission, storage, LNG and distribution system operators, 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 fixing the transmission and distribution tariffs, regulatory authorities shall have the power to fix or approve provisional transmission and distribution tariffs or methodologies and to decide on the appropriate compensatory measures if the final tariffs or methodologies deviate from those provisional tariffs or methodologies.

11. Any party having a complaint against a transmission, storage, LNG or distribution system 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.

12. Any party who is affected and who has a right to claim 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 Contracting Parties, following publication of the decision or proposal for a decision, submit a complaint for review. Such a complaint shall not have suspensive effect.

13. Contracting Parties 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 the provisions of the

Treaty, and in particular Article 82 thereof.\(^\text{13}\)

14. Contracting Parties 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.

15. Complaints referred to in paragraphs 11 and 12 shall be without prejudice to the exercise of rights of appeal under national law.

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.

17. Contracting Parties 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 42
Regulatory regime for cross-border issues

1. Regulatory authorities shall closely consult and cooperate with each other, and shall provide each other and the Energy Community Regulatory Board with any information necessary for the fulfillment 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 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 Contracting Parties;
(b) coordinate the development of all network codes for the relevant transmission system operators and other market actors; and
(c) coordinate the development of the rules governing the management of congestion.

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. ...

\(^{13}\) In the Energy Community Treaty, Article 82 of the EC Treaty is incorporated through Article 18 and Annex III.
CHAPTER IX
RETAIL MARKETS

Article 45
Retail markets

In order to facilitate the emergence of well functioning and transparent retail markets in
the Energy Community, Contracting Parties shall ensure that the roles and responsibilities
of transmission system operators, distribution system operators, supply undertakings and
arrangements, commitment to customers, data exchange and settlement rules, data own-
ership and metering responsibility.

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

CHAPTER X
FINAL PROVISIONS

Article 46
Safeguard measures

1. In the event of a sudden crisis in the energy market or where the physical safety or security of per-
sons, apparatus or installations or system integrity is threatened, a Contracting Party may temporarily
take the necessary safeguard measures.

Instead of the second and third subparagraphs, Articles 36 to 39 of the Energy Community
Treaty apply.

Article 47
Level playing field

1. Measures that the Contracting Parties may take pursuant to this Directive in order to
ensure a level playing field shall be compatible with the Treaty, notably Article 30 thereof,15
and with Energy Community law.

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 the
Energy Community Secretariat, which shall issue an opinion.

3. The Energy Community Secretariat 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 Energy Community
Secretariat 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 Contracting Party concerned or the designated competent authority. Applications shall, in accordance with the choice of Contracting Parties, be presented on a case-by-case basis either before or after refusal of access to the system. Contracting Parties 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 Contracting Party or the designated competent authority may decide to grant a derogation.

2. The Contracting Party, or the designated competent authority, shall notify the Energy Community Secretariat 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 Energy Community Secretariat in an aggregated form, enabling the Energy Community Secretariat to reach a well-founded decision. Within eight weeks of receipt of that notification, the Energy Community Secretariat shall issue an opinion, inviting, as the case may be, the Contracting Party or the designated competent authority concerned to amend or withdraw the decision to grant a derogation.

The Energy Community Secretariat shall preserve the confidentiality of commercially sensitive information.

3. When deciding on the derogations referred to in paragraph 1, the Contracting Party, or the designated competent authority, and the Energy Community Secretariat shall take into account, in particular, the following criteria:

(a) the objective of achieving a competitive gas market;
(b) the need to fulfill 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 1 July 2006 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. Contracting Parties 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 Energy Community Secretariat shall publish the decision in a dedicated section of the website of the Energy Community.

6. ...

**Article 49**

**Emergent and isolated markets**

...

**Article 50**

**Review procedure**

...

**Article 51**

**Committee**

...

**Article 52**

**Reporting**

1. The Secretariat shall monitor and review application of this Decision in the Contracting Parties.

2. The Secretariat shall submit an overall progress report to the Ministerial Council for the first time by 30 June 2012, and thereafter on an annual basis. The progress report shall reflect the progress made on creating a complete and fully operational internal market in...
electricity and gas and the obstacles that remain in this respect, including aspects of market dominance, market concentration, predatory or anti-competitive behaviour and the effect thereof in terms of market distortion. It shall in particular consider:

– the implementation by each Contracting Party of the provisions on unbundling, certification and on independence of the national regulatory authorities and application of these provisions in practice,

– the existence of non-discriminatory network access,

– effective regulation,

– the development of interconnection infrastructure and the security of supply situation in the Energy Community,

– the extent to which the full benefits of the opening of markets are accruing to small enterprises and household customers, notably with respect to public service and universal service standards,

– the extent to which markets are in practice open to effective competition, including aspects of market dominance, market concentration and predatory or anti-competitive behaviour,

– the extent to which customers are actually switching suppliers and renegotiating tariffs,

– price developments, including supply prices, in relation to the degree of opening of the markets, and

– the experience gained from application of this Decision as far as effective independence of system operators in vertically integrated undertakings is concerned and whether other measures in addition to functional independence and separation of accounts have been developed which have effects equivalent to legal unbundling.

3. The Secretariat shall present a report to the Ministerial Council for the first time by 30 June 2012, and thereafter on an annual basis, summarising the opinions issued by the Secretariat in application of the acts referred to in Article 1, as adapted by this Decision.

**Article 53**

Repeal

...  

**Article 54**\(^\text{22}\)

Implementation of the energy acquis

1. Each Contracting Party shall bring into force the laws, regulations and administrative provisions necessary to comply with ... Directive 2009/73/EC, ... and Regulation (EC) No 715/2009, as adapted by this Decision, by 1 January 2015. They shall forthwith inform the Energy Community Secretariat thereof.

The Contracting Parties shall apply the measures referred to in the previous paragraph with effect from 1 January 2015 with the following exceptions:

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\(^{22}\) The text displayed here corresponds to Article 3 of Decision 2011/02/MC-EnC.
ANNEX I

MEASURES ON CONSUMER PROTECTION

1. Without prejudice to Energy Community rules on consumer protection .. the measures referred to in Article 3 are to ensure that customers:

(a) have a right to a contract with their gas service provider that specifies:
- the identity and address of the supplier,
- the services provided, the service quality levels offered, as well as the time for the initial connection,
- the types of maintenance service offered,
- the means by which up-to-date information on all applicable tariffs and maintenance charges may be obtained,
- the duration of the contract, the conditions for renewal and termination of services and of the contract, and whether withdrawal from the contract without charge is permitted,
- any compensation and the refund arrangements which apply if contracted service quality levels are not met including inaccurate and delayed billing,
- the method of initiating procedures for settlement of disputes in accordance with point (f); and,
- information relating to consumer rights, including on the complaint handling and all of the information referred to in this point, clearly communicated through billing or the natural gas undertaking's web site.

Conditions shall be fair and well-known in advance. In any event, that information should 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 point shall also be provided prior to the conclusion of the contract;

(b) are given adequate notice of any intention to modify contractual conditions and are informed about their right of withdrawal when the notice is given. Service providers shall notify their subscribers directly of any increase in charges, at an appropriate time no later than one normal billing period after the increase comes into effect in a transparent and comprehensible manner. Contracting Parties shall ensure that customers are free to withdraw from contracts if they do not accept the new conditions notified to them by their gas service provider;

(c) receive transparent information on applicable prices and tariffs and on standard terms and conditions, in respect of access to and use of gas services;

(d) are offered a wide choice of payment methods, which do not unduly discriminate between customers. Prepayment systems shall be fair and adequately reflect likely consumption. Any difference in terms and conditions shall reflect the costs to the supplier of the different payment systems. General terms and conditions shall be fair and transparent. They shall be given in clear and comprehensible language and shall not include non-contractual barriers to the exercise of consumers’ rights, for example excessive contractual documentation. Customers shall be protected against unfair or misleading selling methods;

(e) are not charged for changing supplier;

(f) benefit from transparent, simple and inexpensive procedures for dealing with their complaints. In particular, all consumers shall have the right to a good standard of service and complaint handling by their gas service provider. Such out-of-court dispute settlements procedures shall enable disputes to be settled fairly and promptly, preferably within three months, with provision, where warranted, for a system of reimbursement and/or compensation. They should, wherever possible, be in line with the principles set out in Commission Recommendation 98/257/EC of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes;

(g) connected to the gas system are informed about their rights to be supplied, under the national legislation applicable, with natural gas of a specified quality at reasonable prices;

(h) have at their disposal their consumption data, and shall be able to, by explicit agreement and free of charge, give any registered supply undertaking access to its metering data. The party responsible for data management shall be obliged to give those data to the undertaking. Contracting Parties shall define a format for the data and a procedure for suppliers and consumers to have access to the data. No additional costs shall be charged to the consumer for that service;

(i) are properly informed of actual gas consumption and costs frequently enough to enable them to regulate their own gas consumption. That information shall be given by using a sufficient time frame, which takes account of the capability of customer’s metering equipment. Due account shall be taken of the cost-efficiency of such measures. No additional costs shall be charged to the consumer for that service;

(j) receive a final closure account following any change of natural gas supplier no later than six weeks after the change of supplier has taken place.

2. Contracting Parties shall ensure the implementation of intelligent metering systems that shall assist the active participation of consumers in the gas supply market. The implementation of those metering systems may be subject to an economic assessment of all the long-term costs and benefits to the market and the individual consumer or which form of intelligent metering is economically reasonable and cost-effective and which timeframe is feasible for their distribution.

Such assessment shall take place by 1 January 2014.

Subject to that assessment, Contracting Parties or any competent authority they designate, shall prepare a timetable for the implementation of intelligent metering systems. The Contracting Parties or any competent authority they designate, shall ensure the interoperability of those metering systems to be implemented within their territories and shall have due regard to the use of appropriate standards and best practice and the importance of the development of the internal market in natural gas.


The adaptations made by Ministerial Council Decision 2011/02/MC-EnC are highlighted in bold and blue, the changes in the present Regulation in comparison to Regulation (EC) No 1228/2003 are highlighted in bold.

Whereas:

(1) The internal market in natural gas, which has been progressively implemented since 1999, aims to deliver real choice for all consumers in the Community, 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.


(3) Experience gained in the implementation and monitoring of a first set of Guidelines for Good Practice, adopted by the European Gas Regulatory Forum (the Madrid Forum) in 2002, demonstrates that in order to ensure the full implementation of the rules set out in those guidelines in all Member States, and in order to provide a minimum guarantee of equal market access conditions in practice, it is necessary to provide for them to become legally enforceable.

(4) A second set of common rules entitled “the Second Guidelines for Good Practice” was adopted at the meeting of the Madrid Forum on 24 and 25 September 2003 and the purpose of this Regulation is to lay down, on the basis of those guidelines, basic principles and rules regarding network access and third party access services, congestion management, transparency, balancing and the trading of capacity rights.

(5) 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 provides for the possibility of a combined transmission and distribution system operator. The rules set out in this Regulation do not therefore require modification of the organisation of national transmission and distribution systems that are consistent with the relevant provisions of that Directive.

(6) High-pressure pipelines linking up local distributors to the gas network which are not primarily used in the context of local distribution are included in the scope of this Regulation.

(7) It is necessary to specify the criteria according to which tariffs for access to the network are determined, in order to ensure that they fully comply with the principle of non-discrimination and the needs of a well-functioning internal market and take fully into account the need for system integrity and reflect the actual costs incurred, insofar as such costs correspond to those of an efficient and
structurally comparable network operator and are transparent, whilst including appropriate return on investments, and, where appropriate, taking account of the benchmarking of tariffs by the regulatory authorities.

(8) In calculating tariffs for access to networks, it is important to take account of the actual costs incurred, in so far as such costs correspond to those of an efficient and structurally comparable network operator, and are transparent, as well as of the need to provide appropriate return on investments and incentives to construct new infrastructure, including special regulatory treatment for new investments as provided for in Directive 2009/73/EC. In that respect, and in particular if effective pipeline-to-pipeline competition exists, the benchmarking of tariffs by the regulatory authorities will be a relevant consideration.

(9) The use of market-based arrangements, such as auctions, to determine tariffs has to be compatible with the provisions laid down in Directive 2009/73/EC.

(10) A common minimum set of third-party access services is necessary to provide a common minimum standard of access in practice throughout the Community, to ensure that third party access services are sufficiently compatible and to allow the benefits accruing from a well-functioning internal market in natural gas to be exploited.

(11) At present, there are obstacles to the sale of gas on equal terms, without discrimination or disadvantage in the Community. In particular, non-discriminatory network access and an equally effective level of regulatory supervision do not yet exist in each Member State, and isolated markets persist.

(12) A sufficient level of cross-border gas interconnection capacity should be achieved and market integration fostered in order to complete the internal market in natural gas.

(13) 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 creating a level playing field for all natural gas undertakings 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)” demonstrated that the present rules and measures neither provide the necessary minimum requirements are set which must be met by all transport contracts.

with the framework guidelines, and it should be enabled to recommend them for adoption by the Commission. The Agency should assess proposed amendments to the network codes and it should be enabled to recommend them for adoption by the Commission. Transmission system operators should operate their networks in accordance with those network codes.

(16) In order to ensure optimal management of the gas transmission network in the Community a European Network of Transmission System Operators for Gas (the ENTSO for Gas), should be established. The tasks of the ENTSO for Gas should be carried out in compliance with Community competition rules which remain applicable to the decisions of the ENTSO for Gas. The tasks of the ENTSO for Gas should be well-defined and its working method should ensure efficiency, transparency and the representative nature of the ENTSO for Gas. The network codes prepared by the ENTSO for Gas are not intended to replace the necessary national network codes for non cross-border issues. Given that more effective progress may be achieved through an approach at regional level, transmission system operators should set up regional structures within the overall cooperation structure, whilst ensuring that results at regional level are compatible with network codes and non-binding ten-year network development plans at Community level. Cooperation within such regional structures presupposes effective unbundling of network activities from production and supply activities. In the absence of such unbundling, regional cooperation between transmission system operators gives rise to a risk of anti-competitive conduct. Member States should promote cooperation and monitor the effectiveness of the network operations at regional level. Cooperation at regional level should be compatible with progress towards a competitive and efficient internal market in gas.

(17) All market participants have an interest in the work expected of the ENTSO for Gas. An effective consultation process is therefore essential and existing structures set up to facilitate and streamline the consultation process, such as the European Association for the Streamlining of Energy Exchange, national regulators or the Agency should play an important role.

(18) In order to ensure greater transparency regarding the development of the gas transmission network in the Community, the ENTSO for Gas should draw up, publish and regularly update a non-binding Community-wide ten-year network development plan (Community-wide network development plan). Viable gas transmission networks and necessary regional interconnections, relevant from a commercial or security of supply point of view, should be included in that network development plan.

(19) To enhance competition through liquid wholesale markets for gas, it is vital that gas can be traded independently of its location in the system. The only way to do this is to give network users the freedom to book entry and exit capacity independently, thereby creating gas transport through zones instead of along contractual paths. The preference for entry-exit systems to facilitate the development of competition was already expressed by most stakeholders at the 6th Madrid Forum on 30 and 31 October 2002. Tariffs should not be dependent on the transport route. The tariff set for one or more entry points should therefore not be related to the tariff set for one or more exit points, and vice versa.

(20) References to harmonised transport contracts in the context of non-discriminatory access to the network of transmission system operators do not mean that the terms and conditions of the transport contracts of a particular system operator in a Member State must be the same as those of another transmission system operator in that Member State or in another Member State, unless minimum requirements are set which must be met by all transport contracts.
(21) There is substantial contractual congestion in the gas networks. The congestion-management and capacity-allocation principles for new or newly negotiated contracts are therefore based on the freeing-up of unused capacity by enabling network users to sublet or resell their contracted capacities and the obligation of transmission system operators to offer unused capacity to the market, at least on a day-ahead and interruptible basis. Given the large proportion of existing contracts and the need to create a true level playing field between users of new and existing capacity, those principles should be applied to all contracted capacity, including existing contracts.

(22) Although physical congestion of networks is, at present, rarely a problem in the Community, it may become one in the future. It is important, therefore, to provide the basic principle for the allocation of congested capacity in such circumstances.

(23) Market monitoring undertaken over recent years by the national regulatory authorities and by the Commission has shown that current transparency requirements and rules on access to infrastructure are not sufficient to secure a genuine, well-functioning, open and efficient internal market in gas.

(24) Equal access to information on the physical status and efficiency of the system is necessary to enable all market participants to assess the overall demand and supply situation and to identify the reasons for movements in the wholesale price. This includes more precise information on supply and demand, network capacity, flows and maintenance, balancing and availability of storage. The importance of that information for the functioning of the market requires alleviating existing limitations to publication for confidentiality reasons.

(25) Confidentiality requirements for commercially sensitive information are, however, particularly relevant where data of a commercially strategic nature for the company are concerned, where there is only one single user for a storage facility, or where data are concerned regarding exit points within a system or subsystem that is not connected to another transmission or distribution system but to a single industrial final customer, where the publication of such data would reveal confidential information as to the production process of that customer.

(26) To enhance trust in the market, its participants need to be sure that those engaging in abusive behaviour can be subjected to effective, proportionate and dissuasive penalties. The competent authorities should be given the competence to investigate effectively allegations of market abuse. To that end, it is necessary that competent authorities have access to data that provides information on operational decisions made by supply undertakings. In the gas market, all those decisions are communicated to the system operators in the form of capacity reservations, nominations and realised flows. System operators should keep information in relation thereto available to and easily accessible by the competent authorities for a fixed period of time. The competent authorities should, furthermore, regularly monitor the compliance of the transmission system operators with the rules.

(27) Access to gas storage facilities and liquefied natural gas (LNG) facilities is insufficient in some Member States, and therefore the implementation of the existing rules needs to be improved. Monitoring by the European Regulators’ Group for Electricity and Gas concluded that the voluntary guidelines for good third-party access practice for storage system operators, agreed by all stakeholders at the Madrid Forum, are being insufficiently applied and therefore need to be made binding.

(28) Non-discriminatory and transparent balancing systems for gas, operated by transmission system operators, are important mechanisms, particularly for new market entrants which may have more difficulty balancing their overall sales portfolio than companies already established within a relevant market. It is therefore necessary to lay down rules to ensure that transmission system operators operate such mechanisms in a manner compatible with non-discriminatory, transparent and effective access conditions to the network.

(29) The trading of primary capacity rights is an important part of developing a competitive market and creating liquidity. This Regulation should therefore lay down basic rules relating to such trading.

(30) National regulatory authorities should ensure compliance with the rules contained in this Regulation and the Guidelines adopted pursuant thereto.

(31) In the Guidelines annexed to this Regulation, specific detailed implementing rules are defined on the basis of the Second Guidelines for Good Practice. Where appropriate, those rules will evolve over time, taking into account the differences of national gas systems.

(32) When proposing to amend the Guidelines annexed to this Regulation, the Commission should ensure prior consultation of all relevant parties concerned with the Guidelines, represented by the professional organisations, and of the Member States within the Madrid Forum.

(33) The Member States and the competent national authorities should be required to provide relevant information to the Commission. Such information should be treated confidentially by the Commission.

(34) This Regulation and the Guidelines adopted in accordance with it are without prejudice to the application of the Community rules on competition.

(35) The measures necessary for the implementation of this Regulation 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.

(36) In particular, the Commission should be empowered to establish or adopt the Guidelines necessary for providing the minimum degree of harmonisation required to achieve the aims of this Regulation. Since those measures are of general scope and are designed to amend non-essential elements of this Regulation, inter alia 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.

(37) Since the objective of this Regulation, namely the setting of fair rules for access conditions to natural gas transmission networks, storage and LNG facilities cannot be sufficiently achieved by the Member States and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity, as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

(38) Given the scope of the amendments that are being made herein to Regulation (EC) No 1775/2005, 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 Regulation.
Article 1
Subject matter and scope

This Regulation aims at:
(a) setting non-discriminatory rules for access conditions to natural gas transmission systems taking into account the special characteristics of national and regional markets with a view to ensuring the proper functioning of the internal market in gas;
(b) setting non-discriminatory rules for access conditions to LNG facilities and storage facilities taking into account the special characteristics of national and regional markets; and
(c) facilitating the emergence of a well-functioning and transparent wholesale market with a high level of supply in gas and providing mechanisms to harmonise the network access rules for cross-border exchanges in gas.

The objectives referred to in the first subparagraph shall include the setting of harmonised principles for tariffs, or the methodologies underlying their calculation, for access to the network, but not to storage facilities, the establishment of third-party access services and harmonised principles for capacity-allocation and congestion-management, the determination of transparency requirements, balancing rules and imbalance charges, and the facilitation of capacity trading.

This Regulation, with the exception of Article 19(4), shall apply only to storage facilities falling under Article 33(3) or (4) of Directive 2009/73/EC.

The Contracting Parties may establish an entity or body set up in compliance with Directive 2009/73/EC for the purpose of carrying out one or more functions typically attributed to the transmission system operator, which shall be subject to the requirements of this Regulation. That entity or body shall be subject to certification in accordance with Article 3 of this Regulation and shall be subject to designation in accordance with Article 10 of Directive 2009/73/EC.

Article 2
Definitions

1. For the purpose of this Regulation, the following definitions apply:

1) “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;
2) “transport contract” means a contract which the transmission system operator has concluded with a network user with a view to carrying out transmission;
3) “capacity” means the maximum flow, expressed in normal cubic meters per time unit or in energy unit per time unit, to which the network user is entitled in accordance with the provisions of the transport contract;
4) “unused capacity” means firm capacity which a network user has acquired under a transport contract but which that user has not nominated by the deadline specified in the contract;
5) “congestion management” means management of the capacity portfolio of the transmission system operator with a view to optimal and maximum use of the technical capacity and the timely detection of future congestion and saturation points;
6) “secondary market” means the market of the capacity traded otherwise than on the primary market;
7) “nomination” means the prior reporting by the network user to the transmission system operator of the actual flow that the network user wishes to inject into or withdraw from the system;
8) “re-nomination” means the subsequent reporting of a corrected nomination;
9) “system integrity” means any situation in respect of a transmission network including necessary transmission facilities in which the pressure and the quality of the natural gas remain within the minimum and maximum limits laid down by the transmission system operator, so that the transmission of natural gas is guaranteed from a technical standpoint;
10) “balancing period” means the period within which the off-take of an amount of natural gas, expressed in units of energy, must be offset by every network user by means of the injection of the same amount of natural gas into the transmission network in accordance with the transport contract or the network code;
11) “network user” means a customer or a potential customer of a transmission system operator, and transmission system operators themselves in so far as it is necessary for them to carry out their functions in relation to transmission;
12) “interruptible services” means services offered by the transmission system operator in relation to interruptible capacity;
13) “interruptible capacity” means gas transmission capacity that may be interrupted by the transmission system operator in accordance with the conditions stipulated in the transport contract;
14) “long-term services” means services offered by the transmission system operator with a duration of one year or more;
15) “short-term services” means services offered by the transmission system operator with a duration of less than one year;
16) “firm capacity” means gas transmission capacity contractually guaranteed as uninterruptible by the transmission system operator;
17) “firm services” means services offered by the transmission system operator in relation to firm capacity;
18) “technical capacity” means the maximum firm capacity that the transmission system operator can offer to the network users, taking account of system integrity and the operational requirements of the transmission network;
19) “contracted capacity” means capacity that the transmission system operator has allocated to a network user by means of a transport contract;
20) “available capacity” means the part of the technical capacity that is not allocated and is still available to the system at that moment;
21) “contractual congestion” means a situation where the level of firm capacity demand exceeds the technical capacity;
22) “primary market” means the market of the capacity traded directly by the transmission system operator;
4. Regulatory authorities and the Energy Community Secretariat shall preserve the confidentiality of commercially sensitive information.

5. ...

6. Where the Energy Community Secretariat has received notification of the certification of a transmission system operator under Article 9(10) of Directive 2009/73/EC, the Energy Community Secretariat shall issue an opinion relating to certification. The regulatory authority shall take the utmost account of that opinion. Where the final decision diverges from the Secretariat’s opinion, the regulatory authority concerned shall provide and publish, together with that decision, the reasoning underlying such decision. Diverting decisions shall be included in the agenda of the first meeting of the Ministerial Council following the date of the decision, for information and discussion.

Article 4
European network of transmission system operators for gas
...

Article 5
Establishment of the ENTSO for Gas
...

Article 6
Establishment of network codes

1. The Energy Community shall endeavour to apply the network codes developed at European Union level.

2. The relevant network codes shall be adopted by the Permanent High Level Group, following the procedure laid down in Article 79 of the Treaty. Before taking a decision, the Permanent High Level Group shall seek the opinion of the Energy Community Regulatory Board.

3. The Permanent High Level Group shall adopt a procedural act on application of this Article.

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1 The following text corresponds to Article 28 of Decision 2011/02/MC-EnC.

2 Procedural Act No 01/2012 PHLG-EnC of the Permanent High Level Group of the Energy Community of 21 June 2012 laying down the rules governing the adoption of Guidelines and Network Codes in the Energy Community was adopted on 21 June 2012, see page 519.
Contracting Parties may decide that tariffs may also be determined through market-based arrangements, such as auctions, provided that such arrangements and the revenues arising there from are approved by the regulatory authority. Tariffs, or the methodologies used to calculate them, shall facilitate efficient gas trade and competition, while at the same time avoiding cross-subsidies between network users and providing incentives for investment and maintaining or creating interoperability for transmission networks.

Tariffs for network users shall be non-discriminatory and set separately for every entry point into or exit point out of the transmission system. Cost-allocation mechanisms and rate setting methodology regarding entry points and exit points shall be approved by the national regulatory authorities. By 3 September 2011, the Contracting Parties shall ensure that, after a transitional period, network charges shall not be calculated on the basis of contract paths.

2. Tariffs for network access shall neither restrict market liquidity nor distort trade across borders of different transmission systems. Where differences in tariff structures or balancing mechanisms would hamper trade across transmission systems, and notwithstanding Article 41(6) of Directive 2009/73/EC, transmission system operators shall, in close cooperation with the relevant national authorities, actively pursue convergence of tariff structures and charging principles, including in relation to balancing.

Article 14

Third-party access services concerning transmission system operators

1. Transmission system operators shall:
   (a) ensure that they offer services on a non-discriminatory basis to all network users;
   (b) provide both firm and interruptible third-party access services. The price of interruptible capacity shall reflect the probability of interruption;
   (c) offer to network users both long and short-term services.

In regard to point (a) of the first subparagraph, where a transmission system operator offers the same service to different customers, it shall do so under equivalent contractual terms and conditions, either using harmonised transport contracts or a common network code approved by the competent authority in accordance with the procedure laid down in Article 41 of Directive 2009/73/EC.

2. Transport contracts signed with non-standard start dates or with a shorter duration than a standard annual transport contract shall not result in arbitrarily higher or lower tariffs that do not reflect the market value of the service, in accordance with the principles laid down in Article 13(1).

3. Where appropriate, third-party access services may be granted subject to appropriate guarantees from network users with respect to the creditworthiness of such users. Such guarantees shall not constitute undue market-entry barriers and shall be non-discriminatory, transparent and proportionate.

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*In accordance with Article 7(3) of Decision 2011/02/MC-EnC, Article 25 of that Decision is displayed here.*
**Article 15**

Third-party access services concerning storage and LNG facilities

1. LNG and storage system operators shall:
   (a) offer services on a non-discriminatory basis to all network users that accommodate market demand; in particular, where an LNG or storage system operator offers the same service to different customers, it shall do so under equivalent contractual terms and conditions;
   (b) offer services that are compatible with the use of the interconnected gas transport systems and facilitate access through cooperation with the transmission system operator; and
   (c) make relevant information public, in particular data on the use and availability of services, in a time-frame compatible with the LNG or storage facility users’ reasonable commercial needs, subject to the monitoring of such publication by the national regulatory authority.

2. Each storage system operator shall:
   (a) provide both firm and interruptible third-party access services; the price of interruptible capacity shall reflect the probability of interruption;
   (b) offer to storage facility users both long and short-term services; and
   (c) offer to storage facility users both bundled and unbundled services of storage space, injectability and deliverability.

3. LNG and storage facility contracts shall not result in arbitrarily higher tariffs in cases in which they are signed:
   (a) outside a natural gas year with non-standard start dates; or
   (b) with a shorter duration than a standard LNG and storage facility contract on an annual basis.

5. Contractual limits on the required minimum size of LNG facility capacity and storage capacity shall be justified on the basis of technical constrains and shall permit smaller storage users to gain access to storage services.

4. Where appropriate, third-party access services may be granted subject to appropriate guarantees from network users with respect to the creditworthiness of such users. Such guarantees shall not constitute undue market-entry barriers and shall be non-discriminatory, transparent and proportionate.

**Article 16**

Principles of capacity-allocation mechanisms and congestion-management procedures concerning transmission system operators

1. The maximum capacity at all relevant points referred to in Article 18(3) shall be made available to market participants, taking into account system integrity and efficient network operation.

2. The transmission system operator shall implement and publish non-discriminatory and transparent capacity-allocation mechanisms, which shall:
   (a) provide appropriate economic signals for the efficient and maximum use of technical capacity, facilitate investment in new infrastructure and facilitate cross-border exchanges in natural gas;
   (b) be compatible with the market mechanisms including spot markets and trading hubs, while being flexible and capable of adapting to evolving market circumstances; and
   (c) be compatible with the network access systems of the Contracting Parties.

3. The transmission system operator shall implement and publish non-discriminatory and transparent congestion-management procedures which facilitate cross-border exchanges in natural gas on a non-discriminatory basis and which shall be based on the following principles:
   (a) in the event of contractual congestion, the transmission system operator shall offer unused capacity on the primary market at least on a day-ahead and interruptible basis; and
   (b) network users who wish to re-sell or sublet their unused contracted capacity on the secondary market shall be entitled to do so.

In regard to point (b) of the first subparagraph, a Contracting Party may require notification or information of the transmission system operator by network users.

4. In the event that physical congestion exists, non-discriminatory, transparent capacity-allocation mechanisms shall be applied by the transmission system operator or, as appropriate, by the regulatory authorities.

5. Transmission system operators shall regularly assess market demand for new investment. When planning new investments, transmission system operators shall assess market demand and take into account security of supply.

**Article 17**

Principles of capacity-allocation mechanisms and congestion-management procedures concerning storage and LNG facilities

1. The maximum storage and LNG facility capacity shall be made available to market participants, taking into account system integrity and operation.

2. LNG and storage system operators shall implement and publish non-discriminatory and transparent capacity-allocation mechanisms which shall:
   (a) provide appropriate economic signals for the efficient and maximum use of capacity and facilitate investment in new infrastructure;
   (b) be compatible with the market mechanism including spot markets and trading hubs, while being flexible and capable of adapting to evolving market circumstances; and

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* In Regulation (EC) 1775/2005 (applicable until 1 January 2015), Article 5(3) and (4) reads as follows:

  “3. When transmission system operators conclude new transportation contracts or renegotiate existing transportation contracts, these contracts shall take into account the following principles:
   (a) in the event of contractual congestion, the transmission system operator shall offer unused capacity on the primary market at least on a day-ahead and interruptible basis;
   (b) network users who wish to re-sell or sublet their unused contracted capacity on the secondary market shall be entitled to do so. Contracting Parties may require notification or information of the transmission system operator by network users.

4. When capacity contracted under existing transportation contracts remains unused and contractual congestion occurs, transmission system operators shall apply paragraph 3 unless this would infringe the requirements of the existing transportation contracts. Where this would infringe the existing transportation contracts, transmission system operators shall, following consultation with the competent authorities, submit a request to the network user for the use on the secondary market of unused capacity in accordance with paragraph 3.”

(c) be compatible with the connected network access systems.

3. LNG and storage facility contracts shall include measures to prevent capacity-hoarding, by taking into account the following principles, which shall apply in cases of contractual congestion:

(a) the system operator must offer unused LNG facility and storage capacity on the primary market without delay; for storage facilities this must be at least on a day-ahead and interruptible basis;

(b) LNG and storage facility users who wish to re-sell their contracted capacity on the secondary market must be entitled to do so.

Article 18

Transparency requirements concerning transmission system operators

1. The transmission system operator shall make public detailed information regarding the services it offers and the relevant conditions applied, together with the technical information necessary for network users to gain effective network access.

2. In order to ensure transparent, objective and non-discriminatory tariffs and facilitate efficient utilisation of the gas network, transmission system operators or relevant national authorities shall publish reasonably and sufficiently detailed information on tariff derivation, methodology and structure.

3. For the services provided, each transmission system operator shall make public information on technical, contracted and available capacities on a numerical basis for all relevant points including entry and exit points on a regular and rolling basis and in a user-friendly and standardised manner.

4. The relevant points of a transmission system on which the information is to be made public shall be approved by the competent authorities after consultation with network users.

5. The transmission system operator shall always disclose the information required by this Regulation in a meaningful, quantifiably clear and easily accessible way and on a non-discriminatory basis.\(^5\)

6. The transmission system operator shall make public ex-ante and ex-post supply and demand information, based on nominations, forecasts and realised flows in and out of the system. The national regulatory authority shall ensure that all such information is made public. The level of detail of the information that is made public shall reflect the information available to the transmission system operator.

The transmission system operator shall make public measures taken as well as costs incurred and revenue generated to balance the system.

The market participants concerned shall provide the transmission system operator with the data referred to in this Article.

\(^5\) In Regulation (EC) 1775/2005 (applicable until 1 January 2015), Article 6(5) reads as follows:

“5. Where a transmission system operator considers that it is not entitled for confidentiality reasons to make public all the data required, it shall seek the authorisation of the competent authorities to limit publication with respect to the point or points in question. The competent authorities shall grant or refuse the authorisation on a case by case basis, taking into account in particular the need to respect legitimate commercial confidentiality and the objective of creating a competitive internal gas market. If the authorisation is granted, available capacity shall be published without indicating the numerical data that would contravene confidentiality. No such authorisation as referred to in this paragraph shall be granted where three or more network users have contracted capacity at the same point.”


Article 19

Transparency requirements concerning storage facilities and LNG facilities

1. LNG and storage system operators shall make public detailed information regarding the services it offers and the relevant conditions applied, together with the technical information necessary for LNG and storage facility users to gain effective access to the LNG and storage facilities.

2. For the services provided, LNG and storage system operators shall make public information on contracted and available storage and LNG facility capacities on a numerical basis on a regular and rolling basis and in a user-friendly standardised manner.

3. LNG and storage system operators shall always disclose the information required by this Regulation in a meaningful, quantifiably clear and easily accessible way and on a non-discriminatory basis.

4. LNG and storage system operators shall make public the amount of gas in each storage or LNG facility, or group of storage facilities if that corresponds to the way in which the access is offered to system users, inflows and outflows, and the available storage and LNG facility capacities, including for those facilities exempted from third-party access. That information shall also be communicated to the transmission system operator, which shall make it public on an aggregated level per system or subsystem defined by the relevant points. The information shall be updated at least daily.

In cases in which a storage system user is the only user of a storage facility, the storage system user may submit to the national regulatory authority a reasoned request for confidential treatment of the data referred to in the first subparagraph. Where the national regulatory authority comes to the conclusion that such a request is justified, taking into account, in particular, the need to balance the interest of legitimate protection of business secrets, the disclosure of which would negatively affect the overall commercial strategy of the storage user, with the objective of creating a competitive internal gas market, it may allow the storage system operator not to make public the data referred to in the first subparagraph, for a duration of up to one year.

The second subparagraph shall apply without prejudice to the obligations of communication to and publication by the transmission system operator referred to in the first subparagraph, unless the aggregated data are identical to the individual storage system data for which the national regulatory authority has approved non-publication.

5. In order to ensure transparent, objective and non-discriminatory tariffs and facilitate efficient utilisation of the infrastructures, the LNG and storage facility operators or relevant regulatory authorities shall make public sufficiently detailed information on tariff derivation, the methodologies and the structure of tariffs for infrastructure under regulated third-party access.
Article 20

Transmission system operators, storage system operators and LNG system operators shall keep at the disposal of the national authorities, including the national regulatory authority, the national competition authority and of the Energy Community Secretariat, all information referred to in Articles 18 and 19, and in Part 3 of Annex I for a period of five years.

Article 21

1. Balancing rules shall be designed in a fair, non-discriminatory and transparent manner and shall be based on objective criteria. Balancing rules shall reflect genuine system needs taking into account the resources available to the transmission system operator. Balancing rules shall be market-based.

2. In order to enable network users to take timely corrective action, the transmission system operator shall provide sufficient, well-timed and reliable on-line based information on the balancing status of network users.

The information provided shall reflect the level of information available to the transmission system operator and the settlement period for which imbalance charges are calculated.

No charge shall be made for the provision of information under this paragraph.6

3. Imbalance charges shall be cost-reflective to the extent possible, whilst providing appropriate incentives on network users to balance their input and off-take of gas. They shall avoid cross-subsidisation between network users and shall not hamper the entry of new market entrants.

Any calculation methodology for imbalance charges as well as the final tariffs shall be made public by the competent authorities or the transmission system operator, as appropriate.

4. Contracting Parties shall ensure that transmission system operators endeavour to harmonise balancing regimes and streamline structures and levels of balancing charges in order to facilitate gas trade.7

4 In Regulation (EC) 1775/2005 (applicable until 1 January 2015), the last sentence of Article 7(6) reads as follows: “Where they exist, charges for the provision of such information shall be approved by the competent authorities and shall be made public by the transmission system operator.”

7 In Regulation (EC) 1775/2005 (applicable until 1 January 2015), Article 7(2), (4) and (5) reads as follows: “2. In the case of non-market based balancing systems, tolerance levels shall be designed in a way that either reflects seasonality or results in a tolerance level higher than that resulting from seasonality, and that reflects the actual technical capabilities of the transmission system. Tolerance levels shall reflect genuine system needs taking into account the resources available to the transmission system operator.”

5. Transmission system operators may impose penalty charges on network users whose input into and off-take from the transmission system is not in balance according to the balancing rules referred to in paragraph 1.

5. Penalty charges which exceed the actual balancing costs incurred, insofar as such costs correspond to those of an efficient and structurally comparable network operator and are transparent, shall be taken into account when calculating tariffs in a way that does not reduce the interest in balancing and shall be approved by the competent authorities.”

Article 22

Trading of capacity rights

Each transmission, storage and LNG system operator shall take reasonable steps to allow capacity rights to be freely tradable and to facilitate such trade in a transparent and non-discriminatory manner. Every such operator shall develop harmonised transport, LNG facility and storage contracts and procedures on the primary market to facilitate secondary trade of capacity and shall recognise the transfer of primary capacity rights where notified by system users.

The harmonised transport, LNG facility and storage contracts and procedures shall be notified to the regulatory authorities.

Article 23

Guidelines8


2. These Guidelines, which may need to be adapted to the institutional framework of the Energy Community, shall be adopted by the Permanent High Level Group, following the procedure laid down in Article 79 of the Treaty.

3. The Permanent High Level Group shall adopt a Procedural Act on application of this article.9

Article 24

Regulatory authorities

When carrying out their responsibilities under this Regulation, the regulatory authorities shall ensure compliance with this Regulation and the Guidelines adopted pursuant to Article 18.10

Where appropriate, they shall cooperate with each other, with the Energy Community Secretariat and the Energy Community Regulatory Board in compliance with Chapter VIII of Directive 2009/73/EC.

8 The text displayed here corresponds to Article 27 of Decision 2011/02/MC-EnC.

9 Procedural Act No 01/2012 PHLG-EnC of the Permanent High Level Group of the Energy Community of 21 June 2012 laying down the rules governing the adoption of Guidelines and Network Codes in the Energy Community was adopted on 21 June 2012, see page 519.

10 As adopted by the Permanent High Level Group under Procedural Act No 01/2012 PHLG-EnC.
Article 29
Secretariat report

1. The Secretariat shall monitor and review application of this Decision in the Contracting Parties.
2. The Secretariat shall submit an overall progress report to the Ministerial Council for the first time by 30 June 2012, and thereafter on an annual basis. The progress report shall reflect the progress made on creating a complete and fully operational internal market in electricity and gas and the obstacles that remain in this respect, including aspects of market dominance, market concentration, predatory or anti-competitive behaviour and the effect thereof in terms of market distortion. It shall in particular consider:
   – the implementation by each Contracting Party of the provisions on unbundling, certification and on independence of the national regulatory authorities and application of these provisions in practice,
   – the existence of non-discriminatory network access,
   – effective regulation,
   – the development of interconnection infrastructure and the security of supply situation in the Energy Community,
   – the extent to which the full benefits of the opening of markets are accruing to small enterprises and household customers, notably with respect to public service and universal service standards,
   – the extent to which markets are in practice open to effective competition, including aspects of market dominance, market concentration and predatory or anti-competitive behaviour,
   – the extent to which customers are actually switching suppliers and renegotiating tariffs,
   – price developments, including supply prices, in relation to the degree of opening of the markets, and
   – the experience gained from application of this Decision as far as effective independence of system operators in vertically integrated undertakings is concerned and whether other measures in addition to functional independence and separation of accounts have been developed which have effects equivalent to legal unbundling.
3. The Secretariat shall present a report to the Ministerial Council for the first time by 30 June 2012, and thereafter on an annual basis, summarising the opinions issued by the Secretariat in application of the acts referred to in Article 1, as adapted by this Decision.
ANNEX I
GUIDELINES ON

1. Third-party access services concerning transmission system operators
   1. Transmission system operators shall offer firm and interruptible services down to a minimum
      period of one day.
   2. Harmonised transport contracts and common network codes shall be designed in a manner that
      facilitates trading and re-utilisation of capacity contracted by network users without hampering
      capacity release.
   3. Transmission system operators shall develop network codes and harmonised contracts following
      proper consultation with network users.
   4. Transmission system operators shall implement standardised nomination and re-nomination pro-
      cedures. They shall develop information systems and electronic communication means to provide
      adequate data to network users and to simplify transactions, such as nominations, capacity contract-
      ing and transfer of capacity rights between network users.
   5. Transmission system operators shall harmonise formalised request procedures and response times
      according to best industry practice with the aim of minimising response times. They shall provide for
      online screen-based capacity booking and confirmation systems and nomination and re-nomination
      procedures no later than 1 January 2010 after consultation with the relevant network users.
   6. Transmission system operators shall not separately charge network users for information requests
      and transactions associated with their transport contracts and which are carried out according to
      standard rules and procedures.
   7. Information requests that require extraordinary or excessive expenses such as feasibility studies
      may be charged separately, provided the charges can be duly substantiated.
   8. Transmission system operators shall cooperate with other transmission system operators in coor-
      dinating the maintenance of their respective networks in order to minimise any disruption of trans-
      mission services to network users and transmission system operators in other areas and in order to
      ensure equal benefits with respect to security of supply including in relation to transit.
   9. Transmission system operators shall publish at least annually, by a predetermined deadline, all
      planned maintenance periods that might affect network users’ rights from transport contracts and
      corresponding operational information with adequate advance notice. This shall include publishing
      on a prompt and non-discriminatory basis any changes to planned maintenance periods and notifica-
      tion of unplanned maintenance, as soon as that information becomes available to the transmission
      system operator. During maintenance periods, transmission system operators shall publish regularly
      updated information on the details of and expected duration and effect of the maintenance.
   10. Transmission system operators shall maintain and make available to the competent authority
      upon request a daily log of the actual maintenance and flow disruptions that have occurred. Infor-
      mation shall also be made available on request to those affected by any disruption.

2. Principles of capacity-allocation mechanisms and congestion-management procedures
   concerning transmission system operators and their application in the event of
   contractual congestion

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Article 30
Derogations and exemptions

This Regulation shall not apply to:
(a) …
(b) major new infrastructure, i.e. interconnectors, LNG and storage facilities, and significant increases
    of capacity in existing infrastructure and modifications of such infrastructure which enable the de-
    velopment of new sources of gas supply referred to in Article 36(1) and (2) of Directive 2009/73/EC
    which are exempt from the provisions of Articles 9, 14, 32, 33, 34 or Article 41(6), (8) and (10) of
    that Directive as long as they are exempt from the provisions referred to in this subparagraph, with
    the exception of Article 19(4) of this Regulation; or
(c) natural gas transmission systems which have been granted derogations under Article 48 of Direc-
   tive 2009/73/EC.

Article 31
Repeal

…

Article 32
Entry into force

This Decision [2011/02/MC-EnC] enters into force upon its adoption and is addressed to the
Contracting Parties.

Article 3 of Decision 2011/02/MC-EnC

Each Contracting Party shall bring into force the laws, regulations and administrative provi-
sions necessary to comply with … Regulation (EC) 715/2009, as adapted by this Decision, by 1 January 2015. They shall forthwith inform the Energy Community Secretariat thereof.

…

The Contracting Parties shall communicate to the Energy Community Secretariat the text of
the main provisions of national law which they adopt in the field covered by this Decision.

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Not applicable in accordance with Article 24(4) of Decision 2011/02/MC-EnC.
Not applicable in accordance with Article 24(4) of Decision 2011/02/MC-EnC.
The text displayed here corresponds to Article 32 of Decision 2011/02/MC-EnC.

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2.1. Principles of capacity-allocation mechanisms and congestion-management procedures concerning transmission system operators

1. Capacity-allocation mechanisms and congestion-management procedures shall facilitate the development of competition and liquid trading of capacity and shall be compatible with market mechanisms including spot markets and trading hubs. They shall be flexible and capable of adapting to evolving market circumstances.

2. Those mechanisms and procedures shall take into account the integrity of the system concerned as well as security of supply.

3. Those mechanisms and procedures shall neither hamper the entry of new market participants nor create undue barriers to market entry. They shall not prevent market participants, including new market entrants and companies with a small market share, from competing effectively.

4. Those mechanisms and procedures shall provide appropriate economic signals for efficient and maximum use of technical capacity and facilitate investment in new infrastructure.

5. Network users shall be advised about the type of circumstance that could affect the availability of contracted capacity. Information on interruption should reflect the level of information available to the transmission system operator.

6. Should difficulties in meeting contractual delivery obligations arise due to system integrity reasons, transmission system operators should notify network users and seek a non-discriminatory solution without delay.

Transmission system operators shall consult network users regarding procedures prior to their implementation and agree them with the regulatory authority.

2.2. Congestion-management procedures in the event of contractual congestion

1. In the event that contracted capacity goes unused, transmission system operators shall make that capacity available on the primary market on an interruptible basis via contracts of differing duration, as long as that capacity is not offered by the relevant network user on the secondary market at a reasonable price.

2. Revenues from released interruptible capacity shall be split according to rules laid down or approved by the relevant regulatory authority. Those rules shall be compatible with the requirement of an effective and efficient use of the system.

3. A reasonable price for released interruptible capacity may be determined by the relevant regulatory authorities taking into account the specific circumstances prevailing.

4. Where appropriate, transmission system operators shall make reasonable endeavours to offer at least parts of the unused capacity to the market as firm capacity.

3. Definition of the technical information necessary for network users to gain effective access to the system, the definition of all relevant points for transparency requirements and the information to be published at all relevant points and the time schedule according to which that information shall be published

3.1. Definition of the technical information necessary for network users to gain effective access to the system

Transmission system operators shall publish at least the following information about their systems and services:

(a) a detailed and comprehensive description of the different services offered and their charges;
(b) the different types of transport contracts available for those services and, as applicable, the network code and/or the standard conditions outlining the rights and responsibilities of all network users including harmonised transport contracts and other relevant documents;
(c) the harmonised procedures applied when using the transmission system, including the definition of key terms;
(d) provisions on capacity allocation, congestion management, and anti-hoarding and re-utilisation procedures;
(e) the rules applicable to capacity trade on the secondary market as regards the transmission system operator;
(f) if applicable, the flexibility and tolerance levels included in transport and other services without separate charge, as well as any flexibility offered in addition thereto and the corresponding charges;
(g) a detailed description of the gas system of the transmission system operator indicating all relevant points interconnecting its system with that of other transmission system operators and/or gas infrastructure such as liquefied natural gas (LNG) and infrastructure necessary for providing ancillary services as defined by Article 2 point 14 of Directive 2009/73/EC;
(h) information on gas quality and pressure requirements;
(i) the rules applicable for connection to the system operated by the transmission system operator;
(j) any information, in a timely manner, as regards proposed and/or actual changes to the services or conditions, including the items listed in points (a) to (i).

3.2. Definition of all relevant points for transparency requirements

Relevant points shall include at least:

(a) all entry points to a network operated by a transmission system operator;
(b) the most important exit points and exit zones covering at least 50% of total exit capacity of the network of a given transmission system operator, including all exit points or exit zones covering more than 2% of total exit capacity of the network;
(c) all points connecting different networks of transmission system operators;
(d) all points connecting the network of a transmission system operator with an LNG terminal;
(e) all essential points within the network of a given transmission system operator including points connecting to gas hubs. All points are considered essential which, based on experience, are likely to experience physical congestion;
(f) all points connecting the network of a given transmission system operator to infrastructure necessary for providing ancillary services as defined by Article 2, point 14 of Directive 2009/73/EC.

3.3. Information to be published at all relevant points and the time schedule according to which that information should be published

1. At all relevant points, transmission system operators shall publish the following information about the capacity situation down to daily periods on the Internet on a regular/rolling basis and in a user-friendly standardised manner:

(a) the maximum technical capacity for flows in both directions;
(b) the total contracted and interruptible capacity; and
(c) the available capacity.

2. For all relevant points, transmission system operators shall publish available capacities for a period of at least 18 months ahead and shall update that information at least every month or more frequently, if new information becomes available.

3. Transmission system operators shall publish daily updates of availability of short-term services (day-ahead and week-ahead) based, inter alia, on nominations, prevailing contractual commitments and regular long-term forecasts of available capacities on an annual basis for up to ten years for all relevant points.

4. Transmission system operators shall publish historical maximum and minimum monthly capacity utilisation rates and annual average flows at all relevant points for the past three years on a rolling basis.

5. Transmission system operators shall keep a daily log of actual aggregated flows for at least three months.

6. Transmission system operators shall keep effective records of all capacity contracts and all other relevant information in relation to calculating and providing access to available capacities, to which relevant national authorities shall have access to fulfil their duties.

7. Transmission system operators shall provide user-friendly instruments for calculating tariffs for the services available and for verifying on-line the capacity available.

8. Where transmission system operators are unable to publish information in accordance with points 1, 3 and 7, they shall consult their relevant national authorities and set up an action plan for implementation as soon as possible, but no later than 31 July 2012.


The adaptations made by Ministerial Council Decision 2007/06/MC-EnC are highlighted in bold and blue.

Whereas:

(1) Natural gas (gas) is becoming an increasingly important component in Community energy supply, and, as indicated in the Green Paper “Towards a European strategy for the security of energy supply”, the European Union is expected in the longer term to become increasingly dependent on gas imported from non-EU sources of supply.


(3) The completion of the internal gas market necessitates a minimum common approach to security of supply, in particular through transparent and non-discriminatory security of supply policies compatible with the requirements of such a market, in order to avoid market distortions. Definition of clear roles and responsibilities of all market players is therefore crucial in safeguarding security of gas supply and the well-functioning of the internal market.

(4) Security of supply obligations imposed on companies should not impede the well functioning of the internal market and should not impose unreasonable and disproportionate burden on gas market players, including new market entrants and small market players.

(5) In view of the growing gas market in the Community, it is important that the security of gas supply is maintained, in particular as regards household customers.

(6) A large choice of instruments are available for the industry and, if appropriate, for Member States, to comply with the security of supply obligations. Bilateral agreements between Member States could be one of the means to contribute to the achievement of the minimum security of supply standards, having due regard to the Treaty and secondary legislation, in particular Article 3(2) of Directive 2003/55/EC.

(7) Indicative minimum targets for gas storage could be set either at national level or by the industry. It is understood that this should not create any additional investment obligations.

(8) Considering the importance of securing gas supply, i.e. on the basis of long-term contracts, the Commission should monitor the developments on the gas market on the basis of reports from Member States.

(9) In order to meet growing demand for gas and diversify gas supplies as a condition for a competitive internal gas market, the Community will need to mobilise significant additional volumes of gas over the coming decades much of which will have to come from distant sources and transported...
over long distances.
(10) The Community has a strong common interest with gas supplying and transit countries in ensuring continued investments in gas supply infrastructure.

(11) Long-term contracts have played a very important role in securing gas supplies for Europe and will continue to do so. The current level of long term contracts is adequate on the Community level, and it is believed that such contracts will continue to make a significant contribution to overall gas supplies as companies continue to include such contracts in their overall supply portfolio.

(12) Considerable progress has been made in developing liquid trading platforms and through gas release programmes at national level. This trend is expected to continue.

(13) The establishment of genuine solidarity between Member States in major emergency supply situations is essential, even more so as Member States become increasingly interdependent regarding security of supply.

(14) The sovereign rights of Member States over their own natural resources are not affected by this Directive.

(15) A Gas Coordination Group should be established, which should facilitate coordination of security of supply measures at Community level in the event of a major supply disruption, and may also assist member States in coordinating measures taken at a national level. In addition, it should exchange information on security of gas supply on a regular basis, and should consider aspects relevant in the context of a major supply disruption.

(16) Member States should adopt and publish national emergency provisions.

(17) This Directive should provide rules applicable in the event of a major supply disruption; the foreseeable length of such a supply disruption should cover a significant period of time of at least eight weeks.

(18) Regarding the handling of a major supply disruption, this Directive should provide for a mechanism based on a three step approach. The first step would involve the reactions of the industry to the supply disruption; if this were not sufficient, Member States should take measures to solve the supply disruption. Only if the measures taken at stage one and two have failed should appropriate measures be taken at Community level.

(19) Since the objective of this Directive, namely ensuring an adequate level for the security of gas supply, in particular in the event of a major supply disruption, whilst contributing to the proper functioning of the internal gas market, cannot, in all circumstances, be sufficiently achieved by the Member States, particularly in light of the increasing interdependency of the Member States regarding security of gas supply, and can therefore, by reason of the scale and effects of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. 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.
(c) periods of exceptionally high gas demand during the coldest weather periods statistically occurring every 20 years.

These criteria are referred to in this Directive as “security of supply standards”.

2. Contracting Parties may extend the scope of paragraph 1 in particular to small and medium-sized enterprises and other customers that cannot switch their gas consumption to other energy sources, including measures for the security of their national electricity system if it depends on gas supplies.

3. A non-exhaustive list in the Annex sets out examples of instruments which may be used in order to achieve the security of supply standards.

4. Contracting Parties, having due regard to the geological conditions of their territory and the economic and technical feasibility, may also take the necessary measures to ensure that gas storage facilities located within their territory contribute to an appropriate degree to achieving the security of supply standards.

5. If an adequate level of interconnection is available, Contracting Parties may take the appropriate measures in cooperation with another Contracting Party, including bilateral agreements, to achieve the security of supply standards using gas storage facilities located within that other Contracting Party. These measures, in particular bilateral agreements, shall not impede the proper functioning of the internal gas market.

6. Contracting Parties may set or require the industry to set indicative minimum targets for a possible future contribution of storage, either located within or outside the Contracting Party, to security of supply. These targets shall be published.

**Article 5**

*Reporting*

1. In the report published by Contracting Parties pursuant to Article 5 of Directive 2003/55/EC, Contracting Parties shall also cover the following:

(a) the competitive impact of the measures taken pursuant to Articles 3 and 4 on all gas market players;

(b) the levels of storage capacity;

(c) the extent of long-term gas supply contracts concluded by companies established and registered on their territory, and in particular their remaining duration, based on information provided by the companies concerned, but excluding commercially sensitive information, and the degree of liquidity of the gas market;

(d) the regulatory frameworks to provide adequate incentives for new investment in exploration and production, storage, LNG and transport of gas, taking into account Article 22 of Directive 2003/55/EC as far as implemented by the Contracting Party.

2. This information shall be considered by the Commission in the reports that it issues pursuant to Article 31 of Directive 2003/55/EC in the light of the consequences of that Directive for the Community as a whole and the overall efficient and secure operation of the internal gas market.

**Article 6**

*Monitoring*

1. The Commission shall monitor, on the basis of the reports referred to in Article 5(1):

(a) the degree of new long-term gas import contracts from third countries;

(b) the existence of adequate liquidity of gas supplies;

(c) the level of working gas and of the withdrawal capacity of gas storage;

(d) the level of interconnection of the national gas systems of Contracting Parties;

(e) the foreseeable gas supply situation in function of demand, supply autonomy and available supply sources at Community level concerning specific geographic areas in the Community.

2. Where the Commission concludes that gas supplies in the Community will be insufficient to meet foreseeable gas demand in the long term, it may submit proposals in accordance with the Treaty.

3. By 19 May 2008 the Commission shall submit a review report to the European Parliament and the Council on the experience gained from the application of this Article.

**Article 7**

*Gas Coordination Group*

For the implementation of Directive 2004/67/EC in the Contracting Parties, the coordination group referred to at its Article 7 will be set up by a Procedural Act to be adopted by the Permanent High Level Group.

**Article 8**

*National emergency measures*

1. Contracting Parties shall prepare in advance and, if appropriate, update national emergency measures and shall communicate these to the Commission. Contracting Parties shall publish their national emergency measures.

2. Contracting Parties’ emergency measures shall ensure, where appropriate, that market players are given sufficient opportunity to provide an initial response to the emergency situation.

3. Subject to Article 4(1), Contracting Parties may indicate to the Chair of the Group events which they consider, because of their magnitude and exceptional character, cannot be adequately managed with national measures.

**Article 9**

*Community mechanism*

1. If an event occurs that is likely to develop into a major supply disruption for a significant period of time, or in the case of an event indicated by a Contracting Party according to Article 8(3), the
Article 12 and 13
Entry into force and Addressees

This Decision [2007/06/MC-EnC] enters into force on the day of its adoption and is addressed to the Contracting Parties.


Commission shall convene the Group as soon as possible, at the request of a Contracting Party or on its own initiative.

2. The Group shall examine, and, where appropriate, assist the Contracting Parties in coordinating the measures taken at national level to deal with the major supply disruption.

3. In carrying out its work, the Group shall take full account of:
   (a) the measures taken by the gas industry as a first response to the major supply disruption;
   (b) the measures taken by Contracting Parties, such as those taken pursuant to Article 4, including relevant bilateral agreements.

4. Where the measures taken at national level referred to in paragraph 3 are inadequate to deal with the effects of an event referred to in paragraph 1, the Commission may, in consultation with the Group, provide guidance to Contracting Parties regarding further measures to assist those Contracting Parties particularly affected by the major supply disruption.

5. Where the measures taken at national level pursuant to paragraph 4 are inadequate to deal with the effects of an event referred to in paragraph 1, the Commission may submit a proposal to the Council regarding further necessary measures.

6. Any measures at Community level referred to in this Article shall contain provisions aimed at ensuring fair and equitable compensation of the undertakings concerned by the measures to be taken.

Article 10
Monitoring of implementation

The Secretariat shall monitor and review the implementation of Directive 2004/67/EC in the Contracting Parties and shall submit a progress report to the Permanent High Level Group by 30 June 2010.

Article 11
Transposition


When Member States adopt these 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.

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2 The text displayed here corresponds to Article 2(4) of Decision 2007/06/MC-EnC.
3 The text displayed here corresponds to Article 2(1) of Decision 2007/06/MC-EnC. For the Republic of Moldova, the corresponding date is 31 December 2010 and for Ukraine 1 January 2012.
ANNEX

NON-EXHAUSTIVE LIST OF INSTRUMENTS TO ENHANCE THE SECURITY OF GAS SUPPLY REFERRED TO IN ARTICLE 3(3) AND ARTICLE 4(3)

- working gas in storage capacity,
- withdrawal capacity in gas storage,
- provision of pipeline capacity enabling diversion of gas supplies to affected areas,
- liquid tradable gas markets,
- system flexibility,
- development of interruptible demand,
- use of alternative back-up fuels in industrial and power generation plants,
- cross-border capacities,
- cooperation between transmission system operators of neighbouring Contracting Parties for coordinated dispatching,
- coordinated dispatching activities between distribution and transmission system operators,
- domestic production of gas,
- production flexibility,
- import flexibility,
- diversification of sources of gas supply,
- long term contracts,
- investments in infrastructure for gas import via regasification terminals and pipelines.
PART II


Whereas:

(1) The supply of crude oil and petroleum products to the Community remains very important, particularly for the transport sector and the chemicals industry.

(2) The increasing concentration of production, dwindling oil reserves and growing worldwide consumption of petroleum products are all contributing to an increased risk of supply difficulties.

(3) The European Council, in its Action Plan (2007 to 2009), entitled “Energy Policy for Europe”, underlined the need to enhance security of supply for the European Union (EU) as a whole and for each Member State, inter alia, by reviewing the Union’s oil stocks mechanisms, with special reference to the availability of oil in the event of a crisis.

(4) That objective requires, among other things, greater convergence between the Community system and the system provided for by the International Energy Agency (hereinafter “the IEA”).

(5) Under Council Directive 2006/67/EC of 24 July 2006 imposing an obligation on Member States to maintain minimum stocks of crude oil and/or petroleum products [4], stocks are calculated on the basis of average daily inland consumption during the previous calendar year. However, stockholding obligations under the Agreement on an International Energy Programme of 18 November 1974 (hereinafter “the IEA Agreement”) are calculated on the basis of net imports of oil and petroleum products. For that reason, and owing to other differences in methodology, the way in which stockholding obligations and Community emergency stocks are calculated should be brought more into line with the calculation methods used under the IEA Agreement, notwithstanding the facts that the IEA calculation methods may have to be evaluated in light of technological improvements during the last decades, and that non-IEA members that are fully dependent on imports may require a longer period for adapting their stockholding obligations. Further amendments to the methods and procedures for calculating stock levels may prove necessary and beneficial in order to further increase coherence with IEA practice, including, for example, changes that lead to a lowering for certain Member States of the reduction percentage of 10% applied in the calculation of stocks, that would allow a different treatment of naphtha stocks, or that would allow the stocks held in tankers in territorial waters of a Member State to be counted.

(6) Indigenous production of oil can in itself contribute to security of supply and might therefore provide justification for oil-producing Member States to hold lower stocks than other Member States. A derogation of that kind should not, however, result in stockholding obligations that differ substantially from those that apply under Directive 2006/67/EC. It therefore follows that the stockholding obligation for certain Member States should be set on the basis of inland oil consumption and not on the basis of imports.

(7) The Presidency Conclusions of the Brussels European Council of 8 and 9 March 2007 show that it is becoming increasingly vital and pressing for the Community to put in place an integrated energy policy, combining action at European and Member State level. It is therefore essential to ensure greater convergence in the standards secured by the stockholding mechanisms in place in the vari-
ous Member States.

(8) The availability of oil stocks and the safeguarding of energy supply are essential elements of public security for Member States and for the Community. The existence of central stockholding entities (CSEs) in the Community brings those goals closer. In order to allow the Member States concerned to make optimal use of national law to define the terms of reference for their CSEs while easing the financial burden placed on final consumers as a result of such stockholding activities, it is sufficient to prohibit the use of stocks for commercial purposes, while allowing stocks to be held in any location across the Community and by any CSE set up for that purpose.

(9) Given the objectives of the Community legislation on oil stocks, possible security concerns which may be expressed by some Member States and the desire to make mechanisms for solidarity amongst Member States more rigorous and more transparent, it is necessary to focus as much as possible the operation of CSEs to their national territories.

(10) It should be possible for oil stocks to be held at any location across the Community, provided that due account is taken of their physical accessibility. Consequently, economic operators on which such stockholding obligations fall should be able to discharge their obligations by delegation to other economic operators or any one of the CSEs. Furthermore, provided those obligations can be delegated to a freely chosen CSE located within the Community on payment of an amount limited to the cost of the services provided, the risk of discriminatory practices at national level will be reduced. The right of an economic operator to delegate should not imply an obligation on the part of any actor to accept the delegation, unless this Directive requires otherwise. When Member States decide to limit operators’ delegation rights, they should ensure that operators are guaranteed the right to delegate a certain minimum percentage of their obligation; those Member States should therefore ensure that their CSE will accept the delegation of the stockholding obligation in respect of the amount needed to guarantee that minimum percentage.

(11) Member States should ensure full availability of all stocks held pursuant to Community legislation. In order to guarantee that availability, there should be no restrictions or limitations on the right of ownership of those stocks that could hamper their use in case of oil supply disruption. Petroleum products owned by companies facing a significant risk of enforcement proceedings against their assets should not be taken into account. Where a stockholding obligation has been imposed on operators, initiation of bankruptcy or settlement proceedings could be considered to demonstrate the existence of such a risk.

(12) In order to allow Member States to react quickly to cases of particular urgency or to local crises it might be appropriate to allow them to use a part of their stocks for such situations. Such urgent cases or local crises would not include situations caused by price developments of crude oil or petroleum products, but could include disruptions in the supply of natural gas which require fuel switching, i.e. using crude oil or petroleum products as fuel for energy production.

(13) In view of what is required in connection with setting up emergency policies, bringing about convergence in the standards secured by national stockholding mechanisms and ensuring a better overview of stock levels, particularly in the event of a crisis, Member States and the Community should have the means for reinforced control of those stocks. Stocks held under bilateral agreements, or contractual rights to purchase certain volumes of stocks (tickets) that fulfil all obligations set by the current Directive, should form useful instruments compatible with this aim of greater convergence.

(14) Ownership of a substantial part of those stocks by the Member States or the CSEs set up by the various national authorities should make it possible to increase the level of control and transparency, at least for that part of the stocks.

(15) To help enhance security of supply in the Community, the stocks, known as "specific stocks", purchased by the Member States or the CSEs and constituted on the basis of decisions taken by the Member States should correspond to actual needs in the event of a crisis. They should also have separate legal status to ensure full availability should such a crisis occur. To that end, the Member States concerned should ensure that appropriate steps are taken to protect those stocks unconditionally against all enforcement measures.

(16) At this stage, the volumes to be owned by the CSEs or the Member States should be set at a level determined independently and voluntarily by each of the Member States concerned.

(17) Given the need to increase the level of control and transparency, emergency stocks that are not specific stocks should be subject to increased monitoring requirements and, in certain cases, Member States should be required to notify measures governing the availability of emergency stocks and any changes in the arrangements for maintaining them.

(18) Fluctuations in the volume of specific stocks due to individual stock replacement operations could be permissible in order to allow necessary operations such as those required for ensuring freshness of the stocks, for ensuring compliance with changed product specifications, or for issuing new tenders for storage.

(19) Where emergency stocks and specific stocks are commingled with other stocks held by economic operators, transparency of emergency stock levels should be emphasised.

(20) The frequency with which stock summaries are drawn up and the deadline for their submission, as laid down by Directive 2006/67/EC, seem to be out of step with various oil stockholding systems that have been set up in other parts of the world. In a resolution on the macroeconomic impact of the increase in the price of energy, the European Parliament voiced its support for more frequent reporting.

(21) In order to prevent double reporting with regard to the information to be provided by Member States on the different product categories, Regulation (EC) No 1099/2008 of the European Parliament and of the Council of 22 October 2008 on energy statistics should serve as a point of reference for the different categories of petroleum products referred to in this Directive.

(22) In order to enhance security of supply, provide the markets with fuller information, reassure consumers about the state of oil stocks and optimise the way in which information is transmitted, provision should be made for possible subsequent amendment or clarification of the rules for the preparation and submission of statistical summaries.

(23) With the same objectives in mind, the preparation and submission of statistical summaries should also be extended to stocks other than emergency stocks and specific stocks, with those summaries to be submitted on a monthly basis.

(24) As there may be errors or discrepancies in the summaries submitted to the Commission, the Commission's employees or authorised agents should be able to review the emergency preparedness and stockholding of Member States. Member States' national regimes should be relied upon to secure that such reviews can be conducted effectively in accordance with national procedures.

(25) Complex electronic and statistical data processing should be carried out for the data received or
collected. This requires the use of integrated tools and procedures. The Commission should therefore be able to take all appropriate measures to that effect, in particular developing new computer systems.

(26) The protection of individuals with regard to the processing of personal data by the Member States is governed by Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, while the protection of individuals with regard to the processing of personal data by the Commission is governed by Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. In particular, those acts require the processing of personal data to be justified by a legitimate purpose and stipulate that any personal data gathered accidentally must be deleted immediately.

(27) Biofuels and certain additives are often blended with petroleum products. When blended or intended to be blended with those products, it should be possible to take them into account both when calculating the stockholding obligation and when calculating the stocks held.

(28) The Member States concerned should be allowed to fulfil any obligations they may be subject to as a result of a decision to release stocks taken pursuant to the IEA Agreement or its implementing measures. A proper and timely execution of IEA decisions is a key factor for efficient response to cases of supply difficulties. In order to ensure this, Member States should release part of their emergency stocks to the extent provided for in the IEA decision in question. The Commission should cooperate closely with IEA and base action at Community level on the IEA methodology. In particular, the Commission should be in a position to recommend stock releases by all Member States, as appropriate to complement, and facilitate the implementation of, the IEA decision inviting its members to release stocks. It is appropriate for Member States to respond positively to such Commission recommendations in the interest of a strong Community-wide solidarity and cohesion, between those Member States that are members of the IEA and those that are not, in response to a supply disruption.

(29) Council Directive 73/238/EEC of 24 July 1973 on measures to mitigate the effects of difficulties in the supply of crude oil and petroleum products is intended, in particular, to offset, or at least to diminish, the adverse effects of any difficulties, even temporary, having the effect of considerably reducing supplies of crude oil or petroleum products, including the serious disruption to the economic activity of the Community that such a reduction could cause. This Directive should include similar measures.

(30) Directive 73/238/EEC also aims to set up a consultative body to facilitate the coordination of practical measures taken or proposed by the Member States in this field. Such a body should be provided for in this Directive. It remains necessary for each Member State to draw up a plan that could be used in the event of difficulties arising in the supply of crude oil and petroleum products. Each Member State should also make arrangements with regard to the organisational measures to be taken in the event of a crisis.

(31) Given that this Directive introduces a number of new mechanisms, its implementation and functioning should be reviewed.

(32) This Directive replaces or covers all of the aspects dealt with in Council Decision 68/416/EEC of 20 December 1968 on the conclusion and implementation of individual agreements between Governments relating to the obligation of Member States to maintain minimum stocks of crude oil and/or petroleum products [9]. That Decision therefore no longer serves any purpose.

(33) Since the objective of this Directive, namely to maintain a high level of security of oil supply in the Community through reliable and transparent mechanisms based on solidarity amongst Member States while complying with the internal market and competition rules, cannot be sufficiently achieved by the Member States and can therefore, by reason of its scale and effects, be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. 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.

(34) 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 [10].

(35) In accordance with point 34 of the Interinstitutional Agreement on better law-making, Member States are encouraged to draw up, for themselves and in the interest of the Community, their own tables, illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public.


**Article 1**

**Objective**

This Directive lays down rules aimed at ensuring a high level of security of oil supply in the Community through reliable and transparent mechanisms based on solidarity amongst Member States, maintaining minimum stocks of crude oil and/or petroleum products and putting in place the necessary procedural means to deal with a serious shortage.

**Article 2**

**Definitions**

For the purposes of this Directive:

(a) **"reference year"** means the calendar year of the consumption or of the net import data used to calculate either the stocks to be held or the stocks actually held at a given time;

(b) **"additives"** means non-hydrocarbon compounds added to or blended with a product to modify its properties;

(c) **"biofuel"** means liquid or gaseous fuel for transport produced from biomass, "biomass" being the biodegradable fraction of products, waste and residues from agriculture (including vegetable and animal substances), forestry and related industries, as well as the biodegradable fraction of industrial and municipal waste;

(d) **"inland consumption"** means the total quantities, calculated according to Annex II, delivered within a country for both energy and non-energy use; this aggregate includes deliveries to the
transformation sector and deliveries to industry, transport, households and other sectors for "final" consumption; it also includes the own consumption of the energy sector (except refinery fuel);
(e) "effective international decision to release stocks" means any decision in force taken by the Governing Board of the International Energy Agency to make crude oil or petroleum products available to the market by a release of its members' stocks and/or additional measures;
(f) "central stockholding entity" (CSE) means the body or service upon which powers may be conferred to act to acquire, maintain or sell oil stocks, including emergency stocks and specific stocks;
(g) "major supply disruption" means a substantial and sudden drop in the supply of crude oil or petroleum products to the Community or to a Member State, irrespective of whether or not it has led to an effective international decision to release stocks;
(h) "international marine bunkers" has the meaning given in Section 2.1 of Annex A to Regulation (EC) No 1099/2008;
(i) "oil stocks" means stocks of the energy products listed in the first paragraph of Section 3.1 of Annex C to Regulation (EC) No 1099/2008;
(j) "emergency stocks" means the oil stocks that each Member State is required to maintain pursuant to Article 3;
(k) "commercial stocks" means those oil stocks held by economic operators which are not a requirement under this Directive;
(l) "specific stocks" means oil stocks that meet the criteria set out in Article 9;
(m) "physical accessibility" means arrangements for locating and transporting stocks to ensure their release or effective delivery to end users and markets within time frames and conditions conducive to alleviating the supply problems which may have arisen.

The definitions set out in this Article may be clarified or amended in accordance with the regulatory procedure referred to in Article 23(2).

Article 3
Emergency stocks - Calculating stockholding obligations

1. Member States shall adopt such laws, regulations or administrative provisions as may be appropriate in order to ensure, by 31 December 2012, that the total oil stocks maintained at all times within the Community for their benefit correspond, at the very least, to 90 days of average daily net imports or 61 days of average daily inland consumption, whichever of the two quantities is greater.
2. The average daily net imports to be taken into account shall be calculated on the basis of the crude oil equivalent of imports during the previous calendar year, determined in accordance with the method and procedures set out in Annex I.
3. The average daily inland consumption to be taken into account shall be calculated on the basis of the crude oil equivalent of inland consumption during the previous calendar year, established and calculated in accordance with the method and procedures set out in Annex I.
4. However, notwithstanding paragraph 2, the daily averages of net imports and inland consumption, as referred to in that paragraph, shall be determined, as regards the period from 1 January to 31 March of each calendar year, on the basis of the quantities imported or consumed during the last year but one before the calendar year in question.
4. The methods and procedures for calculating stockholding obligations, as referred to in this Article, may be amended in accordance with the regulatory procedure referred to in Article 23(2).

Article 4
Calculating stock levels

1. The levels of stocks held shall be calculated using the methods set out in Annex III. When calculating stock levels for each category held pursuant to Article 9, those methods shall apply only to the products in the category in question.
2. The levels of stocks held at a given time shall be calculated using data from the reference year determined in accordance with the rules set out in Article 3.
3. Any oil stocks may be included simultaneously in both the calculation of a Member State’s emergency stocks and the calculation of its specific stocks provided that those oil stocks satisfy all the conditions laid down in this Directive for both types of stocks.
4. The methods and procedures for calculating stock levels, as referred to in paragraphs 1 and 2, may be amended in accordance with the regulatory procedure referred to in Article 23(2). In particular, it may prove necessary and beneficial to amend those methods and procedures, including the application of the reduction provided for in Annex III, in order to ensure coherence with IEA practice.

Article 5
Availability of stocks

1. At all times, Member States shall ensure that emergency stocks and specific stocks are available and physically accessible for the purposes of this Directive. They shall establish arrangements for the identification, accounting and control of those stocks so as to allow them to be verified at any time. This requirement also applies to any emergency stocks and specific stocks that are commingled with other stocks held by economic operators.
2. Member States shall take all necessary measures to prevent all obstacles and encumbrances that could hamper the availability of emergency stocks and specific stocks. Each Member State may set limits or additional conditions on the possibility of its emergency stocks and specific stocks being held outside its territory.
3. Where there is reason to implement the emergency procedures provided for in Article 20, Member States shall prohibit, and refrain from taking, any measure hindering the transfer, use or release of emergency stocks or specific stocks held within their territory on behalf of another Member State.

Article 6
Register of emergency stocks - Annual report

1. Each Member State shall keep a continually updated and detailed register of all emergency stocks held for its benefit which do not constitute specific stocks. That register shall contain, in particular, information needed to pinpoint the depot, refinery or storage facility where the stocks in question are located, as well as the quantities involved, the owner of the stocks and their nature, with reference to the categories identified in the first paragraph of Section 3.1 of Annex C to Regulation (EC)
No 1099/2008.

2. By the 25th February each year, each Member State shall send the Commission a summary copy of the stock register referred to in paragraph 1 showing at least the quantities and nature of the emergency stocks included in the register on the last day of the preceding calendar year.

3. Member States shall also send the Commission a full copy of the register within 15 days of a request by the Commission; in this copy sensitive data relating to the location of stocks may be withheld. Such requests may be made no later than 5 years after the date to which the requested data relate, and may not be upon data relating to any period preceding 1 January 2013.

Article 7
Central stockholding entities

1. Member States may set up CSEs.

No Member State may set up more than one CSE or any other similar body. A Member State may set up its CSE at any location within the Community.

Where a Member State sets up a CSE, it shall take the form of a body or service without profit objective and acting in the general interest and shall not be considered to be an economic operator within the meaning of this Directive.

2. The main purpose of the CSE shall be to acquire, maintain and sell oil stocks for the purposes of this Directive or for the purpose of complying with international agreements concerning the maintenance of oil stocks. It is the only body or service upon which powers may be conferred to acquire or sell specific stocks.

3. CSEs or Member States may, for a specified period, delegate tasks relating to the management of emergency stocks and, with the exception of sale and acquisition, of specific stocks, but only to:

(a) another Member State within whose territory such stocks are located or the CSE set up by that Member State. Tasks thus delegated may not be subdelegated to other Member States or to CSEs set up by them. The Member State that set up the CSE, as well as each Member State within whose territory the stocks will be held, has the right to make the delegation conditional upon its authorisation;

(b) economic operators. Tasks thus delegated may not be subdelegated. Where such a delegation, or any change or extension to that delegation, involves tasks relating to the management of emergency and specific stocks held in another Member State, it must be authorised in advance both by the Member State on whose account the stocks are held and by all Member States within whose territories the stocks will be held.

4. Each Member State having a CSE shall require it, for the purposes of Article 8(1) and (2), to publish:

(a) on an ongoing basis, full information, broken down by product category, on the stock volumes that it can undertake to maintain for economic operators, or, where appropriate, interested CSEs;

(b) at least 7 months in advance, the conditions subject to which it is willing to provide services related to maintaining the stocks for economic operators. The conditions under which services may be provided, including conditions relating to scheduling, may also be determined by competent national authorities or following a competitive procedure intended to determine the best bid among operators or, where appropriate, interested CSEs.
4. Member States shall take the necessary measures to inform economic operators of the modalities to be used to calculate the stockholding obligations imposed on them no later than 200 days prior to the start of the period to which the obligation in question relates. Economic operators shall exercise their right to delegate stockholding obligations to CSEs no later than 170 days prior to the start of the period to which the obligation in question relates.

Where economic operators are informed less than 200 days before the start of the period to which the stockholding obligation relates, they may exercise their right to delegate that obligation at any time.

**Article 9**

**Specific stocks**

1. Each Member State may undertake to maintain a minimum level of oil stocks, calculated in terms of number of days of consumption, in accordance with the conditions set out in this Article.

Specific stocks shall be owned by the Member State or the CSE set up by it and shall be maintained on the territory of the Community.

2. Specific stocks can only be composed of one or more of the following product categories, as defined in Section 4 of Annex B to Regulation (EC) No 1099/2008:

- Ethane
- LPG
- Motor gasoline
- Aviation gasoline
- Gasoline-type jet fuel (naphtha-type jet fuel or JP4)
- Kerosene-type jet fuel
- Other kerosene
- Gas/diesel oil (distillate fuel oil)
- Fuel oil (high sulphur content and low sulphur content)
- White spirit and SBP
- Lubricants
- Bitumen
- Paraffin waxes
- Petroleum coke

3. Petroleum products constituting specific stocks shall be identified by each Member State on the basis of the categories listed in paragraph 2. Member States shall ensure that, for the reference year determined in accordance with the rules set out in Article 3 and concerning the products included in the categories used, the crude oil equivalent of quantities consumed in the Member State is at least equal to 75% of inland consumption calculated using the method set out in Annex II.

For each of the categories chosen by the Member State, the specific stocks it undertakes to maintain shall correspond to a given number of days of average daily consumption measured on the basis of their crude oil equivalent during the reference year determined in accordance with the rules set out in Article 3.

The crude oil equivalents referred to in the first and second subparagraphs are calculated by multiplying by a factor of 1.2 the sum of the aggregate "observed gross inland deliveries", as defined in Section 3.2.1 of Annex C to Regulation (EC) No 1099/2008, for the products included in the categories used or concerned. International marine bunkers are not included in the calculation.

4. Each Member State that has decided to maintain specific stocks shall send the Commission a notice to be published in the Official Journal of the European Union, specifying the level of such stocks that it has undertaken to maintain and the duration of such undertaking which shall be at least 1 year. The notified minimum level shall apply equally to all categories of specific stocks used by the Member State.

The Member State shall ensure that such stocks are held for the full length of the notified period without prejudice to the right of the Member State to undergo temporary reductions due solely to individual stock replacement operations.

The list of categories used by a Member State shall remain in effect for at least 1 year and may be amended only with effect on the first day of a calendar month.

5. Each Member State that has not made a commitment for the full length of a given calendar year to maintain at least 30 days of specific stocks shall ensure that at least one-third of their stockholding obligation is held in the form of products composed in accordance with paragraphs 2 and 3.

A Member State for which less than 30 days of specific stocks are held shall draw up an annual report analysing the measures taken by its national authorities to ensure and verify the availability and physical accessibility of its emergency stocks as referred to in Article 5 and shall document in the same report arrangements made to allow the Member State to control the use of these stocks in case of oil supply disruptions. That report shall be sent to the Commission by the end of the first month of the calendar year to which it relates.

**Article 10**

**Managing specific stocks**

1. Each Member State shall keep a continually updated and detailed register of all specific stocks held within its territory. That register shall contain, in particular, all information needed to pinpoint the exact location of the stocks in question.

Member States shall also send the Commission a copy of the register within 15 days of a request by the Commission. In this copy, sensitive data relating to the location of stocks may be withheld. Such requests may be made no later than 5 years after the date to which the requested data relate.

2. Where specific stocks are commingled with other oil stocks, Member States or their CSEs shall make the necessary arrangements to prevent those commingled products from being moved, to the extent of the proportion constituting specific stocks, without prior written authorisation by the owner of the specific stocks and by the authorities of, or the CSE established by, the Member State in whose territory the stocks are located.

3. Member States shall take the necessary measures to confer unconditional immunity from enforcement action on all specific stocks maintained or transported within their territory, irrespective of whether those stocks are owned by them or by other Member States.
**Article 11**

**The effect of delegations**

The delegations referred to in Articles 7 and 8 shall in no way alter the obligations incumbent upon each Member State pursuant to this Directive.

**Article 12**

**Statistical summaries of stocks covered by Article 3**

1. With regard to the levels of stocks to be held pursuant to Article 3, each Member State shall draw up statistical summaries and submit them to the Commission in accordance with the rules set out in Annex IV.

2. The rules for drawing up the summaries referred to in paragraph 1, their scope, content and frequency and the deadlines for their submission may be amended in accordance with the regulatory procedure referred to in Article 23(2). The rules for submitting those summaries to the Commission may also be amended in accordance with the regulatory procedure referred to in Article 23(2).

3. Member States may not include quantities of crude oil or petroleum products which are subject to a seizure order or enforcement action in their statistical summaries of emergency stocks. This also applies to stocks owned by companies that are bankrupt or have entered into an arrangement with creditors.

**Article 13**

**Statistical summaries of specific stocks**

1. Each Member State concerned shall draw up and submit to the Commission a statistical summary, for each product category, showing the specific stocks existing on the last day of each calendar month and specifying the quantities and the number of days of average consumption in the reference year which those stocks represent. If some of those specific stocks are held outside a Member State’s territory, it shall provide details of the stocks maintained in or by the various Member States and CSEs concerned. It shall also provide a detailed indication of whether it owns all of those stocks or whether they are owned, in whole or in part, by its CSE.

2. Each Member State concerned shall also draw up and submit to the Commission a summary of the specific stocks located within its territory and owned by other Member States or CSEs, showing the stocks existing on the last day of each calendar month and broken down into the product categories identified pursuant to Article 9(4). In that summary, the Member State shall also indicate, in each case, the Member State or CSE concerned and the quantities involved.

3. The statistical summaries referred to in paragraphs 1 and 2 shall be submitted during the calendar month following that to which they relate.

4. Copies of the statistical summaries shall also be sent immediately upon request by the Commission. Such requests may be made no later than 5 years after the date to which the data in question relate.

5. The scope, content and frequency of the statistical summaries and the deadlines for their submission may be amended in accordance with the regulatory procedure referred to in Article 23(2). The rules for submitting those summaries to the Commission may also be amended in accordance with the regulatory procedure referred to in Article 23(2).

**Article 14**

**Summaries of commercial stocks**

1. Member States shall send the Commission a monthly statistical summary of the levels of commercial stocks held within their national territory. When doing so, they shall ensure that sensitive data are protected and shall abstain from mentioning the names of the owners of the stocks concerned.

2. Using aggregate levels, the Commission shall publish a monthly statistical summary of the commercial stocks in the Community on the basis of the summaries submitted by the Member States.

3. The rules for submitting and publishing the statistical summaries, as well as for their frequency, may be amended in accordance with the regulatory procedure referred to in Article 23(2).

**Article 15**

**Data processing**

The Commission shall be responsible for developing, hosting, managing and maintaining the IT resources needed to receive, store and carry out any processing of the data provided in the statistical summaries, all other information submitted by Member States or gathered by the Commission pursuant to this Directive and any data on oil stocks gathered pursuant to Regulation (EC) No 1099/2008 and needed for the purpose of drawing up the summaries required by this Directive.

**Article 16**

**Biofuels and additives**

1. When calculating stockholding obligations under Articles 3 and 9 biofuels and additives shall be taken into account only where they have been blended with the petroleum products concerned.

2. When calculating the stock levels actually maintained, biofuels and additives shall be taken into account when:
   (a) they have been blended with petroleum products concerned; or
   (b) they are stored on the territory of the Member State concerned, provided that the Member State has adopted rules ensuring that they are to be blended with petroleum products held pursuant to stockholding requirements set out in this Directive and that they are to be used in transportation.

3. The rules for taking biofuels and additives into account when calculating stockholding obligations and stock levels, as laid down in paragraph 1 and 2, may be amended in accordance with the regulatory procedure referred to in Article 23(2).
Article 17
Coordination Group for oil and petroleum products

1. A Coordination Group for oil and petroleum products is hereby set up (hereinafter the “Coordination Group”). The Coordination Group is a consultative Group that shall contribute to analysing the situation within the Community with regard to security of supply for oil and petroleum products and facilitate the coordination and implementation of measures in that field.

2. The Coordination Group shall be made up of representatives of the Member States. It shall be chaired by the Commission. Representative bodies from the sector concerned may take part in the work of the Coordination Group at the invitation of the Commission.

Article 18
Reviews of emergency preparedness and stockholding

1. The Commission may, in coordination with Member States, carry out reviews to verify their emergency preparedness and, if considered appropriate by the Commission, related stockholding. When preparing for such reviews, the Commission shall take into account efforts undertaken by other institutions and international organisations and consult the Coordination Group.

2. The Coordination Group may agree on the participation of authorised agents and representatives of other Member States in the reviews. Designated national officials of the reviewed Member State may accompany the persons performing the review. Within 1 week following the announcement of a review referred to in paragraph 1, any Member State concerned that has not provided the Commission with sensitive data relating to the location of stocks pursuant Articles 6 and 9 shall place this information at the disposal of the Commission’s employees or authorised agents.

3. Member States shall ensure that their authorities and those responsible for maintaining and managing emergency and specific stocks agree to inspections and provide assistance to the persons authorised by the Commission to perform those reviews. Member States shall in particular ensure that these persons are granted the right to consult all documents and registers relating to the stocks and have right of access to all sites on which stocks are held and to all related documents.

4. The outcome of reviews carried out pursuant to this Article shall be notified to the Member State reviewed and may be forwarded to the Coordination Group.

5. Member States and the Commission shall ensure that officials, agents and other persons working under Commission supervision and members of the Coordination Group may not disclose any information which has been gathered or exchanged pursuant to this Article and which, by its nature, is covered by professional secrecy, such as the identity of the owners of stocks.

6. The objectives of the reviews referred to in paragraph 1 may not include the processing of personal data. Any personal data found or uncovered during these reviews may not be gathered or taken into consideration and, if gathered accidentally, shall be destroyed immediately.

7. Member States shall take the necessary measures to ensure that all data, records, summaries and documents relating to emergency stocks and specific stocks are kept for a period of at least 5 years.

Article 19
Protection of individuals with regard to the processing of data

This Directive is without prejudice to, and in no way affects, the level of protection of individuals with regard to the processing of personal data under the provisions of Community and national law and, in particular, does not alter Member States’ obligations with regard to the processing of personal data, as laid down by Directive 95/46/EC, or the obligations incumbent upon Community institutions and bodies under Regulation (EC) No 45/2001 with regard to the processing of personal data by them in the course of their duties.

Article 20
Emergency procedures

1. Member States shall ensure that they have procedures in place and take such measures as may be necessary, in order to enable their competent authorities to release quickly, effectively and transparently some or all of their emergency stocks and specific stocks in the event of a major supply disruption, and to impose general or specific restrictions on consumption in line with the estimated shortages, inter alia, by allocating petroleum products to certain groups of users on a priority basis.

2. Member States shall at all times have contingency plans to be implemented in the event of a major supply disruption and shall provide for organisational measures to be taken to allow those plans to be implemented. Upon request, Member States shall inform the Commission of their contingency plans and the corresponding organisational arrangements.

3. In the event of an effective international decision to release stocks affecting one or more Member States:

(a) the Member States concerned may use their emergency stocks and specific stocks to fulfil their international obligations under that decision. Any Member State so doing shall notify the Commission immediately, so that the Commission can call a meeting of the Coordination Group or consult its members by electronic means to assess, in particular, the impact of that release;

(b) the Commission should recommend to Member States to release some or all of their emergency stocks and specific stocks or to take other measures of equivalent effect as considered appropriate. The Commission may act only after consulting the Coordination Group.

4. In the absence of an effective international decision to release stocks but when difficulties arise in the supply of crude oil or petroleum products to the Community or to a Member State, the Commission shall inform the IEA where applicable, and coordinate with it as appropriate, and arrange a consultation of the Coordination Group as soon as possible, either at the request of a Member State or on its own initiative. When a consultation of the Coordination Group is requested by a Member State, it shall be arranged within 4 days of the request at most, unless the Member State agrees to a longer period. On the basis of the results of the examination of the situation by the Coordination Group, the Commission shall determine whether a major supply disruption has occurred.

If a major supply disruption is deemed to have occurred, the Commission shall authorise the release of some or all of the quantities of emergency stocks and specific stocks that have been put forward for that purpose by the Member States concerned.

5. Member States may release emergency and specific stocks below the compulsory minimum level.
set by this Directive in amounts immediately necessary for an initial response in cases of particular urgency or in order to meet local crises. In the event of such release, Member States shall inform the Commission immediately of the amount released. The Commission shall transmit this information to the members of the Coordination Group.

6. Where paragraphs 3, 4 or 5 are applied, Member States may temporarily hold stocks at levels lower than those stipulated in this Directive. In that case, the Commission shall determine, on the basis of the results of the consultation of the Coordination Group and, where applicable, in coordination with the IEA, and notably by taking into account the situation on the international oil and petroleum products markets, a reasonable time frame within which Member States must bring their stocks back up to the minimum required levels.

7. Decisions taken by the Commission by virtue of this Article shall be without prejudice to any other international obligations on the Member States concerned.

Article 21
Penalties

Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take such measures as may be necessary to ensure that they are applied. Such penalties shall be effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission by 31 December 2012 and shall notify it without delay of any subsequent amendment affecting them.

Article 22
Review

The Secretariat shall monitor and review the preparation of the implementation of Directive 2009/119/EC in the Contracting Parties and shall submit an annual progress report to the Ministerial Council, the first of which shall be submitted in 2013.

Article 23
Committee procedure

1. The Commission shall be assisted by a Committee.

2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply.

Article 24
Repeal


References to the repealed Directives and to the repealed Decision shall be construed as references to this Directive.

Article 25
Transposition

1. Each Contracting Party shall implement Council Directive 2009/119/EC of 14 September 2009 imposing an obligation on Member States to maintain minimum stocks of crude oil and/or petroleum products not later than 1 January 2023. When Member States adopt measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the 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.

Article 26 and 27
Entry into force and Addressees

This Decision [2012/03/MC-EnC] enters into force upon its adoption and is addressed to the Contracting Parties.
ANNEX I

METHOD FOR CALCULATING THE CRUDE OIL EQUIVALENT OF IMPORTS OF PETROLEUM PRODUCTS

The crude oil equivalent of imports of petroleum products, as referred to in Article 3, must be calculated using the following method:

The crude oil equivalent of imports of petroleum products is obtained by calculating the sum of the net imports of crude oil, NGL, refinery feedstocks and other hydrocarbons as defined in Section 4 of Annex B to Regulation (EC) No 1099/2008, adjusting the result to take account of any stock changes, deducting 4% for naphtha yield (or, if the average naphtha yield within the national territory is greater than 7%, deducting the net actual consumption of naphtha or the average naphtha yield) and adding this to the net imports of all other petroleum products excluding naphtha, also adjusted to take account of stock changes and multiplied by a factor of 1.065.

International marine bunkers are not included in the calculation.

ANNEX II

METHOD FOR CALCULATING THE CRUDE OIL EQUIVALENT OF INLAND CONSUMPTION

For the purpose of Article 3, the crude oil equivalent of inland consumption must be calculated using the following method:

Inland consumption is the sum of the aggregate "observed gross inland deliveries", as defined in Section 3.2.1 of Annex C to Regulation (EC) No 1099/2008, of the following products only: motor gasoline, aviation gasoline, gasoline-type jet fuel (naphtha-type jet fuel or JP4), kerosene-type jet fuel, other kerosene, gas/diesel oil (distillate fuel oil) and fuel oil (high sulphur content and low sulphur content) as defined in Section 4 of Annex B to Regulation (EC) No 1099/2008.

International marine bunkers are not included in the calculation.

The crude oil equivalent of inland consumption is calculated by multiplying by a factor of 1.2.
ANNEX III

METHODS FOR CALCULATING THE LEVEL OF STOCKS HELD

The following methods must be used to calculate stock levels:
Without prejudice to the case addressed in Article 4(3), no quantity may be counted as stock more than once.
Crude oil stocks are reduced by 4%, which corresponds to the average naphtha yield.
Stocks of naphtha and petroleum products for international marine bunkers are not included.
Other petroleum products are included in the stock count using one of the two methods set out below. Member States must continue to use the method they have chosen throughout the whole calendar year in question.
Member States may:
(a) include all other stocks of the petroleum products identified in the first paragraph of Section 3.1 of Annex C to Regulation (EC) No 1099/2008 and calculate the crude oil equivalent by multiplying the quantities by a factor of 1.065; or
(b) include stocks of only the following products: motor gasoline, aviation gasoline, gasoline-type jet fuel (naphtha-type jet fuel or JP4), kerosene-type jet fuel, other kerosene, gas/diesel oil (distillate fuel oil) and fuel oil (high sulphur content and low sulphur content) and calculate the crude oil equivalent by multiplying the quantities by a factor of 1.2.
The calculation may include quantities held:
- in refinery tanks,
- in bulk terminals,
- in pipeline tankage,
- in barges,
- in intercoastal tankers,
- in oil tankers in port,
- in inland ship bunkers,
- in storage tank bottoms,
- as working stocks,
- by large consumers as required by law or otherwise controlled by governments.
However, those quantities except for any held in refinery tanks, in pipeline tankage or in bulk terminals, may not be included when calculating levels of specific stocks where such stocks are calculated separately from emergency stocks.
The calculation may never include:
(a) crude oil not yet produced;
(b) quantities held:
  - in pipelines,
  - in rail tank cars,
- in seagoing ships’ bunkers,
- in service stations and retail stores,
- by other consumers,
- in tankers at sea,
- as military stocks.
When calculating their stocks, Member States must reduce the quantities of stocks calculated as set out above by 10%. That reduction applies to all quantities included in a given calculation.
However, no 10% reduction is to be applied when calculating the level of specific stocks or the levels of the different categories of specific stocks where those stocks or categories are considered separately from the emergency stocks, particularly with a view to verifying compliance with the minimum levels laid down by Article 9.
ANNEX IV

RULES FOR THE PREPARATION AND SUBMISSION TO THE COMMISSION OF
STATISTICAL SUMMARIES OF STOCKS TO BE HELD PURSUANT TO ARTICLE 3

Each Member State must draw up and submit to the Commission, on a monthly basis, a definitive statistical summary of the level of stocks actually held on the last day of the calendar month, calculated either on the basis of the number of days of net oil imports or on the basis of the number of days of inland oil consumption, in accordance with Article 3. The statistical summary must provide precise details of why the calculation is based on the number of days of imports or, conversely, on the number of days of consumption and must specify which of the calculation methods set out in Annex III was used.

If some of the stocks included when calculating the level of stocks held pursuant to Article 3 are held outside national territory, each summary shall give details of the stocks held by the various Member States and CSEs concerned on the last day of the period to which it relates. In its summary, each Member State must also indicate, in each case, whether the stocks are being held pursuant to a delegation request made by one or more economic operators or whether they are being held at its request or at the request of its CSE.

For any stocks held by a Member State within its territory on behalf of other Member States or CSEs, that Member State must draw up and submit to the Commission a summary showing the stocks existing on the last day of each calendar month, broken down by product category. In that summary, the Member State must also indicate, in particular, the Member State or CSE concerned and the quantities involved in each case.

The statistical summaries referred to in this Annex must be submitted to the Commission within 55 days of the end of the month to which they relate. Those same summaries must also be submitted within 2 months of a request by the Commission. Such requests may be made no later than 5 years after the date to which the data relate.
ACQUIS COMMUNAUTAIRE

ENVIRONMENT

Whereas the 1973 and 1977 action programmes of the European Communities on the environment, as well as the 1983 action programme, the main outlines of which have been approved by the Council of the European Communities and the representatives of the Governments of the Member States, stress that the best environmental policy consists in preventing the creation of pollution or nuisances at source, rather than subsequently trying to counteract their effects; whereas they affirm the need to take effects on the environment into account at the earliest possible stage in all the technical planning and decision-making processes; whereas to that end, they provide for the implementation of procedures to evaluate such effects;

Whereas the disparities between the laws in force in the various Member States with regard to the assessment of the environmental effects of public and private projects may create unfavourable competitive conditions and thereby directly affect the functioning of the common market; whereas, therefore, it is necessary to approximate national laws in this field pursuant to Article 100 of the Treaty;

Whereas, in addition, it is necessary to achieve one of the Community's objectives in the sphere of the protection of the environment and the quality of life;

Whereas, since the Treaty has not provided the powers required for this end, recourse should be had to Article 235 of the Treaty;

Whereas general principles for the assessment of environmental effects should be introduced with a view to supplementing and coordinating development consent procedures governing public and private projects likely to have a major effect on the environment;

Whereas development consent for public and private projects which are likely to have significant effects on the environment should be granted only after prior assessment of the likely significant environmental effects of these projects has been carried out; whereas this assessment must be conducted on the basis of the appropriate information supplied by the developer, which may be supplemented by the authorities and by the people who may be concerned by the project in question;

Whereas the principles of the assessment of environmental effects should be harmonized, in particular with reference to the projects which should be subject to assessment, the main obligations of the developers and the content of the assessment;

Whereas projects belonging to certain types have significant effects on the environment and these projects must as a rule be subject to systematic assessment;

Whereas projects of other types may not have significant effects on the environment in every case and whereas these projects should be assessed where the Member States consider that their characteristics so require;
Whereas, for projects which are subject to assessment, a certain minimal amount of information must be supplied, concerning the project and its effects;

Whereas the effects of a project on the environment must be assessed in order to take account of concerns to protect human health, to contribute by means of a better environment to the quality of life, to ensure maintenance of the diversity of species and to maintain the reproductive capacity of the ecosystem as a basic resource for life;

Whereas, however, this Directive should not be applied to projects the details of which are adopted by a specific act of national legislation, since the objectives of this Directive, including that of supplying information, are achieved through the legislative process;

Whereas, furthermore, it may be appropriate inexceptional cases to exempt a specific project from the assessment procedures laid down by this Directive, subject to appropriate information being supplied to the Commission.

Article 1

1. This Directive shall apply to the assessment of the environmental effects of those public and private projects which are likely to have significant effects on the environment.

2. For the purposes of this Directive:

‘project’ means:
- the execution of construction works or of other installations or schemes,
- other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources;

‘developer’ means:
the applicant for authorization for a private project or the public authority which initiates a project;

‘development consent’ means:
the decision of the competent authority or authorities which entitles the developer to proceed with the project;

‘public’ means:
one or more natural or legal persons and, in accordance with national legislation or practice, their associations, organisations or groups;

‘public concerned’ means:
the public affected or likely to be affected by, or having an interest in, the environmental decision-making procedures referred to in Article 2(2); for the purposes of this definition, non-governmental organizations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest.

3. The competent authority or authorities shall be that or those which the Member States designate as responsible for performing the duties arising from this Directive.

4. Member States may decide, on a case-by-case basis if so provided under national law, not to apply this Directive to projects serving national defense purposes, if they deem that such application would have an adverse effect on these purposes.

5. This Directive shall not apply to projects the details of which are adopted by a specific act of national legislation, since the objectives of this Directive, including that of supplying information, are achieved through the legislative process.

Article 2

1. Member States shall adopt all measures necessary to ensure that, before consent is given, projects likely to have significant effects on the environment by virtue, inter alia, of their nature, size or location are made subject to a requirement for development consent and an assessment with regard to their effects. These projects are defined in Article 4.

2. The environmental impact assessment may be integrated into the existing procedures for consent to projects in the Member States, or, failing this, into other procedures or into procedures to be established to comply with the aims of this Directive.

2a. Member States may provide for a single procedure in order to fulfil the requirements of this Directive and the requirements of Council Directive 96/61/EC of 24 September 1996 on integrated pollution prevention and control.

3. Without prejudice to Article 7, Member States may, inexceptional cases, exempt a specific project in whole or in part from the provisions laid down in this Directive. In this event, the Member States shall:

(a) consider whether another form of assessment would be appropriate;
(b) make available to the public concerned the information obtained under other forms of assessment referred to in point (a), the information relating to the exemption decision and the reasons for granting it;
(c) inform the Commission, prior to granting consent, of the reasons justifying the exemption granted, and provide it with the information made available, where applicable to their own nationals.

The Commission shall immediately forward the documents received to the other Member States. The Commission shall report annually to the Council on the application of this paragraph.

Article 3

The environmental impact assessment shall identify, describe and assess in an appropriate manner, in the light of each individual case and in accordance with Articles 4 to 11, the direct and indirect effects of a project on the following factors:

- human beings, fauna and flora;
- soil, water, air, climate and the landscape;
- material assets and the cultural heritage;
- the interaction between the factors mentioned in the first, second and third indents.
Article 4

1. Subject to Article 2 (3), projects listed in Annex I shall be made subject to an assessment in accordance with Articles 5 to 10.

2. Subject to Article 2 (3), for projects listed in Annex II, the Member States shall determine through:
   (a) a case-by-case examination, or
   (b) thresholds or criteria set by the Member State
whether the project shall be made subject to an assessment in accordance with Articles 5 to 10. Member States may decide to apply both procedures referred to in (a) and (b).

3. When a case-by-case examination is carried out or thresholds or criteria are set for the purpose of paragraph 2, the relevant selection criteria set out in Annex III shall be taken into account.

4. Member States shall ensure that the determination made by the competent authorities under paragraph 2 is made available to the public.

Article 5

1. In the case of projects which, pursuant to Article 4, must be subjected to an environmental impact assessment in accordance with Articles 5 to 10, Member States shall adopt the necessary measures to ensure that the developer supplies in an appropriate form the information specified in Annex IV inasmuch as:
   (a) the Member States consider that the information is relevant to a given stage of the consent procedure and to the specific characteristics of a particular project or type of project and of the environmental features likely to be affected;
   (b) the fact that the project is subject to an environmental impact assessment procedure and, where relevant, the fact that Article 7 applies;
   (c) details of the competent authorities responsible for taking the decision, those from which relevant information can be obtained, those to which comments or questions can be submitted, and details of the time schedule for transmitting comments or questions;
   (d) the nature of possible decisions or, where there is one, the draft decision;
   (e) an indication of the availability of the information gathered pursuant to Article 5;
   (f) an indication of the times and places where and means by which the relevant information will be made available;
   (g) details of the arrangements for public participation made pursuant to paragraph 5 of this Article.

2. The information to be provided by the developer in accordance with paragraph 1 shall include at least:
   - a description of the project comprising information on the site, design and size of the project,
   - a description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects,
   - the data required to identify and assess the main effects which the project is likely to have on the environment,
   - an outline of the main alternatives studied by the developer and an indication of the main reasons for his choice, taking into account the environmental effects,
   - a non-technical summary of the information mentioned in the previous indents.

4. Member States shall, if necessary, ensure that any authorities holding relevant information, with particular reference to Article 3, shall make this information available to the developer.

Article 6

1. Member States shall take the measures necessary to ensure that the authorities likely to be concerned by the project by reason of their specific environmental responsibilities are given an opportunity to express their opinion on the information supplied by the developer and on the request for development consent. To this end, Member States shall designate the authorities to be consulted, either in general terms or on a case-by-case basis. The information gathered pursuant to Article 5 shall be forwarded to those authorities. Detailed arrangements for consultation shall be laid down by the Member States.

2. The public shall be informed, whether by public notices or other appropriate means such as electronic media where available, of the following matters early in the environmental decision-making procedures referred to in Article 2(2) and, at the latest, as soon as information can reasonably be provided:
   (a) the request for development consent;
   (b) the fact that the project is subject to an environmental impact assessment procedure and, where relevant, the fact that Article 7 applies;
   (c) details of the competent authorities responsible for taking the decision, those from which relevant information can be obtained, those to which comments or questions can be submitted, and details of the time schedule for transmitting comments or questions;
   (d) the nature of possible decisions or, where there is one, the draft decision;
   (e) an indication of the availability of the information gathered pursuant to Article 5;
   (f) an indication of the times and places where and means by which the relevant information will be made available;
   (g) details of the arrangements for public participation made pursuant to paragraph 5 of this Article.

3. Member States shall ensure that, within reasonable time-frames, the following is made available to the public concerned:
   (a) any information gathered pursuant to Article 5;
   (b) in accordance with national legislation, the main reports and advice issued to the competent authority or authorities at the time when the public concerned is informed in accordance with paragraph 2 of this Article;
   (c) in accordance with the provisions of Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information, information other than that referred to in paragraph 2 of this Article which is relevant for the decision in accordance with Article 8 and which only becomes available after the time the public concerned was informed in accordance with paragraph 2 of this Article.
4. The public concerned shall be given early and effective opportunities to participate in the environmental decision-making procedures referred to in Article 2(2) and shall, for that purpose, be entitled to express comments and opinions when all options are open to the competent authority or authorities before the decision on the request for development consent is taken.

5. The detailed arrangements for informing the public (for example by bill posting within a certain radius or publication in local newspapers) and for consulting the public concerned (for example by written submissions or by way of a public inquiry) shall be determined by the Member States.

6. Reasonable time-frames for the different phases shall be provided, allowing sufficient time for informing the public and for the public concerned to prepare and participate effectively in environmental decision-making subject to the provisions of this Article.

**Article 7**

1. Where a Member State is aware that a project is likely to have significant effects on the environment in another Member State or where a Member State likely to be significantly affected so requests, the Member State in whose territory the project is intended to be carried out shall send to the affected Member State as soon as possible and no later than when informing its own public, inter alia:

   (a) a description of the project, together with any available information on its possible transboundary impact;

   (b) information on the nature of the decision which may be taken, and shall give the other Member State a reasonable time in which to indicate whether it wishes to participate in the environmental decision-making procedures referred to in Article 2(2), and may include the information referred to in paragraph 2 of this Article.

2. If a Member State which receives information pursuant to paragraph 1 indicates that it intends to participate in the environmental decision-making procedures referred to in Article 2(2), the Member State in whose territory the project is intended to be carried out shall, if it has not already done so, send to the affected Member State the information required to be given pursuant to Article 6(2) and made available pursuant to Article 6(3)(a) and (b).

3. The Member States concerned, each insofar as it is concerned, shall also:

   (a) arrange for the information referred to in paragraphs 1 and 2 to be made available, within a reasonable time, to the authorities referred to in Article 6(1) and the public concerned in the territory of the Member State likely to be significantly affected; and

   (b) ensure that those authorities and the public concerned are given an opportunity, before development consent for the project is granted, to forward their opinion within a reasonable time on the information supplied to the competent authority in the Member State in whose territory the project is intended to be carried out.

4. The Member States concerned shall enter into consultations regarding, inter alia, the potential transboundary effects of the project and the measures envisaged to reduce or eliminate such effects and shall agree on a reasonable time frame for the duration of the consultation period.

5. The detailed arrangements for implementing this Article may be determined by the Member States concerned and shall be such as to enable the public concerned in the territory of the affected Member State to participate effectively in the environmental decision-making procedures referred to in Article 2(2) for the project.

**Article 8**

The results of consultations and the information gathered pursuant to Articles 5, 6 and 7 must be taken into consideration in the development consent procedure.

**Article 9**

1. When a decision to grant or refuse development consent has been taken, the competent authority or authorities shall inform the public thereof in accordance with the appropriate procedures and shall make available to the public the following information:

   - the content of the decision and any conditions attached thereto,
   - having examined the concerns and opinions expressed by the public concerned, the main reasons and considerations on which the decision is based, including information about the public participation process,
   - a description, where necessary, of the main measures to avoid, reduce and, if possible, offset the major adverse effects.

2. The competent authority or authorities shall inform any Member State which has been consulted pursuant to Article 7, forwarding to it the information referred to in paragraph 1 of this Article. The consulted Member States shall ensure that that information is made available in an appropriate manner to the public concerned in their own territory.

**Article 10**

The provisions of this Directive shall not affect the obligation on the competent authorities to respect the limitations imposed by national regulations and administrative provisions and accepted legal practices with regard to commercial and industrial confidentiality, including intellectual property, and the safeguarding of the public interest.

Where Article 7 applies, the transmission of information to another Member State and the receipt of information by another Member State shall be subject to the limitations in force in the Member State in which the project is proposed.

**Article 10a**

Member States shall ensure that, in accordance with the relevant national legal system, members of the public concerned:

   (a) having a sufficient interest, or alternatively,

   (b) maintaining the impairment of a right, where administrative procedural law of a Member State requires this as a precondition,

have access to a review procedure before a court of law or another independent and impartial body established by law to challenge the substantive or procedural legality of decisions, acts or omissions...
subject to the public participation provisions of this Directive.

Member States shall determine at what stage the decisions, acts or omissions may be challenged.

What constitutes a sufficient interest and impairment of a right shall be determined by the Member States, consistently with the objective of giving the public concerned wide access to justice. To this end, the interest of any non-governmental organisation meeting the requirements referred to in Article 1(2), shall be deemed sufficient for the purpose of subparagraph (a) of this Article. Such organisations shall also be deemed to have rights capable of being impaired for the purpose of subparagraph (b) of this Article.

The provisions of this Article shall not exclude the possibility of a preliminary review procedure before an administrative authority and shall not affect the requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures, where such a requirement exists under national law.

Any such procedure shall be fair, equitable, timely and not prohibitively expensive.

In order to further the effectiveness of the provisions of this article, Member States shall ensure that practical information is made available to the public on access to administrative and judicial review procedures.

**Article 11**

1. The Member States and the Commission shall exchange information on the experience gained in applying this Directive.

2. In particular, Member States shall inform the Commission of any criteria and/or thresholds adopted for the selection of the projects in question, in accordance with Article 4(2).

3. Five years after notification of this Directive, the Commission shall send the European Parliament and the Council a report on its application and effectiveness. The report shall be based on the aforementioned exchange of information.

4. On the basis of this exchange of information, the Commission shall submit to the Council additional proposals, should this be necessary, with a view to this Directive’s being applied in a sufficiently coordinated manner.

**Article 12**

1. Member States shall take the measures necessary to comply with this Directive within three years of its notification.

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

**Article 14**

This Directive is addressed to the Member States.

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2 This Directive was notified to the Member States on 3 July 1985

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2 Nuclear power stations and other nuclear reactors cease to be such an installation when all nuclear fuel and other radioactively contaminated elements have been removed permanently from the installation site.
(iv) for the production of basic plant health products and of biocides;
(v) for the production of basic pharmaceutical products using a chemical or biological process;
(vi) for the production of explosives.
7.
(a) Construction of lines for long-distance railway traffic and of airports with a basic runway length of 2,100 m or more;
(b) Construction of motorways and express roads.
(c) Construction of a new road of four or more lanes, or realignment and/or widening of an existing road of two lanes or less so as to provide four or more lanes, where such new road, or realigned and/or widened section of road would be 10 km or more in a continuous length.
8.
(a) Inland waterways and ports for inland-waterway traffic which permit the passage of vessels of over 1.350 tonnes;
(b) Trading ports, piers for loading and unloading connected to land and outside ports (excluding ferry piers) which can take vessels of over 1.350 tonnes.
9. Waste disposal installations for the incineration, chemical treatment as defined in Annex IIA to Directive 75/442/EEC under heading D9, or landfill of hazardous waste (i.e. waste to which Directive 91/689/EEC applies).
10. Waste disposal installations for the incineration or chemical treatment as defined in Annex IIA to Directive 75/442/EEC under heading D9 of non-hazardous waste with a capacity exceeding 100 tonnes per day.
11. Groundwater abstraction or artificial groundwater recharge schemes where the annual volume of water abstracted or recharged is equivalent to or exceeds 10 million cubic metres.
12.
(a) Works for the transfer of water resources between river basins where this transfer aims at preventing possible shortages of water and where the amount of water transferred exceeds 100 million cubic metres / year;
(b) In all other cases, works for the transfer of water resources between river basins where the annual average flow of the basin of abstraction exceeds 2.000 million cubic metres / year and where the amount of water transferred exceeds 5% of this flow.
In both cases transfers of piped drinking water are excluded.
13. Waste water treatment plants with a capacity exceeding 150.000 population equivalent as defined in Article 2 point (6) of Directive 91/271/EEC.
14. Extraction of petroleum and natural gas for commercial purposes where the amount extracted exceeds 500 tonnes / day in the case of petroleum and 500.000 m3 / day in the case of gas.
15. Dams and other installations designed for the holding back or permanent storage of water, where a new or additional amount of water held back or stored exceeds 10 million cubic metres.

16. Pipelines for the transport of gas, oil or chemicals with a diameter of more than 800 mm and a length of more than 40 km.
17. Installations for the intensive rearing of poultry or pigs with more than:
(a) 85.000 places for broilers, 60.000 places for hens;
(b) 3.000 places for production pigs (over 30 kg); or
(c) 900 places for sows.
18. Industrial plants for the
(a) production of pulp from timber or similar fibrous materials;
(b) production of paper and board with a production capacity exceeding 200 tonnes per day.
19. Quarries and open-cast mining where the surface of the site exceeds 25 hectares, or peat extraction, where the surface of the site exceeds 150 hectares.
20. Construction of overhead electrical power lines with a voltage of 220 kV or more and a length of more than 15 km.
21. Installations for storage of petroleum, petrochemical, or chemical products with a capacity of 200.000 tonnes or more.
22. Any change to or extension of projects listed in this Annex where such a change or extension in itself meets the thresholds, if any, set out in this Annex.

ANNEX II

PROJECTS SUBJECT TO ARTICLE 4 (2)

1. Agriculture, silviculture and aquaculture
   (a) Projects for the restructuring of rural land holdings;
   (b) Projects for the use of uncultivated land or semi-natural areas for intensive agricultural purposes;
   (c) Water management projects for agriculture, including irrigation and land drainage projects;
   (d) Initial afforestation and deforestation for the purposes of conversion to another type of land use;
   (e) Intensive livestock installations (projects not included in Annex I);
   (f) Intensive fish farming;
   (g) Reclamation of land from the sea.
2. Extractive industry
   (a) Quarries, open-cast mining and peat extraction (projects not included in Annex I);
   (b) Underground mining;
   (c) Extraction of minerals by marine or fluvial dredging;
   (d) Deep drillings, in particular;

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\(^4\) For the purposes of this Directive, ‘airport’ means airports which comply with the definition in the 1944 Chicago Convention setting up the International Civil Aviation Organization (Annex 14).

\(^5\) For the purposes of the Directive, ‘express road’ means a road which complies with the definition in the European Agreement on Main International Traffic Arteries of 15 November 1975.
- geothermal drilling,
- drilling for the storage of nuclear waste material,
- drilling for water supplies,
with the exception of drillings for investigating the stability of the soil; (e) Surface industrial installation for the extraction of coal, petroleum, natural gas and ores, as well as bituminous shale.

3. Energy industry
(a) Industrial installations for the production of electricity, steam and hot water (projects not included in Annex I);
(b) Industrial installations for carrying gas, steam and hot water; transmission of electrical energy by overhead cables (projects not included in Annex I);
(c) Surface storage of natural gas;
(d) Underground storage of combustible gases;
(e) Surface storage of fossil fuels;
(f) Industrial briquetting of coal and lignite;
(g) Installations for the processing and storage of radioactive waste (unless included in Annex I);
(h) Installations for hydroelectric energy production;
(i) Installations for the harnessing of wind power for energy production (wind farms).

4. Production and processing of metals
(a) Installations for the production of pig iron or steel (primary or secondary fusion) including continuous casting;
(b) Installations for the processing of ferrous metals:
(i) hot-rolling mills;
(ii) smitheries with hammers;
(iii) application of protective fused metal coats;
(c) Ferrous metal foundries;
(d) Installations for the smelting, including the alloyage of non-ferrous metals, excluding precious metals, including recovered products (refining, foundry casting, etc.);
(e) Installations for surface treatment of metals and plastic materials using an electrolytic or chemical process;
(f) Manufacture and assembly of motor vehicles and manufacture of motor-vehicle engines;
(g) Shipyards;
(h) Installations for the construction and repair of aircraft;
(i) Manufacture of railway equipment;
(j) Swaging by explosives;
(k) Installations for the roasting and sintering of metallic ores.

5. Mineral industry
(a) Coke ovens (dry coal distillation);
(b) Installations for the manufacture of cement;
ANNEX III

SELECTION CRITERIA REFERRED TO IN ARTICLE 4(3)

1. Characteristics of projects
The characteristics of projects must be considered having regard, in particular, to:
- the size of the project,
- the cumulation with other projects,
- the use of natural resources,
- the production of waste,
- pollution and nuisances,
- the risk of accidents, having regard in particular to substances or technologies used.

2. Location of projects
The environmental sensitivity of geographical areas likely to be affected by projects must be considered, having regard, in particular, to:
- the existing land use,
- the relative abundance, quality and regenerative capacity of natural resources in the area,
- the absorption capacity of the natural environment, paying particular attention to the following areas:
  (a) wetlands;
  (b) coastal zones;
  (c) mountain and forest areas;
  (d) nature reserves and parks;
  (e) areas classified or protected under Member States’ legislation; special protection areas designated by Member States pursuant to Directive 79/409/EEC and 92/43/EEC;
  (f) areas in which the environmental quality standards laid down in Community legislation have already been exceeded;
  (g) densely populated areas;
  (h) landscapes of historical, cultural or archaeological significance.

3. Characteristics of the potential impact
The potential significant effects of projects must be considered in relation to criteria set out under 1 and 2 above, and having regard in particular to:
- the extent of the impact (geographical area and size of the affected population),
- the transfrontier nature of the impact,
- the magnitude and complexity of the impact,
- the probability of the impact,
- the duration, frequency and reversibility of the impact.

(g) Dams and other installations designed to hold water or store it on a long-term basis (projects not included in Annex I);
(h) Tramways, elevated and underground railways, suspended lines or similar lines of a particular type, used exclusively or mainly for passenger transport;
(i) Oil and gas pipeline installations (projects not included in Annex I);
(j) Installations of long-distance aqueducts;
(k) Coastal work to combat erosion and maritime works capable of altering the coast through the construction, for example, of dykes, mole, jetties and other sea defence works, excluding the maintenance and reconstruction of such works;
(l) Groundwater abstraction and artificial groundwater recharge schemes not included in Annex I;
(m) Works for the transfer of water resources between river basins not included in Annex I.

11. Other projects
(a) Permanent racing and test tracks for motorized vehicles;
(b) Installations for the disposal of waste (projects not included in Annex I);
(c) Waste-water treatment plants (projects not included in Annex I);
(d) Sludge-deposition sites;
(e) Storage of scrap iron, including scrap vehicles;
(f) Test benches for engines, turbines or reactors;
(g) Installations for the manufacture of artificial mineral fibres;
(h) Installations for the recovery or destruction of explosive substances;
(i) Knackers’ yards.

12. Tourism and leisure
(a) Ski-runs, ski-lifts and cable-cars and associated developments;
(b) Marinas;
(c) Holiday villages and hotel complexes outside urban areas and associated developments;
(d) Permanent camp sites and caravan sites;
(e) Theme parks.

13. Any change or extension of projects listed in Annex I or Annex II, already authorized, executed or in the process of being executed, which may have significant adverse effects on the environment (change or extension not included in Annex I);
- Projects in Annex I, undertaken exclusively or mainly for the development and testing of new methods or products and not used for more than two years.
ANNEX IV

INFORMATION REFERRED TO IN ARTICLE 5(1)

1. Description of the project, including in particular:
   - a description of the physical characteristics of the whole project and the land-use requirements during the construction and operational phases,
   - a description of the main characteristics of the production processes, for instance, nature and quantity of the materials used,
   - an estimate, by type and quantity, of expected residues and emissions (water, air and soil pollution, noise, vibration, light, heat, radiation, etc.) resulting from the operation of the proposed project.

2. An outline of the main alternatives studied by the developer and an indication of the main reasons for this choice, taking into account the environmental effects.

3. A description of the aspects of the environment likely to be significantly affected by the proposed project, including, in particular, population, fauna, flora, soil, water, air, climatic factors, material assets, including the architectural and archaeological heritage, landscape and the inter-relationship between the above factors.

4. A description of the likely significant effects of the proposed project on the environment resulting from:
   - the existence of the project,
   - the use of natural resources,
   - the emission of pollutants, the creation of nuisances and the elimination of waste,
   and the description by the developer of the forecasting methods used to assess the effects on the environment.

5. A description of the measures envisaged to prevent, reduce and where possible offset any significant adverse effects on the environment.

6. A non-technical summary of the information provided under the above headings.

7. An indication of any difficulties (technical deficiencies or lack of know-how) encountered by the developer in compiling the required information.

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1 This description should cover the direct effects and any indirect, secondary, cumulative, short, medium and long-term, permanent and temporary, positive and negative effects of the project.
PART II

ACQUIS COMMUNAUTAIRE / ENVIRONMENT / Directive 1999/32/EC


(1) Whereas the objectives and principles of the Community's environmental policy as set out in the action programmes on the environment and in particular the Fifth Environmental Action Programme(4) on the basis of principles enshrined in Article 130r of the Treaty, aim in particular to ensure the effective protection of all people from the recognised risks from sulphur dioxide emissions and to protect the environment by preventing sulphur deposition exceeding critical loads and levels;

(2) Whereas Article 129 of the Treaty provides that health protection requirements are to form a constituent part of the Community's other policies; whereas Article 3(o) of the Treaty also provides that the activities of the Community should include a contribution to the attainment of a high level of health protection;

(3) Whereas emissions of sulphur dioxide contribute significantly to the problem of acidification in the Community; whereas sulphur dioxide also has a direct effect on human health and on the environment;

(4) Whereas acidification and atmospheric sulphur dioxide damage sensitive ecosystems, reduce biodiversity and reduce amenity value as well as detrimentally affecting crop production and the growth of forests; whereas acid rain falling in cities may cause significant damage to buildings and the architectural heritage; whereas sulphur dioxide pollution may also have a significant effect upon human health, particularly among those sectors of the population suffering from respiratory diseases;

(5) Whereas acidification is a transboundary phenomenon requiring Community as well as national or local solutions;

(6) Whereas emissions of sulphur dioxide contribute to the formation of particulate matter in the atmosphere;

(7) Whereas the Community and the individual Member States are Contracting Parties to the UN-ECE Convention on Long-Range Transboundary Air Pollution; whereas the second UN-ECE Protocol on transboundary pollution by sulphur dioxide foresees that the Contracting Parties should reduce sulphur dioxide emissions in line with or beyond the 30% reduction specified in the first Protocol and whereas the second UN-ECE Protocol is based on the premise that critical loads and levels will continue to be exceeded in some sensitive areas; whereas further measures to reduce sulphur dioxide emissions will still be required if the objectives in the Fifth Environmental Action Programme are to be respected; whereas the Contracting Parties should therefore make further significant reductions in emissions of sulphur dioxide;

(8) Whereas sulphur which is naturally present in small quantities in oil and coal has for decades been recognised as the dominant source of sulphur dioxide emissions which are one of the main causes of “acid rain” and one of the major causes of the air pollution experienced in many urban and industrial areas;

(9) Whereas the Commission has recently published a communication on a cost-effective strategy to combat acidification in the Community; whereas the control of sulphur dioxide emissions originating from the combustion of certain liquid fuels was identified as being an integral component of this cost-effective strategy; whereas the Community recognises the need for measures regarding all other fuels;

(10) Whereas studies have shown that benefits from reducing sulphur emissions by reductions in
the sulphur content of fuels will often be considerably greater than the estimated costs to industry in this Directive and whereas the technology exists and is well established for reducing the sulphur level of liquid fuels;

(11) Whereas, in conformity with the principle of subsidiarity and the principle of proportionality referred to in Article 3b of the Treaty, the objective of reducing the emissions of sulphur dioxide arising from the combustion of certain types of liquid fuels cannot be achieved effectively by Member States acting individually; whereas uncoordinated action offers no guarantee of achieving the desired objective, is potentially counterproductive and will result in considerable uncertainty in the market for the fuel products affected; whereas, in view of the need to reduce sulphur dioxide emissions across the Community, it is therefore more effective to take action at the level of the Community; whereas this Directive limits itself to the minimum requirements necessary to achieve the desired objective;

(12) Whereas in Council Directive 93/12/EEC of 23 March 1993 relating to the sulphur content of certain liquid fuels the Commission was asked to submit to the Council a proposal prescribing lower limits for the sulphur content in gas oil and new limits for aviation kerosene; whereas it would be appropriate to lay down limits for the sulphur content of other liquid fuels, in particular heavy fuel oils, bunker fuel oils, marine gas oils and gas oils, on the basis of cost effectiveness studies;

(13) Whereas, in accordance with Article 130t of the Treaty, this Directive should not prevent any Member State from maintaining or introducing more stringent protective measures; whereas such measures must be compatible with the Treaty and should be notified to the Commission;

(14) Whereas a Member State, before introducing new, more stringent protective measures, should notify the draft measures to the Commission in accordance with 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;

(15) Whereas, with regard to the limit on the sulphur content of heavy fuel oil, it is appropriate to provide for derogations in Member States and regions where the environmental conditions allow;

(16) Whereas, with regard to the limit on the sulphur content of heavy fuel oil, it is also appropriate to provide for derogations for their use in combustion plants which comply with the emission limit values laid down in Council Directive 88/609/EEC of 24 November 1988 on the limitation of emissions of certain pollutants into the air from large combustion plants; whereas in the light of the forthcoming revision of Directive 88/609/EEC, it may be necessary to review and, if appropriate, to revise certain provisions of this Directive;

(17) Whereas for refinery combustion plants excluded from the scope of Article 3(3)(ii)(c) of this Directive the emissions of sulphur dioxide averaged over such plants should not exceed the limits set out in Directive 88/609/EEC or any future revision of that Directive; whereas, in the application of this Directive, Member States should bear in mind that substitution by fuels other than those pursuant to Article 2 should not produce an increase in emissions of acidifying pollutants;

(18) Whereas a limit value of 0.2% for the sulphur content of gas oils has already been established pursuant to Directive 93/12/EEC; whereas that limit value should be changed to 0.1% until 1 January 2008;

(19) Whereas, in accordance with the 1994 Act of Accession, Austria and Finland have a derogation for a period of four years from the date of accession regarding the provisions in Directive 93/12/EEC concerning the sulphur content of gas oil;

(20) Whereas the limit values of 0.2% (from the year 2000) and of 0.1% (from the year 2008) for the sulphur content of gas oils intended for marine use in sea-going ships may present technical and economic problems for Greece throughout its territory, for Spain with regard to the Canary Islands, for France with regard to the French Overseas Departments, and for Portugal with regard to the archipelagoes of Madeira and Azores; whereas a derogation for Greece, the Canary Islands, the French Overseas Departments and the Archipelagoes of Madeira and Azores should not have a negative effect upon the market in gas oil intended for marine use and given that exports of gas oil for marine use from Greece, the Canary Islands, the French Overseas Departments and the Archipelagoes of Madeira and Azores should therefore be afforded a derogation from the limit values of sulphur by weight for gas oil used for marine purposes;

(21) Whereas sulphur emissions from shipping due to the combustion of bunker fuels with a high sulphur content contribute to sulphur dioxide pollution and problems of acidification; whereas the Community will be advocating more effective protection of areas sensitive to SOx emissions and a reduction in the normal limit value for bunker fuel oil (from the present 4.5%) at the continuing and future negotiations on the MARPOL Convention within the International Maritime Organisation (IMO); whereas the Community initiatives to have the North Sea/Channel declared a special low SOx emission control area should be continued;

(22) Whereas more profound research into the effects of acidification on ecosystems and the human body is needed; whereas the Community is assisting such research under the Fifth Framework Research Programme;

(23) Whereas in the case of a disruption in the supply of crude oil, petroleum products or other hydrocarbons, the Commission may authorise application of a higher limit within a Member State’s territory;

(24) Whereas Member States should establish the appropriate mechanisms for monitoring compliance with the provisions of this Directive; whereas reports on the sulphur content of liquid fuels should be submitted to the Commission;

(25) Whereas, for reasons of clarity, it will be necessary to amend Directive 93/12/EEC.

**Article 1**

**Purpose and scope**

1. The purpose of this Directive is to reduce the emissions of sulphur dioxide resulting from the combustion of certain types of liquid fuels and thereby to reduce the harmful effects of such emissions on man and the environment.

2. Reductions in the emissions of sulphur dioxide resulting from the combustion of certain petroleum-derived liquid fuels shall be achieved by imposing limits on the sulphur content of such fuels as a condition for their use within the territory of the Member States. The limitations on the sulphur content of certain petroleum-derived liquid fuels as laid down in this Directive shall not, however, apply to:

(a) - petroleum derived liquid fuels used by seagoing ships, except those fuels falling within the definition in Article 2(3),
- marine gas oil used by ships crossing a frontier between a third country and a Member State;
(b) fuels intended for processing prior to final combustion;
(c) fuels to be processed in the refining industry.

Article 2
Definitions

For the purpose of this Directive:
1. heavy fuel oil means:
   - any petroleum-derived liquid fuel falling within CN code 2710 00 71 to 2710 00 78, or
   - any petroleum-derived liquid fuel, other than gas oil as defined in points 2 and 3, which, by reason of its distillation limits, falls within the category of heavy oils intended for use as fuel and of which less than 65% by volume (including losses) distils at 250 °C by the ASTM D86 method. If the distillation cannot be determined by the ASTM D86 method, the petroleum product is likewise categorised as a heavy fuel oil;
2. gas oil means:
   - any petroleum-derived liquid fuel falling within CN code 2710 00 67 or 2710 00 68, or
   - any petroleum-derived liquid fuel which, by reason of its distillation limits, falls within the category of middle distillates intended for use as fuel and of which at least 85% by volume (including losses) distils at 350 °C by the ASTM D86 method.

Diesel fuels as defined in Article 2(2) of Directive 98/70/EC of the European Parliament and of the Council of 13 October 1998 relating to the quality of petrol and diesel fuels and amending Council Directive 93/12/EEC are excluded from this definition. Fuels used in non-road mobile machinery and agricultural tractors are also excluded from this definition;
3. marine gas oil means fuels intended for marine use which meet the definition in point 2 or which have a viscosity or density falling within the ranges of viscosity or density defined for marine distillates in Table I of ISO 8217 (1996);
4. ASTM method means the methods laid down by the American Society for Testing and Materials in the 1976 edition of standard definitions and specifications for petroleum and lubricating products;
5. combustion plant means any technical apparatus in which fuels are oxidised in order to use the energy contained in their chemical composition and which falls within the scope of Directive 88/609/EEC, which is considered new plants in accordance with the definition given in Article 2(9) of that Directive and which comply with the sulphur dioxide emission limits for such plants set out in Article 4 of and Annex IV to that Directive;
6. critical load means a quantitative estimate of exposure to one or more pollutants below which significant harmful effects on sensitive elements of the environment do not occur according to current knowledge.

Article 3
Maximum sulphur content of heavy fuel oil

1. Member States shall take all necessary steps to ensure that as from 1 January 2003 within their territory heavy fuel oils are not used if their sulphur content exceeds 1.00% by mass.
2. Provided that the air quality standards for sulphur dioxide laid down in Directive 80/779/EEC or in any Community legislation which repeals and replaces these standards and other relevant Community provisions are respected and the emissions do not contribute to critical loads being exceeded in any Member State, a Member State may authorise heavy fuel oils with a sulphur content of between 1.00 and 3.00% by mass to be used in part or the whole of its territory. Such authorisation shall apply only while emissions from a Member State do not contribute to critical loads being exceeded in any Member State.
3. (i) Subject to appropriate monitoring of emissions by competent authorities paragraphs 1 and 2 shall not apply to heavy fuel oils used:
   (a) in combustion plants which fall within the scope of Directive 88/609/EEC, which are considered new plants in accordance with the definition given in Article 2(9) of that Directive and which comply with the sulphur dioxide emission limits for such plants set out in Article 4 of and Annex IV to that Directive;
   (b) in other combustion plants, which do not fall under the scope of (a), where the emissions of sulphur dioxide from the plant are less than or equal to 1700 mg/Nm³ at an oxygen content in the flue gas of 3% by volume on a dry basis;
   (c) for combustion in refineries, where the monthly average of emissions of sulphur dioxide averaged over all plants in the refinery (excluding combustion plants which fall under the scope of (a)), irrespective of the type of fuel or fuel combination used, are within a limit to be set by each Member State, which shall not exceed 1700 mg/Nm³.
(ii) Member States shall take the necessary measures to ensure that any combustion plant using heavy fuel oil with a sulphur concentration greater than that referred to in paragraph 1 shall not be operated without a permit issued by a competent authority, which specifies the emission limits.
4. The provisions of paragraph 3 shall be reviewed and, if appropriate, revised in the light of any future revision of Directive 88/609/EEC.
5. If a Member State avails itself of the possibilities referred to in paragraph 2, it shall, at least 12 months beforehand, inform the Commission and the public. The Commission shall be given sufficient information to assess whether the criteria mentioned in paragraph 2 are met. The Commission shall inform the other Member States.

Within six months of the date on which it receives the information from the Member State, the Commission shall examine the measures envisaged and, in accordance with the procedure set out in Article 9, take a decision which it shall communicate to the Member States. This decision shall be reviewed every eight years on the basis of information to be provided to the Commission by the Member States concerned in accordance with the procedure set out in Article 9.

Article 4
Maximum sulphur content in gas oil

1. Member States shall take all necessary steps to ensure that gas oils, including marine gas oils, are not used within their territory as from:
   - July 2000 if their sulphur content exceeds 0.20% by mass,
   - 1 January 2008 if their sulphur content exceeds 0.10% by mass.
2. By way of derogation from paragraph 1, Spain, for the Canary Islands, France, for the French Over-
seas Departments, Greece, for the whole or part of its territory, and Portugal, for the archipelagoes of Madeira and Azores may authorise the use of gas oils for marine use with a sulphur content in excess of the limits set out in paragraph 1.

3. Provided that the air quality standards for sulphur dioxide laid down in Directive 80/779/EEC or in any Community legislation which repeals and replaces these standards and other relevant Community provisions are respected and the emissions do not contribute to critical loads being exceeded in any Member State, a Member State may authorise gas oil with a sulphur content between 0.10 and 0.20% by mass to be used in part or the whole of its territory. Such authorisation shall apply only while emissions from a Member State do not contribute to critical loads being exceeded in any Member State and shall not extend beyond 1 January 2013.

4. If a Member State avails itself of the possibilities referred to in paragraph 3, it shall, at least 12 months beforehand, inform the Commission and the public. The Commission shall be given sufficient information to assess whether the criteria mentioned in paragraph 3 are met. The Commission shall inform the other Member States. Within six months of the date on which it receives the information from the Member State, the Commission shall examine the measures envisaged and, in accordance with the procedure set out in Article 9, take a decision which it shall communicate to the Member States.

**Article 5**

**Change in the supply of fuels**

If, as a result of a sudden change in the supply of crude oil, petroleum products or other hydrocarbons, it becomes difficult for a Member State to apply the limits on the maximum sulphur content referred to in Articles 3 and 4, that Member State shall inform the Commission thereof. The Commission may authorise a higher limit to be applicable within the territory of that Member State for a period not exceeding six months; it shall notify its decision to the Council and the Member States. Any Member State may refer that decision to the Council within one month. The Council, acting by qualified majority, may adopt a different decision within two months.

**Article 6**

**Sampling and analysis**

1. Member States shall take all necessary measures to check by sampling that the sulphur content of fuels used complies with Articles 3 and 4. The sampling shall commence within six months of the date on which the relevant limit for maximum sulphur content in the fuel comes into force. It shall be carried out with sufficient frequency and in such a way that the samples are representative of the fuel examined.

2. The reference method adopted for determining the sulphur content shall be that defined by:
   (a) ISO method 8754 (1992) and PrEN ISO 14596 for heavy fuel oil and marine gas oil;
   (b) EN method 24260 (1987), ISO 8754 (1992) and PrEN ISO 14596 for gas oil.

The arbitration method will be PrEN ISO 14596. The statistical interpretation of the verification of the sulphur content of the gas oils used shall be carried out in accordance with ISO standard 4259 (1992).

**Article 7**

**Reporting and review**

1. On the basis of the results of the sampling and analysis carried out in accordance with Article 6, Member States shall by 30 June of each year supply the Commission with a short report on the sulphur content of the liquid fuels falling within the scope of this Directive and used within their territory during the preceding calendar year. This report shall include a summary of derogations granted pursuant to Article 3(3).

2. On the basis inter alia of the annual reports submitted in accordance with paragraph 1 and the observed trends in air quality and acidification, the Commission shall, by 31 December 2006, submit a report to the European Parliament and to the Council. The Commission may submit with its report proposals aimed at revising this Directive and in particular the limit values laid down for each fuel category and the exceptions and derogations provided for in Article 3(2) and (3), and Article 4(2) and (3).

3. The Commission shall consider which measures could be taken to reduce the contribution to acidification of the combustion of marine fuels other than those specified in Article 2(3) and, if appropriate, make a proposal by the end of 2000.

**Article 8**

**Amendments to Directive 93/12/EEC**

1. Directive 93/12/EEC is amended as follows:
   (a) in Article 1, paragraph 1(a) and paragraph 2 are deleted;
   (b) in Article 2, the first subparagraph of paragraph 2 and paragraph 3 are deleted;
   (c) Articles 3 and 4 are deleted.

2. Paragraph 1 shall apply as from 1 July 2000.

**Article 9**

**Advisory Committee**

The Commission shall be assisted by a committee of an advisory nature composed of the representatives of the Member States and chaired by the representative of the Commission.

The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft, within a time limit which the chairman may lay down according to the urgency of the matter, if necessary by taking a vote. The opinion shall be recorded in the minutes; in addition, each Member State shall have the right to ask to have its position recorded in the minutes. The Commission shall take the utmost account of the opinion delivered by the committee. It shall inform the committee of the manner in which its opinion has been taken into account.
Article 10
Transposition

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 1 July 2000. They shall immediately inform the Commission thereof.

When Member States adopt these provisions, these shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

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

Article 11
Penalties

Member States shall determine the penalties applicable to breaches of the national provisions adopted pursuant to this Directive. The penalties determined must be effective, proportionate and dissuasive.

Article 12
Entry into force

This Directive shall enter into force on the day of its publication in the Official Journal of the European Communities.

Article 13
Addressees

This Directive is addressed to the Member States.
Directive 2001/80/EC of 23 October 2001 on the limitation of emissions of certain pollutants into the air from large combustion plants

Whereas:

(1) Council Directive 88/609/EEC of 24 November 1988 on the limitation of emissions of certain pollutants into the air from large combustion plants has contributed to the reduction and control of atmospheric emissions from large combustion plants. It should be recast in the interests of clarity.

(2) The Fifth Environmental Action Programme sets as objectives that the critical loads and levels of certain acidifying pollutants such as sulphur dioxide (SO$_2$) and nitrogen oxides (NOx) should not be exceeded at any time and, as regards air quality, that all people should be effectively protected against recognised health risks from air pollution.

(3) All Member States have signed the Gothenburg Protocol of 1 December 1999 to the 1979 Convention of the United Nations Economic Commission for Europe (UNECE) on long-range transboundary air pollution to abate acidification, eutrophication and ground-level ozone, which includes, inter alia, commitments to reduce emissions of sulphur dioxide and oxides of nitrogen.

(4) The Commission has published a Communication on a Community strategy to combat acidification in which the revision of Directive 88/609/EEC was identified as being an integral component of that strategy with the long term aim of reducing emissions of sulphur dioxide and nitrogen oxides sufficiently to bring depositions and concentrations down to levels below the critical loads and levels.

(5) In accordance with the principle of subsidiarity as set out in Article 5 of the Treaty, the objective of reducing acidifying emissions from large combustion plants cannot be sufficiently achieved by the Member States acting individually and unconcerted action offers no guarantee of achieving the desired objective; in view of the need to reduce acidifying emissions across the Community, it is more effective to take action at Community level.

(6) Existing large combustion plants are significant contributors to emissions of sulphur dioxide and nitrogen oxides in the Community and it is necessary to reduce these emissions. It is therefore necessary to adapt the approach to the different characteristics of the large combustion plant sector in the Member States.

(7) Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control sets out an integrated approach to pollution prevention and control in which all the aspects of an installation’s environmental performance are considered in an integrated manner; combustion installations with a rated thermal input exceeding 50 MW are included within the scope of that Directive; pursuant to Article 15(3) of that Directive an inventory of the principal emissions and sources responsible is to be published every three years by the Commission on the basis of data supplied by the Member States. Pursuant to Article 18 of that Directive, acting on a proposal from the Commission, the Council will set emission limit values in accordance with the procedures laid down in the Treaty for which the need for Community action has been identified, on the basis, in particular, of the exchange of information provided for in Article 16 of that Directive.

(8) Compliance with the emission limit values laid down by this Directive should be regarded as a necessary but not sufficient condition for compliance with the requirements of Directive 96/61/EC regarding the use of best available techniques. Such compliance may involve more stringent emission limit values, emission limit values for other substances and other media, and other appropriate conditions.

(9) Industrial experience in the implementation of techniques for the reduction of polluting emissions
from large combustion plants has been acquired over a period of 15 years.

(10) The Protocol on heavy metals to the UNECE Convention on long-range transboundary air pollution recommends the adoption of measures to reduce heavy metals emitted by certain installations. It is known that benefits from reducing dust emissions by dust abatement equipment will provide benefits on reducing particle-bound heavy metal emissions.

(11) Installations for the production of electricity represent an important part of the large combustion plant sector.

(12) Directive 96/92/EC of the European Parliament and of the Council of 19 December 1996 concerning common rules for the internal market in electricity is intended inter alia to have the effect of distributing new production capacity among new arrivals in the sector.

(13) The Community is committed to a reduction of carbon dioxide emissions. Where it is feasible the combined production of heat and electricity represents a valuable opportunity for significantly improving overall efficiency in fuel use.

(14) A significant increase in the use of natural gas for producing electricity is already underway and is likely to continue, in particular through the use of gas turbines.

(15) In view of the increase in energy production from biomass, specific emission standards for this fuel are justified.

(16) The Council Resolution of 24 February 1997 on a Community strategy for waste management emphasises the need for promoting waste recovery and states that appropriate emission standards should apply to the operation of facilities in which waste is incinerated in order to ensure a high level of protection for the environment.

(17) Industrial experience has been gained concerning techniques and equipment for the measurement of the principal pollutants emitted by large combustion plants; the European Committee for Standardisation (CEN) has undertaken work with the aim of providing a framework securing comparable measurement results within the Community and guaranteeing a high level of quality of such measurements.

(18) There is a need to improve knowledge concerning the emission of the principal pollutants from large combustion plants. In order to be genuinely representative of the level of pollution of an installation, such information should also be associated with knowledge concerning its energy consumption.

(19) This Directive is without prejudice to the time limits within which the Member States must transpose and implement Directive 88/669/EEC.

Article 1

This Directive shall apply to combustion plants, the rated thermal input of which is equal to or greater than 50 MW, irrespective of the type of fuel used (solid, liquid or gaseous).

Article 2

For the purpose of this Directive:

(1) “emission” means the discharge of substances from the combustion plant into the air;

(2) “waste gases” means gaseous discharges containing solid, liquid or gaseous emissions; their volumetric flow rates shall be expressed in cubic metres per hour at standard temperature (273 K) and pressure (101.3 kPa) after correction for the water vapour content, hereinafter referred to as (Nm3/h);

(3) “emission limit value” means the permissible quantity of a substance contained in the waste gases from the combustion plant which may be discharged into the air during a given period; it shall be calculated in terms of mass per volume of the waste gases expressed in mg/Nm³, assuming an oxygen content by volume in the waste gas of 3% in the case of liquid and gaseous fuels, 6% in the case of solid fuels and 15% in the case of gas turbines;

(4) “rate of desulphurisation” means the ratio of the quantity of sulphur which is not emitted into the air at the combustion plant site over a given period to the quantity of sulphur contained in the fuel which is introduced into the combustion plant facilities and which is used over the same period;

(5) “operator” means any natural or legal person who operates the combustion plant, or who has or has been delegated decisive economic power over it;


(7) “combustion plant” means any technical apparatus in which fuels are oxidised in order to use the heat thus generated.

This Directive shall apply only to combustion plants designed for production of energy with the exception of those which make direct use of the products of combustion in manufacturing processes. In particular, this Directive shall not apply to the following combustion plants:

(a) plants in which the products of combustion are used for the direct heating, drying, or any other treatment of objects or materials e.g. reheating furnaces, furnaces for heat treatment;

(b) post-combustion plants i.e. any technical apparatus designed to purify the waste gases by combustion which is not operated as an independent combustion plant;

(c) facilities for the regeneration of catalytic cracking catalysts;

(d) facilities for the conversion of hydrogen sulphide into sulphur;

(e) reactors used in the chemical industry;

(f) coke battery furnaces;

(g) coopers;

(h) any technical apparatus used in the propulsion of a vehicle, ship or aircraft;

(i) gas turbines used on offshore platforms;

(j) gas turbines licensed before 27 November 2002 or which in the view of the competent author-
ity are the subject of a full request for a licence before 27 November 2002 provided that the plant is put into operation no later than 27 November 2003 without prejudice to Article 7(1) and Annex VIII(A) and (B);

Plants powered by diesel, petrol and gas engines shall not be covered by this Directive.

Where two or more separate new plants are installed in such a way that, taking technical and economic factors into account, their waste gases could, in the judgement of the competent authorities, be discharged through a common stack, the combination formed by such plants shall be regarded as a single unit;

(8) “multi-fuel firing unit” means any combustion plant which may be fired simultaneously or alternately by two or more types of fuel;

(9) “new plant” means any combustion plant for which the original construction licence or, in the absence of such a procedure, the original operating licence was granted on or after 1 July 1987;

(10) “existing plant” means any combustion plant for which the original construction licence or, in the absence of such a procedure, the original operating licence was granted before 1 July 1987;

(11) “biomass” means products consisting of any whole or part of a vegetable matter from agriculture or forestry which can be used as a fuel for the purpose of recovering its energy content and the following waste used as a fuel:

(a) vegetable waste from agriculture and forestry;

(b) vegetable waste from the food processing industry, if the heat generated is recovered;

(c) fibrous vegetable waste from virgin pulp production and from production of paper from pulp, if it is co-incinerated at the place of production and the heat generated is recovered;

(d) cork waste;

(e) wood waste with the exception of wood waste which may contain halogenated organic compounds or heavy metals as a result of treatment with wood preservatives or coating, and which includes in particular such wood waste originating from construction and demolition waste;

(12) “gas turbine” means any rotating machine which converts thermal energy into mechanical work, consisting mainly of a compressor, a thermal device in which fuel is oxidised in order to heat the working fluid, and a turbine.

(13) “Outermost Regions” means the French Overseas Departments with regard to France, the Azores and Madeira with regard to Portugal and the Canary Islands with regard to Spain.

Article 3

1. Not later than 1 July 1990 Member States shall draw up appropriate programmes for the progressive reduction of total annual emissions from existing plants. The programmes shall set out the timetables and the implementing procedures.

2. In accordance with the programmes mentioned in paragraph 1, Member States shall continue to comply with the emission ceilings and with the corresponding percentage reductions laid down for sulphur dioxide in Annex I, columns 1 to 6, and for oxides of nitrogen in Annex II, columns 1 to 4, by the dates specified in those Annexes, until the implementation of the provisions of Article 4 that apply to existing plants.

3. When the programmes are being carried out, Member States shall also determine the total annual emissions in accordance with Annex VIII(C).

4. If a substantial and unexpected change in energy demand or in the availability of certain fuels or certain generating installations creates serious technical difficulties for the implementation by a Member State of its programme drawn up under paragraph 1, the Commission shall, at the request of the Member State concerned and taking into account the terms of the request, take a decision to modify, for that Member State, the emission ceilings and/or the dates set out in Annexes I and II and communicate its decision to the Council and to the Member States. Any Member State may within three months refer the decision of the Commission to the Council. The Council, acting by a qualified majority, may within three months take a different decision.

Article 4

1. Without prejudice to Article 17 Member States shall take appropriate measures to ensure that all licences for the construction or, in the absence of such a procedure, for the operation of new plants which in the view of the competent authority are the subject of a full request for a licence before 27 November 2002, provided that the plant is put into operation no later than 27 November 2003 contain conditions relating to compliance with the emission limit values laid down in part A of Annexes III to VII in respect of sulphur dioxide, nitrogen oxides and dust.

2. Member States shall take appropriate measures to ensure that all licences for the construction or, in the absence of such a procedure, for the operation of new plants, other than those covered by paragraph 1, contain conditions relating to compliance with the emission limit values laid down in part B of Annexes III to VII in respect of sulphur dioxide, nitrogen oxides and dust.


(a) taking appropriate measures to ensure that all licences for the operation of existing plants contain conditions relating to compliance with the emission limit values established for new plants referred to in paragraph 1; or

(b) ensuring that existing plants are subject to the national emission reduction plan referred to in paragraph 6;

and, where appropriate, applying Articles 5, 7 and 8.

4. Without prejudice to Directives 96/61/EC and 96/62/EC, existing plants may be exempted from compliance with the emission limit values referred to in paragraph 3 and from their inclusion in the national emission reduction plan on the following conditions:

(a) the operator of an existing plant undertakes, in a written declaration submitted by 30 June 2004 at the latest to the competent authority, not to operate the plant for more than 20000 operational hours starting from 1 January 2008 and ending no later than 31 December 2015;

(b) the operator is required to submit each year to the competent authority a record of the used and unused time allowed for the plants’ remaining operational life.

5. Member States may require compliance with emission limit values and time limits for implementation which are more stringent than those set out in paragraphs 1, 2, 3 and 4 and in Article 10. They
may include other pollutants, and they may impose additional requirements or adaptation of plant to technical progress.

6. Member States may, without prejudice to this Directive and Directive 96/61/EC, and taking into consideration the costs and benefits as well as their obligations under Directive 2001/81/EC of the European Parliament and of the Council of 23 October 2001 on national emission ceilings for certain atmospheric pollutants and Directive 96/62/EC, define and implement a national emission reduction plan for existing plants, taking into account, inter alia, compliance with the ceilings as set out in Annexes I and II.

The national emission reduction plan shall reduce the total annual emissions of nitrogen oxides (NOx), sulphur dioxide (SO₂) and dust from existing plants to the levels that would have been achieved by applying the emission limit values referred to in paragraph 3 to the existing plants in operation in the year 2000, (including those existing plants undergoing a rehabilitation plan in 2000, approved by the competent authority, to meet emission reductions required by national legislation) on the basis of each plant's actual annual operating time, fuel used and thermal input, averaged over the last five years of operation up to and including 2000.

The national emission reduction plan shall not result in an increase in the total annual emissions from the remaining plants covered by the plan.

The national emission reduction plan may under no circumstances exempt a plant from the provisions laid down in relevant Community legislation, including inter alia Directive 96/61/EC.

The following conditions shall apply to national emission reduction plans:

(a) the plan shall comprise objectives and related targets, measures and timetables for reaching these objectives and targets, and a monitoring mechanism;

(b) Member States shall communicate their national emission reduction plan to the Commission no later than 27 November 2003;

(c) within six months of the communication referred to in point (b) the Commission shall evaluate whether or not the plan meets the requirements of this paragraph. When the Commission considers that this is not the case, it shall inform the Member State and within the subsequent three months the Member State shall communicate any measures it has taken in order to ensure that the requirements of this paragraph are met;

(d) the Commission shall, no later than 27 November 2002, develop guidelines to assist Member States in the preparation of their plans.

7. Not later than 31 December 2004 and in the light of progress towards protecting human health and attaining the Community's environmental objectives for acidification and for air quality pursuant to Directive 96/62/EC, the Commission shall submit a report to the European Parliament and the Council in which it shall assess:

(a) the need for further measures;

(b) the amounts of heavy metals emitted by large combustion plants;

(c) the cost-effectiveness and costs and advantages of further emission reductions in the combustion plants sector in Member States compared to other sectors;

(d) the technical and economic feasibility of such emission reductions;

(e) the effects of both the standards set for the large combustion plants sector including the provi-
operations if a return to normal operation is not achieved within 24 hours, or to operate the plant using low polluting fuels. In any case the competent authority shall be notified within 48 hours. In no circumstances shall the cumulative duration of unabated operation in any twelve-month period exceed 120 hours. The competent authority may allow exceptions to the limits of 24 hours and 120 hours above in cases where, in their judgement:

(a) there is an overriding need to maintain energy supplies, or
(b) the plant with the breakdown would be replaced for a limited period by another plant which would cause an overall increase in emissions.

2. The competent authority may allow a suspension for a maximum of six months from the obligation to comply with the emission limit values provided for in Article 4 for sulphur dioxide in respect of a plant which to this end normally uses low-sulphur fuel, in cases where the operator is unable to comply with these limit values because of an interruption in the supply of low-sulphur fuel resulting from a serious shortage. The Commission shall immediately be informed of such cases.

3. The competent authority may allow a derogation from the obligation to comply with the emission limit values provided for in Article 4 in cases where a plant which normally uses only gaseous fuel, and which would otherwise need to be equipped with a waste gas purification facility, has to resort exceptionally, and for a period not exceeding 10 days except where there is an overriding need to maintain energy supplies, to the use of other fuels because of a sudden interruption in the supply of gas. The competent authority shall immediately be informed of each specific case as it arises.

Member States shall inform the Commission immediately of the cases referred to in this paragraph.

**Article 8**

1. In the case of plants with a multi-firing unit involving the simultaneous use of two or more fuels, when granting the licence referred to in Articles 4(1) or 4(2), and in the case of such plants covered by Articles 4(3) or 10, the competent authority shall set the emission limit values as follows:

(a) firstly by taking the emission limit value relevant for each individual fuel and pollutant corresponding to the rated thermal input of the combustion plant as given in Annexes III to VII,

(b) secondly by determining fuel-weighted emission limit values, which are obtained by multiplying the above individual emission limit value by the thermal input delivered by each fuel, the product of multiplication being divided by the sum of the thermal inputs delivered by all fuels,

(c) thirdly by determining the fuel-weighted emission limit values, which are obtained by multiplying the calculated fuel emission limit value by the thermal input of the determinative fuel and the other individual emission limit values by the thermal input delivered by each fuel, the product of multiplication being divided by the sum of the thermal inputs delivered by all fuels,

(d) fourthly by aggregating the fuel-weighted emission limit values.

2. In multi-firing units using the distillation and conversion residues from crude-oil refining for own consumption, alone or with other fuels, the provisions for the fuel with the highest emission limit value (determinative fuel) shall apply, notwithstanding paragraph 1 above, if during the operation of the combustion plant the proportion contributed by that fuel to the sum of the thermal inputs delivered by all fuels is at least 50%.

Where the proportion of the determinative fuel is lower than 50%, the emission limit value is determined on a pro rata basis of the heat input supplied by the individual fuels in relation to the sum of the thermal inputs delivered by all fuels as follows:

(a) firstly by taking the emission limit value relevant for each individual fuel and pollutant corresponding to the rated heat input of the combustion plant as given in Annexes III to VII,

(b) secondly by calculating the emission limit value of the determinative fuel (fuel with the highest emission limit value according to Annexes III to VII and, in the case of two fuels having the same emission limit value, the fuel with the higher thermal input); this value is obtained by multiplying the emission limit value laid down in Annexes III to VII for that fuel by a factor of two, and subtracting from this product the emission limit value of the fuel with the lowest emission limit value,

(c) thirdly by determining the fuel-weighted emission limit values, which are obtained by multiplying the calculated fuel emission limit value by the thermal input of the determinative fuel and the other individual emission limit values by the thermal input delivered by each fuel, the product of multiplication being divided by the sum of the thermal inputs delivered by all fuels,

(d) fourthly by aggregating the fuel-weighted emission limit values.

3. As an alternative to paragraph 2, the following average emission limit values for sulphur dioxide may be applied (irrespective of the fuel combination used):

(a) for plants referred to in Article 4(1) and (3): 1000 mg/Nm³, averaged over all such plants within the refinery;

(b) for new plants referred to in Article 4(2): 600 mg/Nm³, averaged over all such plants within the refinery, with the exception of gas turbines.

The competent authorities shall ensure that the application of this provision does not lead to an increase in emissions from existing plants.

4. In the case of plants with a multi-firing unit involving the alternative use of two or more fuels, when granting the licence referred to in Article 4(1) and (2), and in the case of such plants covered by Articles 4(3) or 10, the emission limit values set out in Annexes III to VII corresponding to each fuel used shall be applied.

**Article 9**

Waste gases from combustion plants shall be discharged in controlled fashion by means of a stack. The licence referred to in Article 4 and licences for combustion plants covered by Article 10 shall lay down the discharge conditions. The competent authority shall in particular ensure that the stack height is calculated in such a way as to safeguard health and the environment.

**Article 10**

Where a combustion plant is extended by at least 50 MW, the emission limit values as set in part B of Annexes III to VII shall apply to the new part of the plant and shall be fixed in relation to the thermal capacity of the entire plant. This provision shall not apply in the cases referred to in Article 8(2) and (3).

Where the operator of a combustion plant is envisaging a change according to Articles 2(10)(b) and 12(2) of Directive 96/61/EC, the emission limit values as set out in part B of Annexes III to VII in respect of sulphur dioxide, nitrogen oxides and dust shall apply.
The periods referred to in Article 7 as well as start-up and shut-down periods shall be disregarded.

4. For new plants for which the licence is granted pursuant to Article 4(2), the emission limit values shall be regarded, for operating hours within a calendar year, as complied with if:

(a) no validated daily average value exceeds the relevant figures set out in part B of Annexes III to VII, and

(b) 95% of all the validated hourly average values over the year do not exceed 200% of the relevant figures set out in part B of Annexes III to VII.

The “validated average values” are determined as set out in point A.6 of Annex VIII.

The periods referred to in Article 7 as well as start up and shut down periods shall be disregarded.

Article 15

1. Member States shall, not later than 31 December 1990, inform the Commission of the programmes drawn up in accordance with Article 3(1).

At the latest one year after the end of the different phases for reduction of emissions from existing plants, the Member States shall forward to the Commission a summary report on the results of the implementation of the programmes.

An intermediate report is required as well in the middle of each phase.

2. The reports referred to in paragraph 1 shall provide an overall view of:

(a) all the combustion plants covered by this Directive,

(b) emissions of sulphur dioxide, and oxides of nitrogen expressed in tonnes per annum and as concentrations of these substances in the waste gases,

(c) measures already taken or envisaged with a view to reducing emissions, and of changes in the choice of fuel used,

(d) changes in the method of operation already made or envisaged,

(f) where appropriate, the emission limit values imposed in the programmes in respect of existing plants.

When determining the annual emissions and concentrations of pollutants in the waste gases, Member States shall take account of Articles 12, 13 and 14.

3. Member States applying Article 5 or the provisions of the Nota Bene in Annex III or the footnotes in Annex VI.A shall report thereon annually to the Commission.

Article 16

The Member States shall determine the penalties applicable to breaches of the national provisions adopted pursuant to this Directive. The penalties thus provided for shall be effective, proportionate and dissuasive.
Article 17

1. Directive 88/609/EEC shall be repealed with effect from 27 November 2002, without prejudice to paragraph 2 or to the obligations of Member States concerning the time limits for transposition and application of that Directive listed in Annex IX hereeto.


3. References to Directive 88/609/EEC shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex X hereto.

Article 18

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 27 November 2002. They shall forthwith inform the Commission thereof.

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

2. For existing plant, and for new plant for which a licence is granted pursuant to Article 4(1), the provisions of point A.2 of Annex VIII shall be applied from 27 November 2004.

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

Article 19

This Directive shall enter into force on the day of its publication in the Official Journal of the European Communities.

Article 20

This Directive is addressed to the Member States.

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ANNEX I

CEILINGS AND REDUCTION TARGETS FOR EMISSIONS OF SO₂ FROM EXISTING PLANTS(1)(2)

<table>
<thead>
<tr>
<th>Member State</th>
<th>SO₂ emissions by large combustion plants 1980</th>
<th>Emission ceiling (ktonnes/year)</th>
<th>% reduction over 1980 emissions</th>
<th>% reduction over adjusted 1980 emissions</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Phase 1</td>
<td>Phase 2</td>
<td>Phase 3</td>
<td>Phase 1</td>
</tr>
<tr>
<td>Belgium</td>
<td>530</td>
<td>318</td>
<td>212</td>
<td>- 40</td>
</tr>
<tr>
<td>Denmark</td>
<td>323</td>
<td>213</td>
<td>141</td>
<td>- 34</td>
</tr>
<tr>
<td>Germany</td>
<td>2225</td>
<td>1335</td>
<td>890</td>
<td>- 40</td>
</tr>
<tr>
<td>Greece</td>
<td>320</td>
<td>1.8</td>
<td>1.5</td>
<td>- 25</td>
</tr>
<tr>
<td>Spain</td>
<td>2290</td>
<td>2190</td>
<td>1140</td>
<td>0 - 24</td>
</tr>
<tr>
<td>France</td>
<td>1910</td>
<td>1146</td>
<td>764</td>
<td>- 40</td>
</tr>
<tr>
<td>Ireland</td>
<td>99</td>
<td>124</td>
<td>124</td>
<td>- 25</td>
</tr>
<tr>
<td>Italy</td>
<td>2400</td>
<td>1800</td>
<td>1500</td>
<td>- 27</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>30</td>
<td>1.8</td>
<td>1.5</td>
<td>- 40</td>
</tr>
<tr>
<td>Netherlands</td>
<td>299</td>
<td>180</td>
<td>90</td>
<td>- 40</td>
</tr>
<tr>
<td>Portugal</td>
<td>151</td>
<td>115</td>
<td>90</td>
<td>- 60</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>3883</td>
<td>3106</td>
<td>2330</td>
<td>- 20</td>
</tr>
<tr>
<td>Austria</td>
<td>90</td>
<td>54</td>
<td>36</td>
<td>- 37</td>
</tr>
<tr>
<td>Finland</td>
<td>171</td>
<td>102</td>
<td>68</td>
<td>- 40</td>
</tr>
<tr>
<td>Sweden</td>
<td>112</td>
<td>67</td>
<td>45</td>
<td>- 40</td>
</tr>
</tbody>
</table>

(1) Additional emissions may arise from capacity authorised on or after 1 July 1987.

(2) Emissions coming from combustion plants authorised before 1 July 1987 but not yet in operation before that date and which have not been taken into account in establishing the emission ceilings fixed by this Annex shall either comply with the requirements established by this Directive for new plants or be accounted for in the overall emissions from existing plants that must not exceed the ceilings fixed in this Annex.
ANNEX II

CEILINGS AND REDUCTION TARGETS FOR EMISSIONS OF NO\textsubscript{x} FROM EXISTING PLANTS(1)(2)

<table>
<thead>
<tr>
<th>Member State</th>
<th>NO\textsubscript{x} emissions (as NO\textsubscript{2}) by large combustion plants 1980 ktonnes</th>
<th>NO\textsubscript{x} emission ceilings (ktonnes/year)</th>
<th>% reduction over 1980 emissions</th>
<th>% reduction over adjusted 1980 emissions</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>NO\textsubscript{x} emission ceilings (ktonnes/year)</td>
<td>Phase 1</td>
<td>Phase 2</td>
<td>Phase 1</td>
</tr>
<tr>
<td>Belgium</td>
<td>110</td>
<td>88</td>
<td>66</td>
<td>-20</td>
</tr>
<tr>
<td>Denmark</td>
<td>124</td>
<td>121</td>
<td>81</td>
<td>-3</td>
</tr>
<tr>
<td>Germany</td>
<td>870</td>
<td>696</td>
<td>522</td>
<td>-20</td>
</tr>
<tr>
<td>Greece</td>
<td>36</td>
<td>70</td>
<td>70</td>
<td>+94</td>
</tr>
<tr>
<td>Spain</td>
<td>366</td>
<td>368</td>
<td>277</td>
<td>+1</td>
</tr>
<tr>
<td>France</td>
<td>400</td>
<td>320</td>
<td>240</td>
<td>-20</td>
</tr>
<tr>
<td>Ireland</td>
<td>28</td>
<td>50</td>
<td>50</td>
<td>+79</td>
</tr>
<tr>
<td>Italy</td>
<td>580</td>
<td>570</td>
<td>428</td>
<td>-2</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>3</td>
<td>2.4</td>
<td>1.8</td>
<td>-20</td>
</tr>
<tr>
<td>Netherlands</td>
<td>122</td>
<td>98</td>
<td>73</td>
<td>-20</td>
</tr>
<tr>
<td>Portugal</td>
<td>23</td>
<td>59</td>
<td>64</td>
<td>+157</td>
</tr>
<tr>
<td>Austria</td>
<td>19</td>
<td>15</td>
<td>11</td>
<td>-20</td>
</tr>
<tr>
<td>Finland</td>
<td>81</td>
<td>65</td>
<td>48</td>
<td>-20</td>
</tr>
<tr>
<td>Sweden</td>
<td>31</td>
<td>25</td>
<td>19</td>
<td>-20</td>
</tr>
</tbody>
</table>

(*) Member States may for technical reasons delay for up to two years the phase 1 date for reduction in NO\textsubscript{x} emissions by notifying the Commission within one month of the notification of the Directive.

(1) Additional emissions may arise from capacity authorised on or after 1 July 1987.

(2) Emissions coming from combustion plants authorised before 1 July 1987 but not yet in operation before that date and which have not been taken into account in establishing the emission ceilings fixed by this Annex shall either comply with the requirements established by this Directive for new plants or be accounted for in the overall emissions from existing plants that must not exceed the ceilings fixed in this Annex.

ANNEX III

EMISSION LIMIT VALUES FOR SO\textsubscript{2}

Solid fuel

A. SO\textsubscript{2} emission limit values expressed in mg/Nm\textsuperscript{3} (O\textsubscript{2} content 6%) to be applied by new and existing plants pursuant to Article 4(1) and 4(3) respectively:

NB. Where the emission limit values above cannot be met due to the characteristics of the fuel, a rate of desulphurisation of at least 60% shall be achieved in the case of plants with a rated thermal input of less than or equal to 100 MWth, 75% for plants greater than 100 MWth and less than or equal to 300 MWth and 90% for plants greater than 300 MWth or plants greater than 500 MWth, a desulphurisation rate of at least 94% shall apply or of at least 92% where a contract for the fitting of flue gas desulphurisation or lime injection equipment has been entered into, and work on its installation has commenced, before 1 January 2001.
B. SO₂ emission limit values expressed in mg/Nm³ (O₂ content 3%) to be applied by new and existing plants pursuant to Article 4(1) and 4(3), respectively:

<table>
<thead>
<tr>
<th>Type of fuel</th>
<th>50 to 100 MWth</th>
<th>50 to 100 MWth</th>
<th>&gt; 300 MWth</th>
</tr>
</thead>
<tbody>
<tr>
<td>Biomass</td>
<td>200</td>
<td>200</td>
<td>200</td>
</tr>
<tr>
<td>General case</td>
<td>850</td>
<td>200 (¹)</td>
<td>200</td>
</tr>
</tbody>
</table>

(¹) Except in the case of the ‘Outermost Regions’ where 850 to 200 mg/Nm³ (linear decrease) shall apply.

NB. Where the emission limit values above cannot be met due to the characteristics of the fuel, installations shall achieve 300 mg/Nm³ SO₂, or a rate of desulphurisation of at least 92% shall be achieved in the case of plants with a rated thermal input of less than or equal to 300 MWth and in the case of plants with a rated thermal input greater than 300 MWth a rate of desulphurisation of at least 95% together with a maximum permissible emission limit value of 400 mg/Nm³ shall apply.

B. SO₂ emission limit values expressed in mg/Nm³ (O₂ content 6%) to be applied by new plants pursuant to Article 4(2) with the exception of gas turbines:

<table>
<thead>
<tr>
<th>Type of fuel</th>
<th>50 to 100 MWth</th>
<th>50 to 100 MWth</th>
<th>&gt; 300 MWth</th>
</tr>
</thead>
<tbody>
<tr>
<td>Biomass</td>
<td>200</td>
<td>200</td>
<td>200</td>
</tr>
<tr>
<td>General case</td>
<td>850</td>
<td>200 (¹)</td>
<td>200</td>
</tr>
</tbody>
</table>

(¹) Except in the case of the ‘Outermost Regions’ where 850 to 200 mg/Nm³ (linear decrease) shall apply.

In the case of two installations with a rated thermal input of 250 MWth on Crete and Rhodos to be licensed before 31 December 2007 the emission limit value of 1700 mg/Nm³ shall apply.
### ANNEX V

#### EMISSION LIMIT VALUES FOR SO₂

**Gaseous fuels**

A. SO₂ emission limit values expressed in mg/Nm³ (O₂ content 3%) to be applied by new and existing plants pursuant to Article 4(1) and 4(3), respectively:

<table>
<thead>
<tr>
<th>Type of fuel</th>
<th>Limit values (mg/Nm³)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gaseous fuels in general</td>
<td>35</td>
</tr>
<tr>
<td>Liquefied gas</td>
<td>5</td>
</tr>
<tr>
<td>Low calorific gases from gasification of refinery residues coke oven gas, blast-furnace gas</td>
<td>800</td>
</tr>
<tr>
<td>Gas from gasification of coal</td>
<td>(*)</td>
</tr>
</tbody>
</table>

(*) The Council will fix the emission limit values applicable to such gas at a later stage on the basis of proposals from the Commission to be made in the light of further technical experience.

B. SO₂ emission limit values expressed in mg/Nm³ (O₂ content 3%) to be applied by new plants pursuant to Article 4(2):

<table>
<thead>
<tr>
<th>Type of fuel</th>
<th>Limit values (mg/Nm³)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gaseous fuels in general</td>
<td>35</td>
</tr>
<tr>
<td>Liquefied gas</td>
<td>5</td>
</tr>
<tr>
<td>Low calorific gases from coke oven</td>
<td>400</td>
</tr>
<tr>
<td>Low calorific gases from blast furnace</td>
<td>200</td>
</tr>
</tbody>
</table>

### ANNEX VI

#### EMISSION LIMIT VALUES FOR NOₓ (MEASURED AS NO₂)

A. NOₓ emission limit values expressed in mg/Nm³ (O₂ content 6% for solid fuels, 3% for liquid and gaseous fuels) to be applied by new and existing plants pursuant to Article 4(1) and 4(3), respectively:

<table>
<thead>
<tr>
<th>Type of fuel</th>
<th>Limit values (¹) (mg/Nm³)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Solid (¹), (³):</td>
<td></td>
</tr>
<tr>
<td>50 to 500 MWth:</td>
<td>600</td>
</tr>
<tr>
<td>&gt;500 MWth:</td>
<td>500</td>
</tr>
<tr>
<td>From 1 January 2016</td>
<td></td>
</tr>
<tr>
<td>50 to 500 MWth:</td>
<td>600</td>
</tr>
<tr>
<td>&gt;500 MWth:</td>
<td>200</td>
</tr>
<tr>
<td>Liquid:</td>
<td></td>
</tr>
<tr>
<td>50 to 500 MWth:</td>
<td>400</td>
</tr>
<tr>
<td>&gt;500 MWth:</td>
<td>450</td>
</tr>
<tr>
<td>Gaseous:</td>
<td></td>
</tr>
<tr>
<td>50 to 500 MWth:</td>
<td>300</td>
</tr>
<tr>
<td>&gt;500 MWth:</td>
<td>200</td>
</tr>
</tbody>
</table>

(¹) Except in the case of the ‘Outermost Regions’ where the following values shall apply:

- Solid in general: 650
- Solid with < 10% vol comps: 1300
- Liquid: 450
- Gaseous: 350

(³) Until 31 December 2015 plants of a rated thermal input greater than 500 MW, which from 2008 onwards do not operate more than 2000 hours a year (rolling average over a period of five years), shall:

- in the case of plant licensed in accordance with Article 4(3)(a), be subject to a limit value for nitrogen oxide emissions (measured as NO₃) of 600 mg/Nm³;
- in the case of plant subject to a national plan under Article 4(6), have their contribution to the national plan assessed on the basis of a limit value of 600 mg/Nm³.

From 1 January 2016 such plants, which do not operate more than 1500 hours a year (rolling average over a period of five years), shall be subject to a limit value for nitrogen oxide emissions (measured as NO₃) of 450 mg/Nm³.

(³) Until 1 January 2018 in the case of plants that in the 12 month period ending on 1 January 2001 operated on, and continue to operate on, solid fuels whose volatile content is less than 10%, 1200 mg/Nm³ shall apply.
B. NO\textsubscript{x} emission limit values expressed in mg/Nm\textsuperscript{3} to be applied by new plants pursuant to Article 4(2) with the exception of gas turbines

Solid fuels (O\textsubscript{2} content 6%)

<table>
<thead>
<tr>
<th>Type of fuel</th>
<th>50 to 100 MW\textsubscript{th}</th>
<th>100 to 300 MW\textsubscript{th}</th>
<th>&gt; 300 MW\textsubscript{th}</th>
</tr>
</thead>
<tbody>
<tr>
<td>Biomass</td>
<td>400</td>
<td>300</td>
<td>200</td>
</tr>
<tr>
<td>General case</td>
<td>400</td>
<td>200 (*)</td>
<td>200</td>
</tr>
</tbody>
</table>

(*) Except in the case of the ‘Outermost Regions’ where 300 mg/Nm\textsuperscript{3} (linear decrease) shall apply.

Liquid fuels (O\textsubscript{2} content 3%)

<table>
<thead>
<tr>
<th></th>
<th>50 to 100 MW\textsubscript{th}</th>
<th>100 to 300 MW\textsubscript{th}</th>
<th>&gt; 300 MW\textsubscript{th}</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>400</td>
<td>200 (*)</td>
<td>200</td>
</tr>
</tbody>
</table>

(*) Except in the case of the ‘Outermost Regions’ where 300 mg/Nm\textsuperscript{3} (linear decrease) shall apply.

In the case of two installations with a rated thermal input of 250 MW\textsubscript{th} on Crete and Rhodos to be licensed before 31 December 2007 the emission limit value of 400 mg/Nm\textsuperscript{3} shall apply.

Gaseous fuels (O\textsubscript{2} content 3%)

<table>
<thead>
<tr>
<th></th>
<th>50 to 300 MW\textsubscript{th}</th>
<th>&gt; 300 MW\textsubscript{th}</th>
</tr>
</thead>
<tbody>
<tr>
<td>Natural gas (Note 1)</td>
<td>150</td>
<td>100</td>
</tr>
<tr>
<td>Other gases</td>
<td>200</td>
<td>200</td>
</tr>
</tbody>
</table>

Gas Turbines

NO\textsubscript{x} emission limit values expressed in mg/Nm\textsuperscript{3} (O\textsubscript{2} content 15%) to be applied by a single gas turbine unit pursuant to Article 4(2) (the limit values apply only above 70% load):

<table>
<thead>
<tr>
<th></th>
<th>&gt; 50 MW\textsubscript{th}</th>
</tr>
</thead>
<tbody>
<tr>
<td>Natural gas (Note 1)</td>
<td>50 (Note 2)</td>
</tr>
<tr>
<td>Liquid fuels (Note 3)</td>
<td>120</td>
</tr>
<tr>
<td>Gaseous fuels (other than natural gas)</td>
<td>120</td>
</tr>
</tbody>
</table>

Gas turbines for emergency use that operate less than 500 hours per year are excluded from these limit values. The operator of such plants is required to submit each year to the competent authority a record of such used time.

Note 1: Natural gas is naturally occurring methane with not more than 20% (by volume) of inerts and other constituents.

Note 2: 75 mg/Nm\textsuperscript{3} in the following cases, where the efficiency of the gas turbine is determined at ISO base load conditions:

- gas turbines, used in combined heat and power systems having an overall efficiency greater than 75%;
- gas turbines used in combined cycle plants having an annual average overall electrical efficiency greater than 55%;
- gas turbines for mechanical drives.

For single cycle gas turbines not falling into any of the above categories, but having an efficiency greater than 35% - determined at ISO base load conditions - the emission limit value shall be 50*\(\eta/35\) where \(\eta\) is the gas turbine efficiency expressed as a percentage (and at ISO base load conditions).

Note 3: This emission limit value only applies to gas turbines firing light and middle distillates.
ANNEX VII
EMISSION LIMIT VALUES FOR DUST

A. Dust emission limit values expressed in mg/Nm³ (O₂ content 6% for solid fuels, 3% for liquid and gaseous fuels) to be applied by new and existing plants pursuant to Article 4(1) and 4(3), respectively:

<table>
<thead>
<tr>
<th>Type of fuel</th>
<th>Rated thermal input (MW)</th>
<th>Emission limit values (mg/Nm³)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Solid</td>
<td>&gt; 500</td>
<td>300</td>
</tr>
<tr>
<td></td>
<td>&lt; 500</td>
<td></td>
</tr>
<tr>
<td>Liquid (*)</td>
<td>all plants</td>
<td>50</td>
</tr>
<tr>
<td>Gaseous</td>
<td>all plants</td>
<td>5 as a rule</td>
</tr>
<tr>
<td></td>
<td></td>
<td>10 for blast furnace</td>
</tr>
<tr>
<td></td>
<td></td>
<td>50 for gases produced by the</td>
</tr>
<tr>
<td></td>
<td></td>
<td>steel industry which can be</td>
</tr>
<tr>
<td></td>
<td></td>
<td>used elsewhere</td>
</tr>
</tbody>
</table>

(1) A limit value of 100 mg/Nm³ may be applied to plants with a rated thermal input less than 500 MWth burning liquid fuel with an ash content of more than 0.06%.

(2) A limit value of 100 mg/Nm³ may be applied to plants licensed pursuant to Article 4(3) with a rated thermal input greater than or equal to 500 MWth burning solid fuel with a heat content of less than 5800 kJ/kg (net calorific value), a moisture content greater than 45% by weight, a combined moisture and ash content greater than 60% by weight and a calcium oxide content greater than 10%.

B. Dust emission limit values expressed in mg/Nm³ to be applied by new plants, pursuant to Article 4(2) with the exception of gas turbines:

Solid fuels (O₂ content 6%)

<table>
<thead>
<tr>
<th>Type of fuel</th>
<th>Rated thermal input (MW)</th>
<th>Emission limit values (mg/Nm³)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>50 to 100 MWth</td>
<td>&gt; 100 MWth</td>
</tr>
<tr>
<td></td>
<td></td>
<td>50</td>
</tr>
</tbody>
</table>

Liquid fuels (O₂ content 3%)

<table>
<thead>
<tr>
<th>Type of fuel</th>
<th>Rated thermal input (MW)</th>
<th>Emission limit values (mg/Nm³)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>50 to 100 MWth</td>
<td>&gt; 100 MWth</td>
</tr>
<tr>
<td></td>
<td></td>
<td>50</td>
</tr>
</tbody>
</table>

In the case of two installations with a rated thermal input of 250 MWth on Crete and Rhodos to be licensed before 31 December 2007 the emission limit value of 50 mg/Nm³ shall apply.

Gaseous fuels (O₂ content 3%)

<table>
<thead>
<tr>
<th>Type of fuel</th>
<th>Rated thermal input (MW)</th>
<th>Emission limit values (mg/Nm³)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>As a rule</td>
<td>5</td>
</tr>
<tr>
<td></td>
<td>For blast furnace</td>
<td>10</td>
</tr>
<tr>
<td></td>
<td>For gases produced by the steel industry which can be used elsewhere</td>
<td>30</td>
</tr>
</tbody>
</table>

ANNEX VIII
METHODS OF MEASUREMENT OF EMISSIONS

A. Procedures for measuring and evaluating emissions from combustion plants.

1. Until 27 November 2004

Concentrations of SO₂, dust, NOₓ shall be measured continuously in the case of new plants for which a licence is granted pursuant to Article 4(1) with a rated thermal input of more than 300 MW. However, monitoring of SO₂ and dust may be confined to discontinuous measurements or other appropriate determination procedures in cases where such measurements or procedures, which must be verified and approved by the competent authorities, may be used to obtain concentration.

In the case of new plants for which a licence is granted pursuant to Article 4(1) not covered by the first subparagraph, the competent authorities may require continuous measurements of those three pollutants to be carried out where considered necessary. Where continuous measurements are not required, discontinuous measurements or appropriate determination procedures as approved by the competent authorities shall be used regularly to evaluate the quantity of the above-mentioned substances present in the emissions.

2. From 27 November 2002 and without prejudice to Article 18(2)

Competent authorities shall require continuous measurements of concentrations of SO₂, NOₓ and dust from waste gases from each combustion plant with a rated thermal input of 100 MW or more.

By way of derogation from the first subparagraph, continuous measurements may not be required in the following cases:

- for combustion plants with a life span of less than 10000 operational hours;
- for SO₂ and dust from natural gas burning boilers or from gas turbines firing natural gas;
- for SO₂ from gas turbines or boilers firing oil with known sulphur content in cases where there is no desulphurisation equipment;
- for SO₂ from biomass firing boilers if the operator can prove that the SO₂ emissions can under no circumstances be higher than the prescribed emission limit values.

Where continuous measurements are not required, discontinuous measurements shall be required at least every six months. As an alternative, appropriate determination procedures, which must be verified and approved by the competent authorities, may be used to evaluate the quantity of the above mentioned pollutants present in the emissions. Such procedures shall use relevant CEN standards as soon as they are available. If CEN standards are not available ISO standards, national or international standards which will ensure the provision of data of an equivalent scientific quality shall apply.

3. In the case of plants which must comply with the desulphurisation rates fixed by Article 5(2) and and Annex III, the requirements concerning SO₂ emission measurements established under paragraph 2 of this point shall apply. Moreover, the sulphur content of the fuel which is introduced into the combustion plant facilities must be regularly monitored.

4. The competent authorities shall be informed of substantial changes in the type of fuel used or in the mode of operation of the plant. They shall decide whether the monitoring requirements laid
down in paragraph 2 are still adequate or require adaptation.

5. The continuous measurements carried out in compliance with paragraph 2 shall include the relevant process operation parameters of oxygen content, temperature, pressure and water vapour content. The continuous measurement of the water vapour content of the exhaust gases shall not be necessary, provided that the sampled exhaust gas is dried before the emissions are analysed.

Representative measurements, i.e. sampling and analysis, of relevant pollutants and process parameters as well as reference measurement methods to calibrate automated measurement systems shall be carried out in accordance with CEN standards as soon as they are available. If CEN standards are not available ISO standards, national or international standards which will ensure the provision of data of an equivalent scientific quality shall apply.

Continuous measuring systems shall be subject to control by means of parallel measurements with the reference methods at least every year.

6. The values of the 95% confidence intervals of a single measures results shall not exceed the following percentages of the emission limit values:

- Sulphur dioxide 20%
- Nitrogen oxides 20%
- Dust 30%

The validated hourly and daily average values shall be determined from the measured valid hourly average values after having subtracted the value of the confidence interval specified above.

Any day in which more than three hourly average values are invalid due to malfunction or maintenance of the continuous measurement system shall be invalidated. If more than ten days over a year are invalidated for such situations the competent authority shall require the operator to take adequate measures to improve the reliability of the continuous monitoring system.

B. Determination of total annual emissions of combustion plants

Until and including 2003 the competent authorities shall obtain determination of the total annual emissions of SO₂ and NOₓ from new combustion plants. When continuous monitoring is used, the operator of the combustion plant shall add up separately for each pollutant the mass of pollutant emitted each day, on the basis of the volumetric flow rates of waste gases. Where continuous monitoring is not in use, estimates of the total annual emissions shall be determined by the operator on the basis of paragraph A.1 to the satisfaction of the competent authorities.

Member States shall communicate to the Commission the total annual SO₂ and NOₓ emissions of new combustion plants at the same time as the communication required under paragraph C.3 concerning the total annual emissions of existing plants.

Member States shall establish, starting in 2004 and for each subsequent year, an inventory of SO₂, NOₓ and dust emissions from all combustion plants with a rated thermal input of 50 MW or more. The competent authority shall obtain for each plant operated under the control of one operator at a given location the following data:

- the total annual emissions of SO₂, NOₓ and dust (as total suspended particles).
- the total annual amount of energy input, related to the net calorific value, broken down in terms of the five categories of fuel: biomass, other solid fuels, liquid fuels, natural gas, other gases.

A summary of the results of this inventory that shows the emissions from refineries separately shall be communicated to the Commission every three years within twelve months from the end of the three-year period considered. The yearly plant-by-plant data shall be made available to the Commission upon request. The Commission shall make available to the Member States a summary of the comparison and evaluation of the national inventories within twelve months of receipt of the national inventories.

Commencing on 1 January 2008 Member States shall report annually to the Commission on those existing plants declared for eligibility under Article 4(4) along with the record of the used and unused time allowed for the plants’ remaining operational life.

C. Determination of the total annual emissions of existing plants until and including 2003

1. Member States shall establish, starting in 1990 and for each subsequent year until and including 2003, a complete emission inventory for existing plants covering SO₂ and NOₓ:

- on a plant by plant basis for plants above 300 MWth and for refineries;
- on an overall basis for other combustion plants to which this Directive applies.

2. The methodology used for these inventories shall be consistent with that used to determine SO₂ and NOₓ emissions from combustion plants in 1980.

3. The results of this inventory shall be communicated to the Commission in a conveniently aggregated form within nine months from the end of the year considered. The methodology used for establishing such emission inventories and the detailed base information shall be made available to the Commission at its request.

4. The Commission shall organise a systematic comparison of such national inventories and, if appropriate, shall submit proposals to the Council aiming at harmonising emission inventory methodologies, for the needs of an effective implementation of this Directive.

Whereas the Council declaration of 22 November 1973 on the programme of action of the European Communities on the environment calls for specific action to protect birds, supplemented by the resolution of the Council of the European Communities and of the representatives of the Governments of the Member States meeting within the Council of 17 May 1977 on the continuation and implementation of a European Community policy and action programme on the environment;

Whereas a large number of species of wild birds naturally occurring in the European territory of the Member States are declining in number, very rapidly in some cases; whereas this decline represents a serious threat to the conservation of the natural environment, particularly because of the biological balances threatened thereby;

Whereas the species of wild birds naturally occurring in the European territory of the Member States are mainly migratory species; whereas such species constitute a common heritage and whereas effective bird protection is typically a trans-frontier environment problem entailing common responsibilities;

Whereas the conditions of life for birds in Greenland are fundamentally different from those in the other regions of the European territory of the Member States on account of the general circumstances and in particular the climate, the low density of population and the exceptional size and geographical situation of the island;

Whereas therefore this Directive should not apply to Greenland;

Whereas the conservation of the species of wild birds naturally occurring in the European territory of the Member States is necessary to attain, within the operation of the common market, of the Community's objectives regarding the improvement of living conditions, a harmonious development of economic activities throughout the Community and a continuous and balanced expansion, but the necessary specific powers to act have not been provided for in the Treaty;

Whereas the measures to be taken must apply to the various factors which may affect the numbers of birds, namely the repercussions of man's activities and in particular the destruction and pollution of their habitats, capture and killing by man and the trade resulting from such practices, whereas the stringency of such measures should be adapted to the particular situation of the various species within the framework of a conservation policy;

Whereas conservation is aimed at the long-term protection and management of natural resources as an integral part of the heritage of the peoples of Europe; whereas it makes it possible to control natural resources and governs their use on the basis of the measures necessary for the maintenance and adjustment of the natural balances between species as far as is reasonably possible;

Whereas the preservation, maintenance or restoration of a sufficient diversity and area of habitats is essential to the conservation of all species of birds; whereas certain species of birds should be the subject of special conservation measures concerning their habitats in order to ensure their survival and reproduction in their area of distribution; whereas such measures must also take account of migratory species and be coordinated with a view to setting up a coherent whole;

Whereas, in order to prevent commercial interests from exerting a possible harmful pressure on exploitation levels it is necessary to impose a general ban on marketing and to restrict all derogation to those species whose biological status so permits, account being taken of the specific conditions obtaining in the different regions;
Whereas, because of their high population level, geographical distribution and reproductive rate in the Community as a whole, certain species may be hunted, which constitutes acceptable exploitation; where certain limits are established and respected, such hunting must be compatible with maintenance of the population of these species at a satisfactory level;

Whereas the various means, devices or methods of large-scale or non-selective capture or killing and hunting with certain forms of transport must be banned because of the excessive pressure which they exert or may exert on the numbers of the species concerned;

Whereas, because of the importance which may be attached to certain specific situations, provision should be made for the possibility of derogations on certain conditions and subject to monitoring by the Commission;

Whereas the conservation of birds and, in particular, migratory birds still presents problems which call for scientific research; whereas such research will also make it possible to assess the effectiveness of the measures taken;

Whereas care should be taken in consultation with the Commission to see that the introduction of any species of wild bird not naturally occurring in the European territory of the Member States does not cause harm to local flora and fauna;

Whereas the Commission will every three years prepare and transmit to the Member States a composite report based on information submitted by the Member States on the application of national provisions introduced pursuant to this Directive;

Whereas it is necessary to adapt certain Annexes rapidly in the light of technical and scientific progress; whereas, to facilitate the implementation of the measures needed for this purpose, provision should be made for a procedure establishing close cooperation between the Member States and the Commission in a Committee for Adaptation to Technical and Scientific Progress.

Article 1

1. This Directive relates to the conservation of all species of naturally occurring birds in the wild state in the European territory of the Member States to which the Treaty applies. It covers the protection, management and control of these species and lays down rules for their exploitation.

2. It shall apply to birds, their eggs, nests and habitats.

3. This Directive shall not apply to Greenland.

Article 2

Member States shall take the requisite measures to maintain the population of the species referred to in Article 1 at a level which corresponds in particular to ecological, scientific and cultural requirements, while taking account of economic and recreational requirements, or to adapt the population of these species to that level.

Article 3

1. In the light of the requirements referred to in Article 2, Member States shall take the requisite measures to preserve, maintain or re-establish a sufficient diversity and area of habitats for all the species of birds referred to in Article 1.

2. The preservation, maintenance and re-establishment of biotopes and habitats shall include primarily the following measures:

(a) creation of protected areas;
(b) upkeep and management in accordance with the ecological needs of habitats inside and outside the protected zones;
(c) re-establishment of destroyed biotopes;
(d) creation of biotopes.

Article 4

1. The species mentioned in Annex I shall be the subject of special conservation measures concerning their habitat in order to ensure their survival and reproduction in their area of distribution.

In this connection, account shall be taken of:

(a) species in danger of extinction;
(b) species vulnerable to specific changes in their habitat;
(c) species considered rare because of small populations or restricted local distribution;
(d) other species requiring particular attention for reasons of the specific nature of their habitat.

Trends and variations in population levels shall be taken into account as a background for evaluations.

Member States shall classify in particular the most suitable territories in number and size as special protection areas for the conservation of these species, taking into account their protection requirements in the geographical sea and land area where this Directive applies.

2. Member States shall take similar measures for regularly occurring migratory species not listed in Annex I, bearing in mind their need for protection in the geographical sea and land area where this Directive applies, as regards their breeding, moultting and wintering areas and staging posts along their migration routes. To this end, Member States shall pay particular attention to the protection of wetlands and particularly to wetlands of international importance.

3. Member States shall send the Commission all relevant information so that it may take appropriate initiatives with a view to the coordination necessary to ensure that the areas provided for in paragraphs 1 and 2 above form a coherent whole which meets the protection requirements of these species in the geographical sea and land area where this Directive applies.

4. In respect of the protection areas referred to in paragraphs 1 and 2 above, Member States shall take appropriate steps to avoid pollution or deterioration of habitats or any disturbances affecting the birds, in so far as these would be significant having regard to the objectives of this Article. Outside these protection areas, Member States shall also strive to avoid pollution or deterioration of habitats.

Article 5

Without prejudice to Articles 7 and 9, Member States shall take the requisite measures to establish a general system of protection for all species of birds referred to in Article 1, prohibiting in particular:
(a) deliberate killing or capture by any method;
(b) deliberate destruction of, or damage to, their nests and eggs or removal of their nests;
(c) taking their eggs in the wild and keeping these eggs even if empty;
(d) deliberate disturbance of these birds particularly during the period of breeding and rearing, in so far as disturbance would be significant having regard to the objectives of this Directive;
(e) keeping birds of species the hunting and capture of which is prohibited.

Article 6

1. Without prejudice to the provisions of paragraphs 2 and 3, Member States shall prohibit, for all the bird species referred to in Article 1, the sale, transport for sale, keeping for sale and the offering for sale of live or dead birds and of any readily recognizable parts or derivatives of such birds.
2. The activities referred to in paragraph 1 shall not be prohibited in respect of the species referred to in Annex III/1, provided that the birds have been legally killed or captured or otherwise legally acquired.
3. Member States may, for the species listed in Annex III/2, allow within their territory the activities referred to in paragraph 1, making provision for certain restrictions, provided the birds have been legally killed or captured or otherwise legally acquired.

Member States wishing to grant such authorization shall first of all consult the Commission with a view to examining jointly with the latter whether the marketing of specimens of such species would result or could reasonably be expected to result in the population levels, geographical distribution or reproductive rate of the species being endangered throughout the Community. Should this examination prove that the intended authorization will, in the view of the Commission, result in any one of the aforementioned species being thus endangered or in the possibility of their being thus endangered, the Commission shall forward a reasoned recommendation to the Member State concerned stating its opposition to the marketing of the species in question. Should the Commission consider that no such risk exists, it will inform the Member State concerned accordingly.

The Commission’s recommendation shall be published in the Official Journal of the European Communities.

Member States granting authorization pursuant to this paragraph shall verify at regular intervals that the conditions governing the granting of such authorization continue to be fulfilled.

4. The Commission shall carry out studies on the biological status of the species listed in Annex III/3 and on the effects of marketing on such status.

It shall submit, at the latest four months before the time limit referred to in Article 18 (1) of this Directive, a report and its proposals to the Committee referred to in Article 16, with a view to a decision on the entry of such species in Annex III/2.

Pending this decision, the Member States may apply existing national rules to such species without prejudice to paragraph 3 hereof.

Article 7

1. Owing to their population level, geographical distribution and reproductive rate throughout the Community, the species listed in Annex II may be hunted under national legislation. Member States shall ensure that the hunting of these species does not jeopardize conservation efforts in their distribution area.
2. The species referred to in Annex II/1 may be hunted in the geographical sea and land area where this Directive applies.
3. The species referred to in Annex II/2 may be hunted only in the Member States in respect of which they are indicated.
4. Member States shall ensure that the practice of hunting, including falconry if practised, as carried on in accordance with the national measures in force, complies with the principles of wise use and ecologically balanced control of the species of birds concerned and that this practice is compatible as regards the population of these species, in particular migratory species, with the measures resulting from Article 2. They shall see in particular that the species to which hunting laws apply are not hunted during the rearing season nor during the various stages of reproduction. In the case of migratory species, they shall see in particular that the species to which hunting regulations apply are not hunted during their period of reproduction or during their return to their rearing grounds. Member States shall send the Commission all relevant information on the practical application of their hunting regulations.

Article 8

1. In respect of the hunting, capture or killing of birds under this Directive, Member States shall prohibit, arrangements or methods used for the large-scale or non-selective capture or killing of birds or capable of causing the local disappearance of a species, in particular the use of those listed in Annex IV (a).
2. Moreover, Member States shall prohibit any hunting from the modes of transport and under the conditions mentioned in Annex IV (b).

Article 9

1. Member States may derogate from the provisions of Articles 5, 6, 7 and 8, where there is no other satisfactory solution, for the following reasons:
(a) - in the interests of public health and safety,
- in the interests of air safety,
- to prevent serious damage to crops, livestock, forests, fisheries and water,
- for the protection of flora and fauna;
(b) for the purposes of research and teaching, of re-population, of re-introduction and for the breeding necessary for these purposes;
(c) to permit, under strictly supervised conditions and on a selective basis, the capture, keeping or other judicious use of certain birds in small numbers.
2. The derogations must specify:
- the species which are subject to the derogations,
- the means, arrangements or methods authorized for capture or killing,
- the conditions of risk and the circumstances of time and place under which such derogations may
be granted,
- the authority empowered to declare that the required conditions obtain and to decide what means, arrangements or methods may be used, within what limits and by whom,
- the controls which will be carried out.

3. Each year the Member States shall send a report to the Commission on the implementation of this Article.

4. On the basis of the information available to it, and in particular the information communicated to it pursuant to paragraph 3, the Commission shall at all times ensure that the consequences of these derogations are not incompatible with this Directive. It shall take appropriate steps to this end.

**Article 10**

1. Member States shall encourage research and any work required as a basis for the protection, management and use of the population of all species of bird referred to in Article 1.

2. Particular attention shall be paid to research and work on the subjects listed in Annex V. Member States shall send the Commission any information required to enable it to take appropriate measures for the coordination of the research and work referred to in this Article.

**Article 11**

Member States shall see that any introduction of species of bird which do not occur naturally in the wild state in the European territory of the Member States does not prejudice the local flora and fauna. In this connection they shall consult the Commission.

**Article 12**

1. Member States shall forward to the Commission every three years, starting from the date of expiry of the time limit referred to in Article 18 (1), a report on the implementation of national provisions taken thereunder.

2. The Commission shall prepare every three years a composite report based on the information referred to in paragraph 1. That part of the draft report covering the information supplied by a Member State shall be forwarded to the authorities of the Member State in question for verification. The final version of the report shall be forwarded to the Member States.

**Article 13**

Application of the measures taken pursuant to this Directive may not lead to deterioration in the present situation as regards the conservation of species of birds referred to in Article 1.

**Article 14**

Member States may introduce stricter protective measures than those provided for under this Directive.

**Article 15**

Such amendments as are necessary for adapting Annexes I and V to this Directive to technical and scientific progress and the amendments referred to in the second paragraph of Article 6 (4) shall be adopted in accordance with the procedure laid down in Article 17.

**Article 16**

1. For the purposes of the amendments referred to in Article 15 of this Directive, a Committee for the Adaptation to Technical and Scientific Progress (hereinafter called “the Committee”), consisting of representatives of the Member States and chaired by a representative of the Commission, is hereby set up.

2. The Committee shall draw up its rules of procedure.

**Article 17**

1. Where the procedure laid down in this Article is to be followed, matters shall be referred to the Committee by its chairman, either on his own initiative or at the request of the representative of a Member State.

2. The Commission representative shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion on the draft within a time limit set by the chairman having regard to the urgency of the matter. It shall act by a majority of 41 votes, the votes of the Member States being weighted as provided in Article 148 (2) of the Treaty. The chairman shall not vote.

3. (a) The Commission shall adopt the measures envisaged where they are in accordance with the opinion of the Committee.

(b) Where the measures envisaged are not in accordance with the opinion of the Committee, or if no opinion is delivered, the Commission shall without delay submit a proposal to the Council concerning the measures to be adopted. The Council shall act by a qualified majority.

(c) If, within three months of the proposal being submitted to it, the Council has not acted, the proposed measures shall be adopted by the Commission.

**Article 18**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive within two years of its notification. They shall forthwith inform the Commission thereof.

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

**Article 19**

This Directive is addressed to the Member States.
ANNEX I

1. Gavia immer | Great northern diver
2. Calonectris diomedea | Cory’s shearwater
3. Hydrobates pelagicus | Storm petrel
4. Oceanodroma leucorhoa | Leach’s petrel
5. Phalacrocorax carbo sinensis | Cormorant (continental race)
6. Botaurus stellaris | Bittern
7. Nycticorax nycticorax | Night heron
8. Ardeola ralloides | Squacco heron
9. Egretta garzetta | Little egret
10. Egretta alba | Great white heron
11. Ardea purpurea | Purple heron
12. Ciconia nigra | Black stork
13. Ciconia ciconia | White stork
14. Plegadis falcinellus | Glossy ibis
15. Platalea leucorodia | Spoonbill
16. Phoenicopterus ruber | Greater flamingo
17. Cygnus colombianus bewickii(Cygnus bewickii) | Bewick’s swan
18. Cygnus cygnus | Whooper swan
19. Anser albifrons flavirostris | White-fronted goose (Greenland race)
20. Branta leucopsis | Barnacle goose
21. Aythya nyroca | White-eyed pochard
22. Oxyura leuciccephala | White-headed duck
23. Pernis apivorus | Honey buzzard
24. Milvus migrans | Black kite
25. Milvus milvus | Kite
26. Haliaeetus albicilla | White-tailed eagle
27. Gypaetus barbatus | Bearded vulture
28. Neophron percnopterus | Egyptian vulture
29. Gyps fulvus | Griffon vulture
30. Aegypius monachus | Black vulture
31. Circus cyaneus | Marsh harrier
32. Circus cyaneus | Hen harrier
33. Circus pygargus | Montagu’s harrier
34. Aquila chrysaetos | Golden eagle
35. Hieraetus pennatus | Booted eagle
36. Hieraetus fasciatus | Bonelli’s eagle
37. Pandion haliaetus | Osprey
38. Falco eleonorae | Eleonora’s falcon
39. Falco biarmicus | Lanner falcon
40. Falco peregrinus | Peregrine
41. Porphyrio porphyrio | Purple gallinule
42. Grus grus | Crane
43. Tetrax tetrax (Otis tetrax) | Little bustard
44. Otis tarda | Great bustard
45. Himantopus himantopus | Black-winged stilt
46. Recurvirostra avosetta | Avocet
47. Burhinus oedicnemus | Stone curlew
48. Glareola pratincola | Pratincole
49. Charadrius morinellus(Endromias morinellus) | Dotterel
50. Pluvialis apricaria | Golden plover
51. Gallinago media | Great snipe
52. Larus genei | Slender-billed gull
53. Larus audouinii | Audouin’s gull
54. Gelochelidon nilotica | Gull-billed tern
55. Sterna sandvicensis | Sandwich tern
56. Sterna dougallii | Roseate tern
57. Sterna hirundo | Common tern
58. Sterna paradisaea | Arctic tern
59. Sterna albifrons | Little tern
60. Chlidonias niger | Black tern
61. Pterocles alchata | Pin-tailed sandgrouse
62. Bubo bubo | Eagle owl
63. Nyctea scandiaca | Snowy owl
64. Asio flammeus | Short-eared owl
65. Alcedo atthis | Kingfisher
66. Dryocopus martius | Black woodpecker
67. Dendrocopos leucotos | White-backed woodpecker
68. Luscinia svecica | Blue-throat
69. Sylvia undata | Dartford warbler
70. Sylvia nisoria | Barred warbler
71. Sitta whiteheadi | Corsican nuthatch
ACQUIS COMMUNAUTAIRE

RENEWABLE ENERGY


The adaptations made by Ministerial Council Decision 2012/04/MC-EnC are highlighted in bold and blue.

Whereas:

(1) The control of European energy consumption and the increased use of energy from renewable sources, together with energy savings and increased energy efficiency, constitute important parts of the package of measures needed to reduce greenhouse gas emissions and comply with the Kyoto Protocol to the United Nations Framework Convention on Climate Change, and with further Community and international greenhouse gas emission reduction commitments beyond 2012. Those factors also have an important part to play in promoting the security of energy supply, promoting technological development and innovation and providing opportunities for employment and regional development, especially in rural and isolated areas.

(2) In particular, increasing technological improvements, incentives for the use and expansion of public transport, the use of energy efficiency technologies and the use of energy from renewable sources in transport are some of the most effective tools by which the Community can reduce its dependence on imported oil in the transport sector, in which the security of energy supply problem is most acute, and influence the fuel market for transport.

(3) The opportunities for establishing economic growth through innovation and a sustainable competitive energy policy have been recognised. Production of energy from renewable sources often depends on local or regional small and medium-sized enterprises (SMEs). The opportunities for growth and employment that investment in regional and local production of energy from renewable sources bring about in the Member States and their regions are important. The Commission and the Member States should therefore support national and regional development measures in those areas, encourage the exchange of best practices in production of energy from renewable sources between local and regional development initiatives and promote the use of structural funding in this area.

(4) When favouring the development of the market for renewable energy sources, it is necessary to take into account the positive impact on regional and local development opportunities, export prospects, social cohesion and employment opportunities, in particular as concerns SMEs and independent energy producers.

(5) In order to reduce greenhouse gas emissions within the Community and reduce its dependence on energy imports, the development of energy from renewable sources should be closely linked to increased energy efficiency.

(6) It is appropriate to support the demonstration and commercialisation phase of decentralised renewable energy technologies. The move towards decentralised energy production has many benefits, including the utilisation of local energy sources, increased local security of energy supply, shorter transport distances and reduced energy transmission losses. Such decentralisation also fosters community development and cohesion by providing income sources and creating jobs locally.
The use of agricultural material such as manure, slurry and other animal and organic waste for salinity gradients should be included.

Other water bodies in the form of waves, marine currents, tides, ocean thermal energy gradients or renewable sources and for defining those sources. In this context, the energy present in oceans and established definitions for the electricity sector in general. In the interests of legal certainty and clarity it is appropriate to use the same or similar definitions in this Directive.

The main purpose of mandatory national targets is to provide certainty for investors and to encourage continuous development of technologies which generate energy from all types of renewable sources. Deferring a decision about whether a target is mandatory until a future event takes place is thus not appropriate.

The starting point, the renewable energy potential and the energy mix of each Member State vary. It is therefore necessary to translate the Community 20% target into individual targets for each Member State, with due regard to a fair and adequate allocation taking account of Member States’ different starting points and potentials, including the existing level of energy from renewable sources and the energy mix. It is appropriate to do this by sharing the required total increase in the use of energy from renewable sources between Member States on the basis of an equal increase in each Member State’s share weighted by their GDP, modulated to reflect their starting points, and by accounting in terms of gross final consumption of energy, with account being taken of Member States’ past efforts with regard to the use of energy from renewable sources.

By contrast, it is appropriate for the 10% target for energy from renewable sources in transport to be set at the same level for each Member State in order to ensure consistency in transport fuel specifications and availability. Because transport fuels are traded easily, Member States with low endowments of the relevant resources will easily be able to obtain biofuels from elsewhere. While it would technically be possible for the Community to meet its target for the use of energy from renewable sources in transport solely from domestic production, it is both likely and desirable that the target will in fact be met through a combination of domestic production and imports. To this end, the Commission should monitor the supply of the Community market for biofuels, and should, as appropriate, propose relevant measures to achieve a balanced approach between domestic production and imports, taking into account, inter alia, the development of multilateral and bilateral trade negotiations, environmental, social and economic considerations, and the security of energy supply.

The improvement of energy efficiency is a key objective of the Community, and the aim is to achieve a 20% improvement in energy efficiency by 2020. That aim, together with existing and future legislation including Directive 2002/91/EC of the European Parliament and of the Council of 16 December 2002 on the energy performance of buildings, Directive 2005/32/EC of the European Parliament and of the Council of 6 July 2005 establishing a framework for the setting of ecodesign requirements for energy-using products, and Directive 2006/32/EC of the European Parliament and of the Council of 5 April 2006 on energy end-use efficiency and energy services, has a critical role to play in ensuring that the climate and energy objectives are being achieved at least cost, and can also provide new opportunities for the European Union’s economy. Energy efficiency and energy saving policies are some of the most effective methods by which Member States can increase the percentage share of energy from renewable sources, and Member States will thus more easily achieve the overall national and transport targets for energy from renewable sources laid down by this Directive.
(18) It will be incumbent upon Member States to make significant improvements in energy efficiency in all sectors in order more easily to achieve their targets for energy from renewable sources, which are expressed as a percentage of gross final consumption of energy. The need for energy efficiency in the transport sector is imperative because a mandatory percentage target for energy from renewable sources is likely to become increasingly difficult to achieve sustainably if overall demand for energy transport continues to rise. The mandatory 10% target for transport to be achieved by all Member States should therefore be defined as that share of final energy consumed in transport which is to be achieved from renewable sources as a whole, and not from biofuels alone.

(19) To ensure that the mandatory national overall targets are achieved, Member States should work towards an indicative trajectory tracing a path towards the achievement of their final mandatory targets. They should establish a national renewable energy action plan including information on sectoral targets, while having in mind that there are different uses of biomass and therefore it is essential to mobilise new biomass resources. In addition, Member States should set out measures to achieve those targets. Each Member State should assess, when evaluating its expected gross final consumption of energy in its national renewable energy action plan, the contribution which energy efficiency and energy saving measures can make to achieving its national targets. Member States should take into account the optimal combination of energy efficiency technologies with energy from renewable sources.

(20) To permit the benefits of technological progress and economies of scale to be reaped, the indicative trajectory should take into account the possibility of a more rapid growth in the use of energy from renewable sources in the future. Thus special attention can be given to sectors that suffer disproportionately from the absence of technological progress and economies of scale and therefore remain under-developed, but which, in future, could significantly contribute to reaching the targets for 2020.

(21) The indicative trajectory should take 2005 as its starting point because that is the latest year for which reliable data on national shares of energy from renewable sources are available.

(22) The achievement of the objectives of this Directive requires that the Community and Member States dedicate a significant amount of financial resources to research and development in relation to renewable energy technologies. In particular, the European Institute of Innovation and Technology should give high priority to the research and development of renewable energy technologies.

(23) Member States may encourage local and regional authorities to set targets in excess of national targets and to involve local and regional authorities in drawing up national renewable energy action plans and in raising awareness of the benefits of energy from renewable sources.

(24) In order to exploit the full potential of biomass, the Community and the Member States should promote greater mobilisation of existing timber reserves and the development of new forestry systems.

(25) Member States have different renewable energy potentials and operate different schemes of support for energy from renewable sources at the national level. The majority of Member States apply support schemes that grant benefits solely to energy from renewable sources that is produced on their territory. For the proper functioning of national support schemes it is vital that Member States can control the effect and costs of their national support schemes according to their different potentials. One important means to achieve the aim of this Directive is to guarantee the proper functioning of national support schemes, as under Directive 2001/77/EC, in order to maintain investor confidence and allow Member States to design effective national measures for target compliance. This Directive aims at facilitating cross-border support of energy from renewable sources without affecting national support schemes. It introduces optional cooperation mechanisms between Member States which allow them to agree on the extent to which one Member State supports the energy production in another and on the extent to which the energy production from renewable sources should count towards the national overall target of one or the other. In order to ensure the effectiveness of both measures of target compliance, i.e. national support schemes and cooperation mechanisms, it is essential that Member States are able to determine if and to what extent their national support schemes apply to energy from renewable sources produced in other Member States and to agree on this by applying the cooperation mechanisms provided for in this Directive.

(26) It is desirable that energy prices reflect external costs of energy production and consumption, including, as appropriate, environmental, social and healthcare costs.

(27) Public support is necessary to reach the Community’s objectives with regard to the expansion of electricity produced from renewable energy sources, in particular for as long as electricity prices in the internal market do not reflect the full environmental and social costs and benefits of energy sources used.

(28) The Community and the Member States should strive to reduce total consumption of energy in transport and increase energy efficiency in transport. The principal means of reducing consumption of energy in transport include transport planning, support for public transport, increasing the share of electric cars in production and producing cars which are more energy efficient and smaller both in size and in engine capacity.

(29) Member States should aim to diversify the mix of energy from renewable sources in all transport sectors. The Commission should present a report to the European Parliament and the Council by 1 June 2015 outlining the potential for increasing the use of energy from renewable sources in each transport sector.

(30) In calculating the contribution of hydropower and wind power for the purposes of this Directive, the effects of climatic variation should be smoothed through the use of a normalisation rule. Further, electricity produced in pumped storage units from water that has previously been pumped uphill should not be considered to be electricity produced from renewable energy sources.

(31) Heat pumps enabling the use of aerothothermal, geothermal or hydrothermal heat at a useful temperature level need electricity or other auxiliary energy to function. The energy used to drive heat pumps should therefore be deducted from the total usable heat. Only heat pumps with an output that significantly exceeds the primary energy needed to drive it should be taken into account.

(32) Passive energy systems use building design to harness energy. This is considered to be saved energy. To avoid double counting, energy harnessed in this way should not be taken into account for the purposes of this Directive.

(33) Some Member States have a large share of aviation in their gross final consumption of energy. In view of the current technological and regulatory constraints that prevent the commercial use of biofuels in aviation, it is appropriate to provide a partial exemption for such Member States, by excluding from the calculation of their gross final consumption of energy in national air transport, the amount by which they exceed one-and-a-half times the Community average gross final consumption of energy in aviation in 2005, as assessed by Eurostat, i.e. 6.18%. Cyprus and Malta, due to their insular and peripheral character, rely on aviation as a mode of transport, which is essential for their...
citizens and their economy. As a result, Cyprus and Malta have a gross final consumption of energy in national air transport which is disproportionally high, i.e. more than three times the Community average in 2005, and are thus disproportionately affected by the current technological and regulatory constraints. For those Member States it is therefore appropriate to provide that the exemption should cover the amount by which they exceed the Community average gross final consumption of energy in aviation in 2005 as assessed by Eurostat, i.e. 4.12%.

(34) To obtain an energy model that supports energy from renewable sources there is a need to encourage strategic cooperation between Member States, involving, as appropriate, regions and local authorities.

(35) Whilst having due regard to the provisions of this Directive, Member States should be encouraged to pursue all appropriate forms of cooperation in relation to the objectives set out in this Directive. Such cooperation can take place at all levels, bilaterally or multilaterally. Apart from the mechanisms with effect on target calculation and target compliance, which are exclusively provided for in this Directive, namely statistical transfers between Member States, joint projects and joint support schemes, cooperation can also take the form of, for example, exchanges of information and best practices, as provided for, in particular, in the transparency platform established by this Directive, and other voluntary coordination between all types of support schemes.

(36) To create opportunities for reducing the cost of achieving the targets laid down in this Directive, it is appropriate both to facilitate the consumption in Member States of energy produced from renewable sources in other Member States, and to enable Member States to count energy from renewable sources consumed in other Member States towards their own national targets. For this reason, flexibility measures are required, but they remain under Member States’ control in order not to affect their ability to reach their national targets. Those flexibility measures take the form of statistical transfers, joint projects between Member States or joint support schemes.

(37) It should be possible for imported electricity, produced from renewable energy sources outside the Community, to count towards Member States’ targets. However, to avoid a net increase in greenhouse gas emissions through the diversion of existing renewable sources and their complete or partial replacement by conventional energy sources, only electricity produced by renewable energy installations that become operational after the entry into force of this Directive or by the increased capacity of an installation that was refurbished after that date should be eligible to be counted. In order to guarantee an adequate effect of energy from renewable sources replacing conventional energy in the Community as well as in third countries it is appropriate to ensure that such imports can be tracked and accounted for in a reliable way. Agreements with third countries concerning the organisation of such trade in electricity from renewable energy sources will be considered. If, by virtue of a decision taken under the Energy Community Treaty to that effect, the contracting parties to that treaty become bound by the relevant provisions of this Directive, the measures of cooperation between Member States provided for in this Directive will be applicable to them.

(38) When Member States undertake joint projects with one or more third countries regarding the production of electricity from renewable energy sources, it is appropriate that those joint projects relate only to newly constructed installations or to installations with newly increased capacity. This will help ensure that the proportion of energy from renewable sources in the third country’s total energy consumption is not reduced due to the importation of energy from renewable sources into the Community. In addition, the Member States concerned should facilitate the domestic use by the third country concerned of part of the production of electricity by the installations covered by the joint project. Furthermore, the third country concerned should be encouraged by the Commission and Member States to develop a renewable energy policy, including ambitious targets.

(39) Noting that projects of high European interest in third countries, such as the Mediterranean Solar Plan, may need a long lead-time before being fully interconnected to the territory of the Community, it is appropriate to facilitate their development by allowing Member States to take into account in their national targets a limited amount of electricity produced by such projects during the construction of the interconnection.

(40) The procedure used by the administration responsible for supervising the authorisation, certification and licensing of renewable energy plants should be objective, transparent, non-discriminatory and proportionate when applying the rules to specific projects. In particular, it is appropriate to avoid any unnecessary burden that could arise by classifying renewable energy projects under installations which represent a high health risk.

(41) The lack of transparent rules and coordination between the different authorisation bodies has been shown to hinder the deployment of energy from renewable sources. Therefore the specific structure of the renewable energy sector should be taken into account when national, regional and local authorities review their administrative procedures for giving permission to construct and operate plants and associated transmission and distribution network infrastructures for the production of electricity, heating and cooling or transport fuels from renewable energy sources. Administrative approval procedures should be streamlined with transparent timetables for installations using energy from renewable sources. Planning rules and guidelines should be adapted to take into consideration cost-effective and environmentally beneficial renewable heating and cooling and electricity equipment.

(42) For the benefit of rapid deployment of energy from renewable sources and in view of their overall high sustainable and environmental beneficial quality, Member States should, when applying administrative rules, planning structures and legislation which are designed for licensing installations with respect to pollution reduction and control for industrial plants, for combating air pollution and for the prevention or minimisation of the discharge of dangerous substances in the environment, take into account the contribution of renewable energy sources towards meeting environmental and climate change objectives, in particular when compared to non-renewable energy installations.

(43) In order to stimulate the contribution by individual citizens to the objectives set out in this Directive, the relevant authorities should consider the possibility of replacing authorisations by simple notifications to the competent body when installing small decentralised devices for producing energy from renewable sources.

(44) The coherence between the objectives of this Directive and the Community’s other environmental legislation should be ensured. In particular, during the assessment, planning or licensing procedures for renewable energy installations, Member States should take account of all Community environmental legislation and the contribution made by renewable energy sources towards meeting environmental and climate change objectives, in particular when compared to non-renewable energy installations.

(45) National technical specifications and other requirements falling within the scope 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 rules on Information Society services, relating for example to levels of quality, testing methods or conditions
of use, should not create barriers for trade in renewable energy equipment and systems. Therefore, support schemes for energy from renewable sources should not prescribe national technical specifications which deviate from existing Community standards or require the supported equipment or systems to be certified or tested in a specified location or by a specified entity.

(46) It is appropriate for Member States to consider mechanisms for the promotion of district heating and cooling from energy from renewable sources.

(47) At national and regional level, rules and obligations for minimum requirements for the use of energy from renewable sources in new and renovated buildings have led to considerable increases in the use of energy from renewable sources. Those measures should be encouraged in a wider Community context, while promoting the use of more energy-efficient applications of energy from renewable sources through building regulations and codes.

(48) It may be appropriate for Member States, in order to facilitate and accelerate the setting of minimum levels for the use of energy from renewable sources in buildings, to provide that such levels are achieved by incorporating a factor for energy from renewable sources in meeting minimum energy performance requirements under Directive 2002/91/EC, relating to a cost-optimal reduction of carbon emissions per building.

(49) Information and training gaps, especially in the heating and cooling sector, should be removed in order to encourage the deployment of energy from renewable sources.

(50) In so far as the access or pursuit of the profession of installer is a regulated profession, the preconditions for the recognition of professional qualifications are laid down in Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications. This Directive therefore applies without prejudice to Directive 2005/36/EC.

(51) While Directive 2005/36/EC lays down requirements for the mutual recognition of professional qualifications, including for architects, there is a further need to ensure that architects and planners properly consider an optimal combination of renewable energy sources and high-efficiency technologies in their plans and designs. Member States should therefore provide clear guidance in this regard. This should be done without prejudice to the provisions of Directive 2005/36/EC and in particular Articles 46 and 49 thereof.

(52) Guarantees of origin issued for the purpose of this Directive have the sole function of proving to a final customer that a given share or quantity of energy was produced from renewable sources. A guarantee of origin can be transferred, independently of the energy to which it relates, from one holder to another. However, with a view to ensuring that a unit of electricity from renewable energy sources is disclosed to a customer only once, double counting and double disclosure of guarantees of origin should be avoided. Energy from renewable sources in relation to which the accompanying guarantee of origin has been sold separately by the producer should not be disclosed or sold to the final customer as energy from renewable sources. It is important to distinguish between green certificates used for support schemes and guarantees of origin.

(53) It is appropriate to allow the emerging consumer market for electricity from renewable energy sources to contribute to the construction of new installations for energy from renewable sources. Member States should therefore be able to require electricity suppliers who disclose their energy mix to final customers in accordance with Article 3(6) of Directive 2003/54/EC, to include a minimum percentage of guarantees of origin from recently constructed installations producing energy from renewable sources, provided that such a requirement is in conformity with Community law.

(54) It is important to provide information on how the supported electricity is allocated to final customers in accordance with Article 3(6) of Directive 2003/54/EC. In order to improve the quality of that information to consumers, in particular as regards the amount of energy from renewable sources produced by new installations, the Commission should assess the effectiveness of the measures taken by Member States.


(56) Guarantees of origin do not by themselves confer a right to benefit from national support schemes.

(57) There is a need to support the integration of energy from renewable sources into the transmission and distribution grid and the use of energy storage systems for integrated intermittent production of energy from renewable sources.

(58) The development of renewable energy projects, including renewable energy projects of European interest under the Trans-European Network for Energy (TEN-E) programme should be accelerated. To that end, the Commission should also analyse how the financing of such projects can be improved. Particular attention should be paid to renewable energy projects that will contribute to a significant increase in security of energy supply in the Community and neighbouring countries.

(59) Interconnection among countries facilitates integration of electricity from renewable energy sources. Besides smoothing out variability, interconnection can reduce balancing costs, encourage true competition bringing about lower prices, and support the development of networks. Also, the sharing and optimal use of transmission capacity could help avoid excessive need for newly built capacity.

(60) Priority access and guaranteed access for electricity from renewable energy sources are important for integrating renewable energy sources into the internal market in electricity, in line with Article 11(2) and developing further Article 11(3) of Directive 2003/54/EC. Requirements relating to the maintenance of the reliability and safety of the grid and to the dispatching may differ according to the characteristics of the national grid and its secure operation. Priority access to the grid provides an assurance given to connected generators of electricity from renewable energy sources that they will be able to sell and transmit the electricity from renewable energy sources in accordance with connection rules at all times, whenever the source becomes available. In the event that the electricity from renewable energy sources is integrated into the spot market, guaranteed access ensures that all electricity sold and supported obtains access to the grid, allowing the use of a maximum amount of electricity from renewable energy sources from installations connected to the grid. However, this does not imply any obligation on the part of Member States to support or introduce purchase obligations for energy from renewable sources. In other systems, a fixed price is defined for electricity from renewable energy sources, usually in combination with a purchase obligation for the system operator. In such a case, priority access has already been given.

(61) In certain circumstances it is not possible fully to ensure transmission and distribution of electricity produced from renewable energy sources without affecting the reliability or safety of the grid.
system. In such circumstances it may be appropriate for financial compensation to be given to those producers. Nevertheless, the objectives of this Directive require a sustained increase in the transmission and distribution of electricity produced from renewable energy sources without affecting the reliability or safety of the grid system. To this end, Member States should take appropriate measures in order to allow a higher penetration of electricity from renewable energy sources, inter alia, by taking into account the specificities of variable resources and resources which are not yet storable. To the extent required by the objectives set out in this Directive, the connection of new renewable energy installations should be allowed as soon as possible. In order to accelerate grid connection procedures, Member States may provide for priority connection or reserved connection capacities for new installations producing electricity from renewable energy sources.

(62) The costs of connecting new producers of electricity and gas from renewable energy sources to the electricity and gas grids should be objective, transparent and non-discriminatory and due account should be taken of the benefit that embedded producers of electricity from renewable energy sources and local producers of gas from renewable sources bring to the electricity and gas grids.

(63) Electricity producers who want to exploit the potential of energy from renewable sources in the peripheral regions of the Community, in particular in island regions and regions of low population density, should, whenever feasible, benefit from reasonable connection costs in order to ensure that they are not unfairly disadvantaged in comparison with producers situated in more central, more industrialised and more densely populated areas.

(64) Directive 2001/77/EC lays down the framework for the integration into the grid of electricity from renewable energy sources. However, there is a significant variation between Member States in the degree of integration actually achieved. For this reason it is necessary to strengthen the framework and to review its application periodically at national level.

(65) Biofuel production should be sustainable. Biofuels used for compliance with the targets laid down in this Directive, and those that benefit from national support schemes, should therefore be required to fulfil sustainability criteria.

(66) The Community should take appropriate steps in the context of this Directive, including the promotion of sustainability criteria for biofuels and the development of second and third-generation biofuels in the Community and worldwide, and to strengthen agricultural research and knowledge creation in those areas.

(67) The introduction of sustainability criteria for biofuels will not achieve its objective if those products that do not fulfil the criteria and would otherwise have been used as biofuels are used, instead, as bioliquids in the heating or electricity sectors. For this reason, the sustainability criteria should also apply to bioliquids in general.

(68) The European Council of March 2007 invited the Commission to propose a comprehensive Directive on the use of all renewable energy sources, which could contain criteria and provisions to ensure sustainable provision and use of bioenergy. Such sustainability criteria should form a coherent part of a wider scheme covering all bioliquids and not biofuels alone. Such sustainability criteria should therefore be included in this Directive. In order to ensure a coherent approach between energy and environment policies, and to avoid the additional costs to business and the environmental incoherence that would be associated with an inconsistent approach, it is essential to provide the same sustainability criteria for the use of biofuels for the purposes of this Directive on the one hand, and Directive 98/70/EC on the other. For the same reasons, double reporting should be avoided in this context. Furthermore, the Commission and the competent national authorities should coordinate their activities in the framework of a committee specifically responsible for sustainability aspects. The Commission should, in addition, in 2009, review the possible inclusion of other biomass applications and the modalities relating thereto.

(69) The increasing worldwide demand for biofuels and bioliquids, and the incentives for their use provided for in this Directive, should not have the effect of encouraging the destruction of biodiversity lands. Those finite resources, recognised in various international instruments to be of value to all mankind, should be preserved. Consumers in the Community would, in addition, find it morally unacceptable that their increased use of biofuels and bioliquids could have the effect of destroying biodiversity lands. For these reasons, it is necessary to provide sustainability criteria ensuring that biofuels and bioliquids can qualify for the incentives only when it can be guaranteed that they do not originate in biodiversity areas or, in the case of areas designated for nature protection purposes or for the protection of rare, threatened or endangered ecosystems or species, the relevant competent authority demonstrates that the production of the raw material does not interfere with those purposes. The sustainability criteria should consider forest as biodiverse where it is a primary forest in accordance with the definition used by the Food and Agriculture Organisation of the United Nations (FAO) in its Global Forest Resource Assessment, which countries use worldwide to report on the extent of primary forest or where it is protected by national nature protection law. Areas where collection of non-wood forest products occurs should be included, provided the human impact is small. Other types of forests as defined by the FAO, such as modified natural forests, semi-natural forests and plantations, should not be considered as primary forests. Having regard, furthermore, to the highly biodiverse nature of certain grasslands, both temperate and tropical, including highly biodiverse savannahs, steppes, scrublands and prairies, biofuels made from raw materials originating in such lands should not qualify for the incentives provided for by this Directive. The Commission should establish appropriate criteria and geographical ranges to define such highly biodiverse grasslands in accordance with the best available scientific evidence and relevant international standards.

(70) If land with high stocks of carbon in its soil or vegetation is converted for the cultivation of raw materials for biofuels or bioliquids, some of the stored carbon will generally be released into the atmosphere, leading to the formation of carbon dioxide. The resulting negative greenhouse gas impact can offset the positive greenhouse gas impact of the biofuels or bioliquids, in some cases by a wide margin. The full carbon effects of such conversion should therefore be accounted for in calculating the greenhouse gas emission saving of particular biofuels and bioliquids. This is necessary to ensure that the greenhouse gas emission saving calculation takes into account the totality of the carbon effects of the use of biofuels and bioliquids.

(71) In calculating the greenhouse gas impact of land conversion, economic operators should be able to use actual values for the carbon stocks associated with the reference land use and the land use after conversion. They should also be able to use standard values. The work of the Intergovernmental Panel on Climate Change is the appropriate basis for such standard values. That work is not currently expressed in a form that is immediately applicable by economic operators. The Commission should therefore produce guidance drawing on that work to serve as the basis for the calculation of carbon stock changes for the purposes of this Directive, including such changes to forestsed areas with a canopy cover of between 10 to 30%, savannahs, scrublands and prairies.

(72) It is appropriate for the Commission to develop methodologies with a view to assessing the impact of the drainage of peatlands on greenhouse gas emissions.
(73) Land should not be converted for the production of biofuels if its carbon stock loss upon conversion could not, within a reasonable period, taking into account the urgency of tackling climate change, be compensated by the greenhouse gas emission saving resulting from the production of biofuels or bioliquids. This would prevent unnecessary, burdensome research by economic operators and the conversion of high-carbon-stock land that would prove to be ineligible for producing raw materials for biofuels and bioliquids. Inventories of worldwide carbon stocks indicate that wetlands and continuously forested areas with a canopy cover of more than 30% should be included in that category. Forested areas with a canopy cover of between 10 and 30% should also be included, unless there is evidence demonstrating that their carbon stock is sufficiently low to justify their conversion in accordance with the rules laid down in this Directive. The reference to wetlands should take into account the definition laid down in the Convention on Wetlands of International Importance, especially as Waterfowl Habitat, adopted on 2 February 1971 in Ramsar.

(74) The incentives provided for in this Directive will encourage increased production of biofuels and bioliquids worldwide. Where biofuels and bioliquids are made from raw material produced within the Community, they should also comply with Community environmental requirements for agriculture, including those concerning the protection of groundwater and surface water quality, and with social requirements. However, there is a concern that production of biofuels and bioliquids in certain third countries might not respect minimum environmental or social requirements. It is therefore appropriate to encourage the development of multilateral and bilateral agreements and voluntary international or national schemes that cover key environmental and social considerations, in order to promote the production of biofuels and bioliquids worldwide in a sustainable manner. In the absence of such agreements or schemes, Member States should require economic operators to report on those issues.

(75) The requirements for a sustainability scheme for energy uses of biomass, other than bioliquids and biofuels, should be analysed by the Commission in 2009, taking into account the need for biomass resources to be managed in a sustainable manner.

(76) Sustainability criteria will be effective only if they lead to changes in the behaviour of market actors. Those changes will occur only if biofuels and bioliquids meeting those criteria command a price premium compared to those that do not. According to the mass balance method of verifying compliance, there is a physical link between the production of biofuels and bioliquids meeting the sustainability criteria and the consumption of biofuels and bioliquids in the Community, providing an appropriate balance between supply and demand and ensuring a price premium that is greater than in systems where there is no such link. To ensure that biofuels and bioliquids meeting the sustainability criteria can be sold at a higher price, the mass balance method should therefore be used to verify compliance. This should maintain the integrity of the system while at the same time avoiding the imposition of an unreasonable burden on industry. Other verification methods should, however, be reviewed.

(77) Where appropriate, the Commission should take due account of the Millennium Ecosystem Assessment which contains useful data for the conservation of at least those areas that provide basic ecosystem services in critical situations such as watershed protection and erosion control.

(78) It is appropriate to monitor the impact of biomass cultivation, such as through land-use changes, including displacement, the introduction of invasive alien species and other effects on biodiversity, and effects on food production and local prosperity. The Commission should consider all relevant sources of information, including the FAO hunger map. Biofuels should be promoted in a manner that encourages greater agricultural productivity and the use of degraded land.

(79) It is in the interests of the Community to encourage the development of multilateral and bilateral agreements and voluntary international or national schemes that set standards for the production of sustainable biofuels and bioliquids, and that certify that the production of biofuels and bioliquids meets those standards. For that reason, provision should be made for such agreements or schemes to be recognised as providing reliable evidence and data, provided that they meet adequate standards of reliability, transparency and independent auditing.

(80) It is necessary to lay down clear rules for the calculation of greenhouse gas emissions from biofuels and bioliquids and their fossil fuel comparators.

(81) Co-products from the production and use of fuels should be taken into account in the calculation of greenhouse gas emissions. The substitution method is appropriate for the purposes of policy analysis, but not for the regulation of individual economic operators and individual consignments of transport fuels. In those cases the energy allocation method is the most appropriate method, as it is easy to apply, is predictable over time, minimises counter-productive incentives and produces results that are generally comparable with those produced by the substitution method. For the purposes of policy analysis the Commission should also, in its reporting, present results using the substitution method.

(82) In order to avoid a disproportionate administrative burden, a list of default values should be laid down for common biofuel production pathways and that list should be updated and expanded when further reliable data is available. Economic operators should always be entitled to claim the level of greenhouse gas emission saving for biofuels and bioliquids established by that list. Where the default value for greenhouse gas emission saving from a production pathway lies below the required minimum level of greenhouse gas emission saving, producers wishing to demonstrate their compliance with this minimum level should be required to show that actual emissions from their production process are lower than those that were assumed in the calculation of the default values.

(83) It is appropriate for the data used in the calculation of the default values to be obtained from independent, scientifically expert sources and to be updated as appropriate as those sources progress their work. The Commission should encourage those sources to address, when they update their work, emissions from cultivation, the effect of regional and climatological conditions, the effects of cultivation using sustainable agricultural and organic farming methods, and the scientific contribution of producers, within the Community and in third countries, and civil society.

(84) In order to avoid encouraging the cultivation of raw materials for biofuels and bioliquids in places where this would lead to high greenhouse gas emissions, the use of default values for cultivation should be limited to regions where such an effect can reliably be ruled out. However, to avoid a disproportionate administrative burden, it is appropriate for Member States to establish national or regional averages for emissions from cultivation, including from fertiliser use.

(85) Global demand for agricultural commodities is growing. Part of that increased demand will be met through an increase in the amount of land devoted to agriculture. The restoration of land that has been severely degraded or heavily contaminated and therefore cannot be used, in its present state, for agricultural purposes is a way of increasing the amount of land available for cultivation. The sustainability scheme should promote the use of restored degraded land because the promotion of biofuels and bioliquids will contribute to the growth in demand for agricultural commodities. Even if biofuels themselves are made using raw materials from land already in arable use, the net
increase in demand for crops caused by the promotion of biofuels could lead to a net increase in the cropped area. This could affect high carbon stock land, which would result in damaging carbon stock losses. To alleviate that risk, it is appropriate to introduce accompanying measures to encourage an increased rate of productivity on land already used for crops, the use of degraded land, and the adoption of sustainability requirements, comparable to those laid down in this Directive for Community biofuel consumption, in other biofuel-consuming countries. The Commission should develop a concrete methodology to minimise greenhouse gas emissions caused by indirect land-use changes. To this end, the Commission should analyse, on the basis of best available scientific evidence, in particular, the inclusion of a factor for indirect land-use changes in the calculation of greenhouse gas emissions and the need to incentivise sustainable biofuels which minimise the impacts of land-use change and improve biofuel sustainability with respect to indirect land-use change. In developing that methodology, the Commission should address, inter alia, the potential indirect land-use changes resulting from biofuels produced from non-food cellulosic material and from lignocellulosic material.

(86) In order to permit the achievement of an adequate market share of biofuels, it is necessary to ensure the placing on the market of higher blends of biodiesel in diesel than those envisaged by standard EN590/2004.

(87) In order to ensure that biofuels that diversify the range of feedstocks used become commercially viable, those biofuels should receive an extra weighting under national biofuel obligations.

(88) Regular reporting is needed to ensure a continuing focus on progress in the development of energy from renewable sources at national and Community level. It is appropriate to require the use of a harmonised template for national renewable energy action plans which Member States should submit. Such plans could include estimated costs and benefits of the measures envisaged, measures relating to the necessary extension or reinforcement of the existing grid infrastructure, estimated costs and benefits to develop energy from renewable sources in excess of the level required by the indicative trajectory, information on national support schemes and information on their use of energy from renewable sources in new or renovated buildings.

(89) When designing their support systems, Member States may encourage the use of biofuels which give additional benefits, including the benefits of diversification offered by biofuels made from waste, residues, non-food cellulosic material, ligno-cellulosic material and algae, as well as non-irrigated plants grown in arid areas to fight desertification, by taking due account of the different costs of producing energy from traditional biofuels on the one hand and of those biofuels that give additional benefits on the other. Member States may encourage investment in research and development in relation to those and other renewable energy technologies that need time to become competitive.


(91) 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.

(92) In particular, the Commission should be empowered to adapt the methodological principles and values necessary for assessing whether sustainability criteria have been fulfilled in relation to biofuels and bioliquids, to adapt the energy content of transport fuels to technical and scientific progress, to establish criteria and geographic ranges for determining highly biodiverse grassland, and to establish detailed definitions for severely degraded or contaminated land. Since those measures are of general scope and are designed to amend non-essential elements of this Directive, inter alia, 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.

(93) Those provisions of Directive 2001/77/EC and Directive 2003/30/EC that overlap with the provisions of this Directive should be deleted from the latest possible moment for transposition of this Directive. Those that deal with targets and reporting for 2010 should remain in force until the end of 2011. It is therefore necessary to amend Directive 2001/77/EC and Directive 2003/30/EC accordingly.

(94) Since the measures provided for in Articles 17 to 19 also have an effect on the functioning of the internal market by harmonising the sustainability criteria for biofuels and bioliquids for the target accounting purposes under this Directive, and thus facilitate, in accordance with Article 17(8), trade between Member States in biofuels and bioliquids which comply with those conditions, they are based on Article 95 of the Treaty.

(95) The sustainability scheme should not prevent Member States from taking into account, in their national support schemes, the higher production cost of biofuels and bioliquids that deliver benefits that exceed the minima laid down in the sustainability scheme.

(96) Since the general objectives of this Directive, namely to achieve a 20% share of energy from renewable sources in the Community’s gross final consumption of energy and a 10% share of energy from renewable sources in each Member State’s transport energy consumption by 2020, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. 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 those objectives.

(97) In accordance with point 34 of the Interinstitutional agreement on better law-making [18], Member States are encouraged to draw up, for themselves and in the interest of the Community, their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures and to make them public.

Article 1

Subject matter and scope

This Directive establishes a common framework for the promotion of energy from renewable sources. It sets mandatory national targets for the overall share of energy from renewable sources in gross final consumption of energy and for the share of energy from renewable sources in transport. It lays down rules relating to statistical transfers between Contracting Parties, joint projects between Contracting Parties and with third countries, guarantees of origin, administrative procedures, information and training, and access to the electricity grid for energy from renewable sources. It establishes sustainability criteria for biofuels and bioliquids.

Part II

Article 2
Definitions

For the purposes of this Directive, the definitions in Directive 2003/54/EC apply. The following definitions also apply:

(a) "energy from renewable sources” means energy from renewable non-fossil sources, namely wind, solar, aerothermal, geothermal, hydrothermal and ocean energy, hydropower, biomass, landfill gas, sewage treatment plant gas and biogases;

(b) "aerothermal energy” means energy stored in the form of heat in the ambient air;

(c) "geothermal energy” means energy stored in the form of heat beneath the surface of solid earth;

(d) "hydrothermal energy” means energy stored in the form of heat in surface water;

(e) "biomass” means the biodegradable fraction of products, waste and residues from biological origin from agriculture (including vegetal and animal substances), forestry and related industries including fisheries and aquaculture, as well as the biodegradable fraction of industrial and municipal waste;

(f) "gross final consumption of energy” means the energy commodities delivered for energy purposes to industry, transport, households, services including public services, agriculture, forestry and fisheries, including the consumption of electricity and heat by the energy branch for electricity and heat production and including losses of electricity and heat in distribution and transmission;

(g) "district heating” or “district cooling” means the distribution of thermal energy in the form of steam, hot water or chilled liquids, from a central source of production through a network to multiple buildings or sites, for the use of space or process heating or cooling;

(h) "bioliquids” means liquid fuel for energy purposes other than for transport, including electricity and heating and cooling, produced from biomass;

(i) "biofuels” means liquid or gaseous fuel for transport produced from biomass;

(j) "guarantee of origin” means an electronic document which has the sole function of providing proof to a final customer that a given share or quantity of energy was produced from renewable sources as required by Article 3(6) of Directive 2003/54/EC;

(k) "support scheme” means any instrument, scheme or mechanism applied by a Contracting Party or a group of Contracting Parties, that promotes the use of energy from renewable sources by reducing the cost of that energy, increasing the price at which it can be sold, or increasing, by means of a renewable energy obligation or otherwise, the volume of such energy purchased. This includes, but is not restricted to, investment aid, tax exemptions or reductions, tax refunds, renewable energy obligation support schemes including those using green certificates, and direct price support schemes including feed-in tariffs and premium payments;

(l) "renewable energy obligation” means a national support scheme requiring energy producers to include a given proportion of energy from renewable sources in their production, requiring energy suppliers to include a given proportion of energy from renewable sources in their supply, or requiring energy consumers to include a given proportion of energy from renewable sources in their consumption. This includes schemes under which such requirements may be fulfilled by using green certificates;

(m) “actual value” means the greenhouse gas emission saving for some or all of the steps of a specific biofuel production process calculated in accordance with the methodology laid down in part C of Annex V;

(n) “typical value” means an estimate of the representative greenhouse gas emission saving for a particular biofuel production pathway;

(o) "default value” means a value derived from a typical value by the application of pre-determined factors and that may, in circumstances specified in this Directive, be used in place of an actual value.

Article 3
Mandatory national overall targets and measures for the use of energy from renewable sources

1. Each Contracting Party shall ensure that the share of energy from renewable sources, calculated in accordance with Articles 5 to 11, in gross final consumption of energy in 2020 is at least its national overall target for the share of energy from renewable sources in that year, as set out in the third column of the table in part A of Annex I. … In order to achieve the targets laid down in this Article more easily, each Contracting Party shall promote and encourage energy efficiency and energy saving.

2. Contracting Parties shall introduce measures effectively designed to ensure that the share of energy from renewable sources equals or exceeds that shown in the indicative trajectory set out in part B of Annex I.

3. In order to reach the targets set in paragraphs 1 and 2 of this Article Contracting Parties may, inter alia, apply the following measures:

(a) support schemes;

(b) measures of cooperation between different Contracting Parties and with third countries for achieving their national overall targets in accordance with Articles 5 to 11.

Without prejudice to Article 18(1)(c) and 18(2) of the Energy Community Treaty, Contracting Parties shall have the right to decide, in accordance with Articles 5 to 11 of this Directive, to which extent they support energy from renewable sources which is produced in a different Contracting Party.

4. Each Contracting Party shall ensure that the share of energy from renewable sources in all forms of transport in 2020 is at least 10% of the final consumption of energy in transport in that Contracting Party.

For the purposes of this paragraph, the following provisions shall apply:

(a) for the calculation of the denominator, that is the total amount of energy consumed in transport for the purposes of the first subparagraph, only petrol, diesel, biofuels consumed in road and rail transport, and electricity shall be taken into account;

(b) for the calculation of the numerator, that is the amount of energy from renewable sources consumed in transport for the purposes of the first subparagraph, all types of energy from renewable sources consumed in all forms of transport shall be taken into account;

(c) for the calculation of the contribution from electricity produced from renewable sources and consumed in all types of electric vehicles for the purpose of points (a) and (b), Contracting Parties may
choose to use either the average share of electricity from renewable energy sources in the Energy Community or the share of electricity from renewable energy sources in their own country as measured two years before the year in question. Furthermore, for the calculation of the electricity from renewable energy sources consumed by electric road vehicles, that consumption shall be considered to be 2.5 times the energy content of the input of electricity from renewable energy sources.

**Article 4**

National renewable energy action plans

1. Each Contracting Party shall adopt a national renewable energy action plan. The national renewable energy action plans shall set out Contracting Parties' national targets for the share of energy from renewable sources consumed in transport, electricity and heating and cooling in 2020, taking into account the effects of other policy measures relating to energy efficiency on final consumption of energy, and adequate measures to be taken to achieve those national overall targets, including cooperation between local, regional and national authorities, planned statistical transfers or joint projects, national policies to develop existing biomass resources and mobilise new biomass resources for different uses, and the measures to be taken to fulfil the requirements of Articles 13 to 19.

...\n
Contracting Parties shall present their National Renewable Energy Action Plans in the form of the template adopted by the Commission under the second subparagraph of Article 4(1) of the Directive.\(^1\)

2. Contracting Parties shall notify their national renewable energy action plans to the Energy Community Secretariat by 30 June 2013.

3. Each Contracting Party shall publish and notify to the Energy Community Secretariat, six months before its national renewable energy action plan is due, a forecast document indicating:

(a) its estimated excess production of energy from renewable sources compared to the indicative trajectory which could be transferred to other Contracting Parties in accordance with Articles 6 to 11, as well as its estimated potential for joint projects, until 2020; and

(b) its estimated demand for energy from renewable sources to be satisfied by means other than domestic production until 2020.

That information may include elements relating to cost and benefits and financing. That forecast shall be updated in the reports of the Contracting Parties as set out in Article 22(1)(x) and (m).

4. A Contracting Party whose share of energy from renewable sources fell below the indicative trajectory in the immediately preceding two-year period set out in part B of Annex I, shall submit an amended national renewable energy action plan to the Energy Community Secretariat by 30 June of the following year, setting out adequate and proportionate measures to rejoin, within a reasonable timetable, the indicative trajectory in part B of Annex I.

The Energy Community Secretariat may, if the Contracting Party has not met the indicative trajectory by a limited margin, and taking due account of the current and future measures taken by the Contracting Party, propose to the Permanent High Level Group to adopt a decision to release the Contracting Party from the obligation to submit an amended National Renewable Energy Action Plan.

5. The Energy Community Secretariat shall evaluate the national renewable energy action plans, notably the adequacy of the measures envisaged by the Contracting Party in accordance with Article 3(2). In response to a national renewable energy action plan or to an amended national renewable energy action plan, the Energy Community Secretariat may issue a recommendation.

**Article 5**

Calculation of the share of energy from renewable sources

1. The gross final consumption of energy from renewable sources in each Contracting Party shall be calculated as the sum of:

(a) gross final consumption of electricity from renewable energy sources;

(b) gross final consumption of energy from renewable sources for heating and cooling; and

(c) final consumption of energy from renewable sources in transport.

Gas, electricity and hydrogen from renewable energy sources shall be considered only once in point (a), (b), or (c) of the first subparagraph, for calculating the share of gross final consumption of energy from renewable sources.

Subject to the second subparagraph of Article 17(1), biofuels and bioliquids that do not fulfil the sustainability criteria set out in Article 17(2) to (6) shall not be taken into account.

2. Where a Contracting Party considers that, due to force majeure, it is impossible for it to meet its share of energy from renewable sources in gross final consumption of energy in 2020 set out in the third column of the table in Annex I, it shall inform the Energy Community Secretariat accordingly as soon as possible. The Energy Community Secretariat shall issue an opinion on whether force majeure has been demonstrated. In the event that the Energy Community Secretariat considers that force majeure has been demonstrated, the Permanent High Level Group shall decide on whether an adjustment that shall be made to the Contracting Party’s gross final consumption of energy from renewable sources for the year 2020 and the level of that adjustment.\(^2\)

3. For the purposes of paragraph 1(a), gross final consumption of electricity from renewable energy sources shall be calculated as the quantity of electricity produced in a Contracting Party from renewable energy sources, excluding the production of electricity in pumped storage units from water that has previously been pumped uphill.

In multi-fuel plants using renewable and conventional sources, only the part of electricity produced from renewable energy sources shall be taken into account. For the purposes of this calculation, the contribution of each energy source shall be calculated on the basis of its energy content.

The electricity generated by hydropower and wind power shall be accounted for in accordance with the normalisation rules set out in Annex II.

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\(^2\) According to Article 12 of Decision 2012/04/MC-EnC (‘Decisions of the Permanent High Level Group’).

"1. Decisions of the Permanent High Level group taken in application of Directive 2009/28/EC, as adapted by the present Decision, shall be adopted by majority of its members, which must include a vote in favour of the European Union.

2. The Permanent High Level Group shall adopt a procedural act on the implementation of the present article.”
4. For the purposes of paragraph 1(b), the gross final consumption of energy from renewable sources for heating and cooling shall be calculated as the quantity of district heating and cooling produced in a Contracting Party from renewable sources, plus the consumption of other energy from renewable sources in industry, households, services, agriculture, forestry and fisheries, for heating, cooling and processing purposes.

In multi-fuel plants using renewable and conventional sources, only the part of heating and cooling produced from renewable energy sources shall be taken into account. For the purposes of this calculation, the contribution of each energy source shall be calculated on the basis of its energy content.

Aerothermal, geothermal and hydrothermal heat energy captured by heat pumps shall be taken into account for the purposes of paragraph 1(b) provided that the final energy output significantly exceeds the primary energy input required to drive the heat pumps. The quantity of heat to be considered as energy from renewable sources for the purposes of this Directive shall be calculated in accordance with the methodology laid down in Annex VII.

Thermal energy generated by passive energy systems, under which lower energy consumption is achieved passively through building design or from heat generated by energy from non-renewable sources, shall not be taken into account for the purposes of paragraph 1(b).

5. The energy content of the transport fuels listed in Annex III shall be taken to be as set out in that Annex. Annex III may be adapted to technical and scientific progress. Those measures, designed to amend non-essential elements of this Directive, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 25(4).

6. The share of energy from renewable sources shall be calculated as the gross final consumption of energy from renewable sources divided by the gross final consumption of energy from all energy sources, expressed as a percentage.

For the purposes of the first subparagraph, the sum referred to in paragraph 1 shall be adjusted in accordance with Articles 6, 8, 10 and 11.

In calculating a Contracting Party’s gross final energy consumption for the purpose of measuring its compliance with the targets and indicative trajectory laid down in this Directive, the amount of energy consumed in aviation shall, as a proportion of that consumed by a Contracting Party’s gross final consumption of energy, be considered to be no more than 6.18%. For Cyprus and Malta the amount of energy consumed in aviation shall, as a proportion of that consumed in accordance with the methodology laid down in Annex VII.

The share of energy from renewable sources shall be calculated as the gross final consumption of energy from renewable sources divided by the gross final consumption of energy from all energy sources, expressed as a percentage.

For the purposes of the first subparagraph, the sum referred to in paragraph 1 shall be adjusted in accordance with Articles 6, 8, 10 and 11.

In calculating a Contracting Party’s gross final energy consumption for the purpose of measuring its compliance with the targets and indicative trajectory laid down in this Directive, the amount of energy consumed in aviation shall, as a proportion of that consumed by a Contracting Party’s gross final consumption of energy, be considered to be no more than 6.18%. For Cyprus and Malta the amount of energy consumed in aviation shall, as a proportion of that consumed in accordance with the methodology laid down in Annex VII.

Thermal energy generated by passive energy systems, under which lower energy consumption is achieved passively through building design or from heat generated by energy from non-renewable sources, shall not be taken into account for the purposes of paragraph 1(b).

According to Article 11 of Decision 2012/04/MC-EnC, the decision of the Ministerial Council referred to in Article 8 and 9 of this Decision shall be adopted by majority of the Members of the Ministerial Council, which must include a vote in favour by the European Union.

2. The arrangements referred to in paragraph 1 may have a duration of one or more years. They shall be notified to the Energy Community Secretariat no later than three months after the end of each year in which they have effect. The information sent to the Energy Community Secretariat shall include the quantity and price of the energy involved.

3. Transfers shall become effective only after all Contracting Parties involved in the transfer have notified the transfer to the Energy Community Secretariat.

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**Article 6**

Statistical transfers between Contracting Parties

1. Contracting Parties may agree on and may make arrangements for the statistical transfer of a specified amount of energy from renewable sources from one Contracting Party to another Contracting Party. The transferred quantity shall be:

   (a) deducted from the amount of energy from renewable sources that is taken into account in measuring compliance by the Contracting Party making the transfer with the requirements of Article 3(1) and (2); and

   (b) added to the amount of energy from renewable sources that is taken into account in measuring compliance by another Contracting Party accepting the transfer with the requirements of Article 3(1) and (2).

A statistical transfer shall not affect the achievement of the national target of the Contracting Party making the transfer.

2. The arrangements referred to in paragraph 1 may have a duration of one or more years. They shall be notified to the Energy Community Secretariat no later than three months after the end of each year in which they have effect. The information sent to the Energy Community Secretariat shall include the quantity and price of the energy involved.

3. Transfers shall become effective only after all Contracting Parties involved in the transfer have notified the transfer to the Energy Community Secretariat.

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*According to Article 11 of Decision 2012/04/MC-EnC,*

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4. For the purposes of paragraph 1(b), the gross final consumption of energy from renewable sources for heating and cooling shall be calculated as the quantity of district heating and cooling produced in a Contracting Party from renewable sources, plus the consumption of other energy from renewable sources in industry, households, services, agriculture, forestry and fisheries, for heating, cooling and processing purposes.

In multi-fuel plants using renewable and conventional sources, only the part of heating and cooling produced from renewable energy sources shall be taken into account. For the purposes of this calculation, the contribution of each energy source shall be calculated on the basis of its energy content.

Aerothermal, geothermal and hydrothermal heat energy captured by heat pumps shall be taken into account for the purposes of paragraph 1(b) provided that the final energy output significantly exceeds the primary energy input required to drive the heat pumps. The quantity of heat to be considered as energy from renewable sources for the purposes of this Directive shall be calculated in accordance with the methodology laid down in Annex VII.

Thermal energy generated by passive energy systems, under which lower energy consumption is achieved passively through building design or from heat generated by energy from non-renewable sources, shall not be taken into account for the purposes of paragraph 1(b).

According to Article 11 of Decision 2012/04/MC-EnC, the decision of the Ministerial Council referred to in Article 8 and 9 of this Decision shall be adopted by majority of the Members of the Ministerial Council, which must include a vote in favour by the European Union.

2. The arrangements referred to in paragraph 1 may have a duration of one or more years. They shall be notified to the Energy Community Secretariat no later than three months after the end of each year in which they have effect. The information sent to the Energy Community Secretariat shall include the quantity and price of the energy involved.

3. Transfers shall become effective only after all Contracting Parties involved in the transfer have notified the transfer to the Energy Community Secretariat.

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*According to Article 11 of Decision 2012/04/MC-EnC,*

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**PART II ACQUIS COMMUNAUTAIRE / RENEWABLE ENERGY / Directive 2009/28/EC**

**Statistical transfers between Contracting Parties**

1. Contracting Parties may agree on and may make arrangements for the statistical transfer of a specified amount of energy from renewable sources from one Contracting Party to another Contracting Party. The transferred quantity shall be:

   (a) deducted from the amount of energy from renewable sources that is taken into account in measuring compliance by the Contracting Party making the transfer with the requirements of Article 3(1) and (2); and

   (b) added to the amount of energy from renewable sources that is taken into account in measuring compliance by another Contracting Party accepting the transfer with the requirements of Article 3(1) and (2).

A statistical transfer shall not affect the achievement of the national target of the Contracting Party making the transfer.

2. The arrangements referred to in paragraph 1 may have a duration of one or more years. They shall be notified to the Energy Community Secretariat no later than three months after the end of each year in which they have effect. The information sent to the Energy Community Secretariat shall include the quantity and price of the energy involved.

3. Transfers shall become effective only after all Contracting Parties involved in the transfer have notified the transfer to the Energy Community Secretariat.

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*According to Article 11 of Decision 2012/04/MC-EnC,*

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**Statistical transfers between Contracting Parties to Member States of the European Union**

1. Upon motivated request from an interested Contracting Party, the Ministerial Council may decide that this Contracting Party may agree on statistical transfers of a specified amount of energy from renewable sources to a Member State of the European Union. The Ministerial Council shall ask the Secretariat for an opinion on the request.

2. The transferred quantity shall be deducted from the amount of energy from renewable sources that is taken into account in measuring compliance by the Contracting Party making the transfer with the requirements of Article 3(1) and (2) of Directive 2009/28/EC, as adapted by this decision.

A statistical transfer shall not affect the achievement of the national target of the Contracting Party making the transfer.

3. The arrangements for the statistical transfer to a Member State of the European Union shall ensure coherence of statistical information used in calculating those sectoral and overall shares and statistical information reported to the Energy Community Secretariat under Regulation (EC) No 1099/2008.

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*Editorial note: Cyprus and Malta are not Contracting Parties of the Energy Community.*
may have a duration of one or more years. They shall be notified by the Contracting Party to the Secretariat no later than three months after the end of each year in which they have effect. The information sent to the Secretariat shall include the quantity and price of the energy involved.

4. Transfers shall become effective only after the Contracting Party involved has notified the transfer to the Secretariat.

5. The provisions in this Article are without prejudice to more stringent requirements agreed by the parties involved in the statistical transfer.

Article 13 of Decision 2012/04/MC-EnC

External Audits

1. The implementation of Article 8 ... of this Decision shall be subject to an external audit on a biennial basis of which the results shall be sent to the Secretariat. Where the result of the audit shows that the conditions laid down in this Decision for applying the cooperation mechanisms of the Directive were not met, the involved transfers will be annulled.

2. The Contracting Party concerned shall arrange for the independent audit referred to in paragraph 1. The auditor needs to be accredited by a member of the International Accreditation Body and must have implemented relevant international standards to ensure its competence.

Article 7

Joint projects between Contracting Parties

1. Two or more Contracting Parties may cooperate on all types of joint projects relating to the production of electricity, heating or cooling from renewable energy sources. That cooperation may involve private operators.

2. Contracting Parties shall notify the Energy Community Secretariat of the proportion or amount of electricity, heating or cooling from renewable energy sources produced by any joint project in their territory, that became operational after 18 December 2012, or by the increased capacity of an installation that was refurbished after that date, which is to be regarded as counting towards the national overall target of another Contracting Party for the purposes of measuring compliance with the requirements of this Directive.

3. The notification referred to in paragraph 2 shall:

(a) describe the proposed installation or identify the refurbished installation;

(b) specify the proportion or amount of electricity or heating or cooling produced from the installation which is to be regarded as counting towards the national overall target of another Contracting Party;

(c) identify the Contracting Party in whose favour the notification is being made; and

(d) specify the period, in whole calendar years, during which the electricity or heating or cooling produced by the installation from renewable energy sources is to be regarded as counting towards the national overall target of the other Contracting Party.

4. The period specified under paragraph 3(d) shall not extend beyond 2020. The duration of a joint project may extend beyond 2020.

5. A notification made under this Article shall not be varied or withdrawn without the joint agreement of the Contracting Party making the notification and the Contracting Party identified in accordance with paragraph 3(c).

Article 8

Effects of joint projects between Contracting Parties

1. Within three months of the end of each year falling within the period specified under Article 7(3) (d), the Contracting Party that made the notification under Article 7 shall issue a letter of notification stating:

(a) the total amount of electricity or heating or cooling produced during the year from renewable energy sources by the installation which was the subject of the notification under Article 7; and

(b) the amount of electricity or heating or cooling produced during the year from renewable energy sources by that installation which is to count towards the national overall target of another Contracting Party in accordance with the terms of the notification.

2. The notifying Contracting Party shall send the letter of notification to the Contracting Party in whose favour the notification was made and to the Energy Community Secretariat.

3. For the purposes of measuring target compliance with the requirements of this Directive concerning national overall targets, the amount of electricity or heating or cooling from renewable energy sources notified in accordance with paragraph 1(b) shall be:

(a) deducted from the amount of electricity or heating or cooling from renewable energy sources that is taken into account, in measuring compliance by the Contracting Party issuing the letter of notification under paragraph 1; and

(b) added to the amount of electricity or heating or cooling from renewable energy sources that is taken into account, in measuring compliance by the Contracting Party receiving the letter of notification in accordance with paragraph 2.

Article 9

Joint projects between Contracting Parties and third countries

1. One or more Contracting Parties may cooperate with one or more third countries on all types of joint projects regarding the production of electricity from renewable energy sources. Such cooperation may involve private operators.

2. Electricity from renewable energy sources produced in a third country shall be taken into account only for the purposes of measuring compliance with the requirements of this Directive concerning national overall targets if the following conditions are met:

(a) the electricity is consumed in the Energy Community, a requirement that is deemed to be met where:

1 According to Recital 6 of Decision 2012/04/MC-EnC, joint projects between Member States and Contracting Parties remain possible under Articles 9 and 10 of the Directive. Article 9 of the Directive in its original form thus remains also relevant.
(i) an equivalent amount of electricity to the electricity accounted for has been firmly nominated to the allocated interconnection capacity by all responsible transmission system operators in the country of origin, the country of destination and, if relevant, each third country of transit;
(ii) an equivalent amount of electricity to the electricity accounted for has been firmly registered in the schedule of balance by the responsible transmission system operator on the Energy Community side of an interconnector; and
(iii) the nominated capacity and the production of electricity from renewable energy sources by the installation referred to in paragraph 2(b) refer to the same period of time;
(b) the electricity is produced by a newly constructed installation that became operational after 18 December 2012 or by the increased capacity of an installation that was refurbished after that date, under a joint project as referred to in paragraph 1; and
(c) the amount of electricity produced and exported has not received support from a support scheme of a third country other than investment aid granted to the installation.

3. Contracting Parties may apply to the Energy Community Secretariat, for the purposes of Article 5, for account to be taken of electricity from renewable energy sources produced and consumed in a third country, in the context of the construction of an interconnector with a very long lead-time between a Contracting Party and a third country if the following conditions are met:

(a) construction of the interconnector started by 31 December 2016;
(b) it is not possible for the interconnector to become operational by 31 December 2020;
(c) it is possible for the interconnector to become operational by 31 December 2022;
(d) after it becomes operational, the interconnector will be used for the export to the Energy Community, in accordance with paragraph 2, of electricity generated from renewable energy sources; and
(e) the application relates to a joint project that fulfils the criteria in points (b) and (c) of paragraph 2 and that will use the interconnector after it becomes operational, and to a quantity of electricity that is no greater than the quantity that will be exported to the Energy Community after the interconnector becomes operational.

4. The proportion or amount of electricity produced by any installation in the territory of a third country, which is to be regarded as counting towards the national overall target of one or more Contracting Parties for the purposes of measuring compliance with Article 3, shall be notified to the Energy Community Secretariat. When more than one Contracting Party is concerned, the distribution between Contracting Parties of this proportion or amount shall be notified to the Energy Community Secretariat. This proportion or amount shall not exceed the proportion or amount actually exported to, and consumed in, the Energy Community, corresponding to the amount referred to in paragraph 2(a)(i) and (ii) of this Article and meeting the conditions as set out in its paragraph (2)(a). The notification shall be made by each Contracting Party towards whose overall national target the proportion or amount of electricity is to count.

5. The notification referred to in paragraph 4 shall:

(a) describe the proposed installation or identify the refurbished installation;
(b) specify the proportion or amount of electricity produced from the installation which is to be regarded as counting towards the national target of a Contracting Party as well as, subject to confidentiality requirements, the corresponding financial arrangements;
(c) specify the period, in whole calendar years, during which the electricity is to be regarded as counting towards the national overall target of the Contracting Party; and
(d) include a written acknowledgement of points (b) and (c) by the third country in whose territory the installation is to become operational and the proportion or amount of electricity produced by the installation which will be used domestically by that third country.

6. The period specified under paragraph 5(c) shall not extend beyond 2020. The duration of a joint project may extend beyond 2020.

7. A notification made under this Article may not be varied or withdrawn without the joint agreement of the Contracting Party making the notification and the third country that has acknowledged the joint project in accordance with paragraph 5(d).

8. Contracting Parties and the Energy Community shall encourage the relevant bodies of the Energy Community Treaty to take, in conformity with the Energy Community Treaty, the measures which are necessary so that the Contracting Parties to that Treaty can apply the provisions on cooperation laid down in this Directive between Contracting Parties.

Article 10

Effects of joint projects between Contracting Parties and third countries:

1. Within three months of the end of each year falling within the period specified under Article 9(5) (c), the Contracting Party having made the notification under Article 9 shall issue a letter of notification stating:

(a) the total amount of electricity produced during that year from renewable energy sources by the installation which was the subject of the notification under Article 9;
(b) the amount of electricity produced during the year from renewable energy sources by that installation which is to count towards its national overall target in accordance with the terms of the notification under Article 9; and
(c) proof of compliance with the conditions set out in Article 9(2).

2. The Contracting Party shall send the letter of notification to the third country which has acknowledged the project in accordance with Article 9(5)(d) and to the Energy Community Secretariat.

3. For the purposes of measuring target compliance with the requirements of this Directive concerning national overall targets, the amount of electricity produced from renewable energy sources notified in accordance with paragraph 1(b) shall be added to the amount of energy from renewable sources that is taken into account, in measuring compliance by the Contracting Party issuing the letter of notification.

Article 11

Joint support schemes

1. Without prejudice to the obligations of Contracting Parties under Article 3, two or more Contracting Parties may decide, on a voluntary basis, to join or partly coordinate their national support schemes as the contribution of each Contracting Party to the joint scheme. The contributions of the Contracting Parties to the joint scheme for each year shall be such as to ensure that the total amount of electricity produced from renewable energy sources by the installations which are involved in the joint project is equal to the amount of energy from renewable sources which is to be regarded as counting towards the national overall target of the Contracting Party.

2. Subject to the conditions set out in Article 9(2), the Contracting Parties may decide to join or partly coordinate their national support schemes as the contribution of each Contracting Party to the joint scheme. The contributions of the Contracting Parties to the joint scheme for each year shall be such as to ensure that the total amount of electricity produced from renewable energy sources by the installations which are involved in the joint project is equal to the amount of energy from renewable sources which is to be regarded as counting towards the national overall target of the Contracting Party.

3. A joint support scheme may extend beyond 2020. The duration of a joint project may extend beyond 2020.

4. A notification made under this Article may not be varied or withdrawn without the joint agreement of the Contracting Party making the notification and the third country that has acknowledged the joint project in accordance with paragraph 5(d).

5. Contracting Parties and the Energy Community shall encourage the relevant bodies of the Energy Community Treaty to take, in conformity with the Energy Community Treaty, the measures which are necessary so that the Contracting Parties to that Treaty can apply the provisions on cooperation laid down in this Directive between Contracting Parties.

Article 10

Effects of joint projects between Contracting Parties and third countries:

1. Within three months of the end of each year falling within the period specified under Article 9(5) (c), the Contracting Party having made the notification under Article 9 shall issue a letter of notification stating:

(a) the total amount of electricity produced during that year from renewable energy sources by the installation which was the subject of the notification under Article 9;
(b) the amount of electricity produced during the year from renewable energy sources by that installation which is to count towards its national overall target in accordance with the terms of the notification under Article 9; and
(c) proof of compliance with the conditions set out in Article 9(2).

2. The Contracting Party shall send the letter of notification to the third country which has acknowledged the project in accordance with Article 9(5)(d) and to the Energy Community Secretariat.

3. For the purposes of measuring target compliance with the requirements of this Directive concerning national overall targets, the amount of electricity produced from renewable energy sources notified in accordance with paragraph 1(b) shall be added to the amount of energy from renewable sources that is taken into account, in measuring compliance by the Contracting Party issuing the letter of notification.

Article 11

Joint support schemes

1. Without prejudice to the obligations of Contracting Parties under Article 3, two or more Contracting Parties may decide, on a voluntary basis, to join or partly coordinate their national support schemes as the contribution of each Contracting Party to the joint scheme. The contributions of the Contracting Parties to the joint scheme for each year shall be such as to ensure that the total amount of electricity produced from renewable energy sources by the installations which are involved in the joint project is equal to the amount of energy from renewable sources which is to be regarded as counting towards the national overall target of the Contracting Party.

2. Subject to the conditions set out in Article 9(2), the Contracting Parties may decide to join or partly coordinate their national support schemes as the contribution of each Contracting Party to the joint scheme. The contributions of the Contracting Parties to the joint scheme for each year shall be such as to ensure that the total amount of electricity produced from renewable energy sources by the installations which are involved in the joint project is equal to the amount of energy from renewable sources which is to be regarded as counting towards the national overall target of the Contracting Party.

3. A joint support scheme may extend beyond 2020. The duration of a joint project may extend beyond 2020.

4. A notification made under this Article may not be varied or withdrawn without the joint agreement of the Contracting Party making the notification and the third country that has acknowledged the joint project in accordance with paragraph 5(d).

5. Contracting Parties and the Energy Community shall encourage the relevant bodies of the Energy Community Treaty to take, in conformity with the Energy Community Treaty, the measures which are necessary so that the Contracting Parties to that Treaty can apply the provisions on cooperation laid down in this Directive between Contracting Parties.
schemes. In such cases, a certain amount of energy from renewable sources produced in the territory of one participating Contracting Party may count towards the national overall target of another participating Contracting Party if the Contracting Parties concerned:

(a) make a statistical transfer of specified amounts of energy from renewable sources from one Contracting Party to another Contracting Party in accordance with Article 6; or

(b) set up a distribution rule agreed by participating Contracting Parties that allocates amounts of energy from renewable sources between the participating Contracting Parties. Such a rule shall be notified to the Energy Community Secretariat no later than three months after the end of the first year in which it takes effect.

2. Within three months of the end of each year each Contracting Party having made a notification under paragraph 1(b) shall issue a letter of notification stating the total amount of electricity or heating or cooling from renewable energy sources produced during the year which is to be the subject of the distribution rule.

3. For the purposes of measuring compliance with the requirements of this Directive concerning national overall targets, the amount of electricity or heating or cooling from renewable energy sources notified in accordance with paragraph 2 shall be reallocated between the concerned Contracting Parties in accordance with the notified distribution rule.

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**Article 9 of Decision 2012/04/MC-EnC**

**Joint support schemes between Contracting Parties and Member States of the European Union**

1. One or more Contracting Parties and one or more EU Member States may decide, on a voluntary basis, to join or partly coordinate their national support schemes. In such cases, a certain amount of energy from renewable sources produced in the territory of one participating Contracting Party or Member State may count towards the national overall target of another participating Contracting Party(ies) or Member State(s) if the involved Parties concerned:

(a) make a statistical transfer of specified amounts of energy from renewable sources from one Party to another Party in accordance with Article 8 of this Decision; or

(b) set up a distribution rule agreed by the participating Contracting Party and Member State that allocates amounts of energy from renewable sources between the participating Parties. Such a rule shall be notified to the Secretariat by the Contracting Party no later than three months after the end of the first year in which it takes effect.

2. Upon motivated request from an interested Contracting Party, which shall include the information referred in Article 7(3) of Directive 2009/28, the Ministerial Council may decide

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5. The provisions in this Article are without prejudice to more stringent requirements agreed by the parties coordinating their national support schemes.

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**Article 13 of Decision 2012/04/MC-EnC**

**External Audits**

1. The implementation of Article ... 9 of this Decision shall be subject to an external audit on a biennial basis of which the results shall be sent to the Secretariat. Where the result of the audit shows that the conditions laid down in this Decision for applying the cooperation mechanisms of the Directive were not met, the involved transfers will be annulled.

2. The Contracting Party concerned shall arrange for the independent audit referred to in paragraph 1. The auditor needs to be accredited by a member of the International Accreditation Body and must have implemented relevant international standards to ensure its competence.

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**Article 12**

**Capacity increases**

For the purpose of Article 7(2) and Article 9(2)(b), units of energy from renewable sources imputable to an increase in the capacity of an installation shall be treated as if they were produced by a separate installation becoming operational at the moment at which the increase of capacity occurred.
Article 13

Administrative procedures, regulations and codes

1. Contracting Parties shall ensure that any national rules concerning the authorisation, certification and licensing procedures that are applied to plants and associated transmission and distribution network infrastructures for the production of electricity, heating or cooling from renewable energy sources, and to the process of transformation of biomass into biofuels or other energy products, are proportionate and necessary.

Contracting Parties shall, in particular, take the appropriate steps to ensure that:

(a) subject to differences between Contracting Parties in their administrative structures and organisation, the respective responsibilities of national, regional and local administrative bodies for authorisation, certification and licensing procedures including spatial planning are clearly coordinated and defined, with transparent timetables for determining planning and building applications;

(b) comprehensive information on the processing of authorisation, certification and licensing applications for renewable energy installations and on available assistance to applicants are made available at the appropriate level;

(c) administrative procedures are streamlined and expedited at the appropriate administrative level;

(d) rules governing authorisation, certification and licensing are objective, transparent, proportionate, do not discriminate between applicants and take fully into account the particularities of individual renewable energy technologies;

(e) administrative charges paid by consumers, planners, architects, builders and equipment and system installers and suppliers are transparent and cost-related; and

(f) simplified and less burdensome authorisation procedures, including through simple notification if allowed by the applicable regulatory framework, are established for smaller projects and for decentralised devices for producing energy from renewable sources, where appropriate.

2. Contracting Parties shall clearly define any technical specifications which must be met by renewable energy equipment and systems in order to benefit from support schemes. Where European standards exist, including eco-labels, energy labels and other technical reference systems established by the European standardisation bodies, such technical specifications shall be expressed in terms of those standards. Such technical specifications shall not prescribe where the equipment and systems are to be certified and should not impede the operation of the internal market.

3. Contracting Parties shall recommend to all actors, in particular local and regional administrative bodies to ensure equipment and systems are installed for the use of electricity, heating and cooling from renewable energy sources and for district heating and cooling when planning, designing, building and renovating industrial or residential areas. Contracting Parties shall, in particular, encourage local and regional administrative bodies to include heating and cooling from renewable energy sources in the planning of city infrastructure, where appropriate.

4. Contracting Parties shall introduce in their building regulations and codes appropriate measures in order to increase the share of all kinds of energy from renewable sources in the building sector. In establishing such measures or in their regional support schemes, Contracting Parties may take into account national measures relating to substantial increases in energy efficiency and relating to cogeneration and to passive, low or zero-energy buildings.

By 31 December 2014, Contracting Parties shall, in their building regulations and codes or by other means with equivalent effect, where appropriate, require the use of minimum levels of energy from renewable sources in new buildings and in existing buildings that are subject to major renovation. Contracting Parties shall permit those minimum levels to be fulfilled, inter alia, through district heating and cooling produced using a significant proportion of renewable energy sources.

The requirements of the first subparagraph shall apply to the armed forces, only to the extent that its application does not cause any conflict with the nature and primary aim of the activities of the armed forces and with the exception of material used exclusively for military purposes.

5. Contracting Parties shall ensure that new public buildings, and existing public buildings that are subject to major renovation, at national, regional and local level fulfil an exemplary role in the context of this Directive from 1 January 2012 onwards. Contracting Parties may, inter alia, allow that obligation to be fulfilled by complying with standards for zero energy housing, or by providing that the roofs of public or mixed private-public buildings are used by third parties for installations that produce energy from renewable sources.

6. With respect to their building regulations and codes, Contracting Parties shall promote the use of renewable energy heating and cooling systems and equipment that achieve a significant reduction of energy consumption. Contracting Parties shall use energy or eco-labels or other appropriate certificates or standards developed at national or Energy Community level, where these exist, as the basis for encouraging such systems and equipment.

In the case of biomass, Contracting Parties shall promote conversion technologies that achieve a conversion efficiency of at least 85% for residential and commercial applications and at least 70% for industrial applications.

In the case of heat pumps, Contracting Parties shall promote those that fulfil the minimum requirements of eco-labelling established in Commission Decision 2007/742/EC of 9 November 2007 establishing the ecological criteria for the award of the Community eco-label to electrically driven, gas driven or gas absorption heat pumps.

In the case of solar thermal energy, Contracting Parties shall promote certified equipment and systems based on European standards where these exist, including eco-labels, energy labels and other technical reference systems established by the European standardisation bodies.

In assessing the conversion efficiency and input/output ratio of systems and equipment for the purposes of this paragraph, Contracting Parties shall use Energy Community or, in their absence, international procedures if such procedures exist.

Article 14

Information and training

1. Contracting Parties shall ensure that information on support measures is made available to all relevant actors, such as consumers, builders, installers, architects, and suppliers of heating, cooling and electricity equipment and systems and of vehicles compatible with the use of energy from renewable sources.

2. Contracting Parties shall ensure that information on the net benefits, cost and energy efficiency of equipment and systems for the use of heating, cooling and electricity from renewable energy sources is made available either by the supplier of the equipment or system or by the national competent authorities.
3. Contracting Parties shall ensure that certification schemes or equivalent qualification schemes become or are available by 31 December 2012 for installers of small-scale biomass boilers and stoves, solar photovoltaic and solar thermal systems, shallow geothermal systems and heat pumps. Those schemes may take into account existing schemes and structures as appropriate, and shall be based on the criteria laid down in Annex IV. Each Contracting Party shall recognise certification awarded by other Contracting Parties in accordance with those criteria.

4. Contracting Parties shall make available to the public information on certification schemes or equivalent qualification schemes as referred to in paragraph 3. Contracting Parties may also make available the list of installers who are qualified or certified in accordance with the provisions referred to in paragraph 3.

5. Contracting Parties shall ensure that guidance is made available to all relevant actors, notably for planners and architects so that they are able properly to consider the optimal combination of renewable energy sources, of high-efficiency technologies and of district heating and cooling when planning, designing, building and renovating industrial or residential areas.

6. Contracting Parties, with the participation of local and regional authorities, shall develop suitable information, awareness-raising, guidance or training programmes in order to inform citizens of the benefits and practicalities of developing and using energy from renewable sources.

Article 15
Guarantees of origin of electricity, heating and cooling produced from renewable energy sources

1. For the purposes of proving to final customers the share or quantity of energy from renewable sources in an energy supplier’s energy mix in accordance with Article 3(6) of Directive 2003/54/EC, Contracting Parties shall ensure that the origin of electricity produced from renewable energy sources can be guaranteed as such within the meaning of this Directive, in accordance with objective, transparent and non-discriminatory criteria.

2. To that end, Contracting Parties shall ensure that a guarantee of origin is issued in response to a request from a producer of electricity from renewable energy sources. Contracting Parties may arrange for guarantees of origin to be issued in response to a request from producers of heating and cooling from renewable energy sources. Such an arrangement may be made subject to a minimum capacity limit. A guarantee of origin shall be of the standard size of 1 MWh. No more than one guarantee of origin shall be issued in respect of each unit of energy produced.

Contracting Parties shall ensure that the same unit of energy from renewable sources is taken into account only once.

Contracting Parties may provide that no support be granted to a producer when that producer receives a guarantee of origin for the same production of energy from renewable sources.

The guarantee of origin shall have no function in terms of a Contracting Party’s compliance with Article 3. Transfers of guarantees of origin, separately or together with the physical transfer of energy, shall have no effect on the decision of Contracting Parties to use statistical transfers, joint projects or joint support schemes for target compliance or on the calculation of the gross final consumption of energy from renewable sources in accordance with Article 5.

3. Any use of a guarantee of origin shall take place within 12 months of production of the corresponding energy unit. A guarantee of origin shall be cancelled once it has been used.

4. Contracting Parties or designated competent bodies shall supervise the issuance, transfer and cancellation of guarantees of origin. The designated competent bodies shall have non-overlapping geographical responsibilities, and be independent of production, trade and supply activities.

5. Contracting Parties or the designated competent bodies shall put in place appropriate mechanisms to ensure that guarantees of origin shall be issued, transferred and cancelled electronically and be accurate, reliable and fraud-resistant.

6. A guarantee of origin shall specify at least:
   (a) the energy source from which the energy was produced and the start and end dates of production;
   (b) whether it relates to:
      (i) electricity; or
      (ii) heating or cooling;
   (c) the identity, location, type and capacity of the installation where the energy was produced;
   (d) whether and to what extent the installation has benefited from investment support, whether and to what extent the unit of energy has benefited in any other way from a national support scheme, and the type of support scheme;
   (e) the date on which the installation became operational; and
   (f) the date and country of issue and a unique identification number.

7. Where an electricity supplier is required to prove the share or quantity of energy from renewable sources in its energy mix for the purposes of Article 3(6) of Directive 2003/54/EC, it may do so by using its guarantees of origin.

8. The amount of energy from renewable sources corresponding to guarantees of origin transferred by an electricity supplier to a third party shall be deducted from the share of energy from renewable sources in its energy mix for the purposes of Article 3(6) of Directive 2003/54/EC.

9. Contracting Parties shall recognise guarantees of origin issued by other Contracting Parties in accordance with this Directive exclusively as proof of the elements referred to in paragraph 1 and paragraph 6(a) to (f). A Contracting Party may refuse to recognise a guarantee of origin only when it has well-founded doubts about its accuracy, reliability or veracity. The Contracting Party shall notify the Energy Community Secretariat of such a refusal and its justification.

10. If the Energy Community Secretariat finds that a refusal to recognise a guarantee of origin is unfounded, the Energy Community Secretariat may issue an opinion inviting the Contracting Party in question to recognise it.

11. A Contracting Party may introduce, in conformity with Energy Community law, objective, transparent and non-discriminatory criteria for the use of guarantees of origin in complying with the obligations laid down in Article 3(6) of Directive 2003/54/EC.

12. Where energy suppliers market energy from renewable sources to consumers with a reference to environmental or other benefits of energy from renewable sources, Contracting Parties may require those energy suppliers to make available, in summary form, information on the amount or share of energy from renewable sources that comes from installations or increased capacity that became operational after 18 December 2012.


**Article 16**

Access to and operation of the grids

1. **Contracting Parties** shall take the appropriate steps to develop transmission and distribution grid infrastructure, intelligent networks, storage facilities and the electricity system, in order to allow the secure operation of the electricity system as it accommodates the further development of electricity production from renewable energy sources, including interconnection between **Contracting Parties** and between **Contracting Parties** and third countries. **Contracting Parties** shall also take appropriate steps to accelerate authorisation procedures for grid infrastructure and to coordinate approval of grid infrastructure with administrative and planning procedures.

2. Subject to requirements relating to the maintenance of the reliability and safety of the grid, based on transparent and non-discriminatory criteria defined by the competent national authorities:

   (a) **Contracting Parties** shall ensure that transmission system operators and distribution system operators in their territory guarantee the transmission and distribution of electricity produced from renewable energy sources;

   (b) **Contracting Parties** shall also provide for either priority access or guaranteed access to the grid-system of electricity produced from renewable energy sources;

   (c) **Contracting Parties** shall ensure that when dispatching electricity generating installations, transmission system operators shall give priority to generating installations using renewable energy sources in so far as the secure operation of the national electricity system permits and based on transparent and non-discriminatory criteria. **Contracting Parties** shall ensure that appropriate grid and market-related operational measures are taken in order to minimise the curtailment of electricity produced from renewable energy sources. If significant measures are taken to curtail the renewable energy sources in order to guarantee the security of the national electricity system and security of energy supply, **Contracting Parties** shall ensure that the responsible system operators report to the competent regulatory authority on those measures and indicate which corrective measures they intend to take in order to prevent inappropriate curtailments.

3. **Contracting Parties** shall require transmission system operators and distribution system operators to set up and make public their standard rules relating to the bearing and sharing of costs of technical adaptations, such as grid connections and grid reinforcements, improved operation of the grid and rules on the non-discriminatory implementation of the grid codes, which are necessary in order to integrate new producers feeding electricity produced from renewable energy sources into the interconnected grid. Those rules shall be based on objective, transparent and non-discriminatory criteria taking particular account of all the costs and benefits associated with the connection of those producers to the grid and of the particular circumstances of producers located in peripheral regions and in regions of low population density. Those rules may provide for different types of connection.

4. Where appropriate, **Contracting Parties** may require transmission system operators and distribution system operators to bear, in full or in part, the costs referred to in paragraph 3. **Contracting Parties** shall review and take the necessary measures to improve the frameworks and rules for the bearing and sharing of costs referred to in paragraph 3 by 30 June 2011 and every two years thereafter to ensure the integration of new producers as referred to in that paragraph.

5. **Contracting Parties** shall require transmission system operators and distribution system operators to provide any new producer of energy from renewable sources wishing to be connected to the system with the comprehensive and necessary information required, including:

   (a) a comprehensive and detailed estimate of the costs associated with the connection;

   (b) a reasonable and precise timetable for receiving and processing the request for grid connection;

   (c) a reasonable indicative timetable for any proposed grid connection.

**Contracting Parties** may allow producers of electricity from renewable energy sources wishing to be connected to the grid to issue a call for tender for the connection work.

6. The sharing of costs referred in paragraph 3 shall be enforced by a mechanism based on objective, transparent and non-discriminatory criteria taking into account the benefits which initially and subsequently connected producers as well as transmission system operators and distribution system operators derive from the connections.

7. **Contracting Parties** shall ensure that the charging of transmission and distribution tariffs does not discriminate against electricity from renewable energy sources, including in particular electricity from renewable energy sources produced in peripheral regions, such as island regions, and in regions of low population density. **Contracting Parties** shall ensure that the charging of transmission and distribution tariffs does not discriminate against gas from renewable energy sources.

8. **Contracting Parties** shall ensure that tariffs charged by transmission system operators and distribution system operators for the transmission and distribution of electricity from plants using renewable energy sources reflect realisable cost benefits resulting from the plant’s connection to the network. Such cost benefits could arise from the direct use of the low-voltage grid.

9. Where relevant, **Contracting Parties** shall assess the need to extend existing gas network infrastructure to facilitate the integration of gas from renewable energy sources.

10. Where relevant, **Contracting Parties** shall require transmission system operators and distribution system operators in their territory to publish technical rules in line with Article 6 of Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning the common rules for the internal market in natural gas, in particular regarding network connection rules that include gas quality, gas odoration and gas pressure requirements. **Contracting Parties** shall also require transmission and distribution system operators to publish the connection tariffs to connect renewable gas sources based on transparent and non-discriminatory criteria.

11. **Contracting Parties** in their national renewable energy action plans shall assess the necessity to build new infrastructure for district heating and cooling produced from renewable energy sources in order to achieve the 2020 national target referred to in Article 3(1). Subject to that assessment, **Contracting Parties** shall, where relevant, take steps with a view to developing a district heating infrastructure to accommodate the development of heating and cooling production from large biomass, solar and geothermal facilities.

**Article 17**

Sustainability criteria for biofuels and bioliquids

1. Irrespective of whether the raw materials were cultivated inside or outside the territory of the **Energy Community**, energy from biofuels and bioliquids shall be taken into account for the purposes referred to in points (a), (b) and (c) only if they fulfil the sustainability criteria set out in paragraphs...
2 to 6:
(a) measuring compliance with the requirements of this Directive concerning national targets;
(b) measuring compliance with renewable energy obligations;
(c) eligibility for financial support for the consumption of biofuels and bioliquids.

However, biofuels and bioliquids produced from waste and residues, other than agricultural, aquaculture, fisheries and forestry residues, need only fulfil the sustainability criteria set out in paragraph 2 in order to be taken into account for the purposes referred to in points (a), (b) and (c).

2. The greenhouse gas emission saving from the use of biofuels and bioliquids taken into account for the purposes referred to in points (a), (b) and (c) of paragraph 1 shall be at least 35%.

With effect from 1 January 2017, the greenhouse gas emission saving from the use of biofuels and bioliquids taken into account for the purposes referred to in points (a), (b) and (c) of paragraph 1 shall be at least 60% for biofuels and bioliquids produced in installations in which production started on or after 1 January 2017.

The greenhouse gas emission saving from the use of biofuels and bioliquids shall be calculated in accordance with Article 19(1).

In the case of biofuels and bioliquids produced by installations that were in operation on 23 January 2008, the first subparagraph shall apply from 1 April 2013.

3. Biofuels and bioliquids taken into account for the purposes referred to in points (a), (b) and (c) of paragraph 1 shall not be made from raw material obtained from land with high biodiversity value, namely land that had one of the following statuses in or after January 2008, whether or not the land continues to have that status:

(a) primary forest and other wooded land, namely forest and other wooded land of native species, where there is no clearly visible indication of human activity and the ecological processes are not significantly disturbed;
(b) areas designated:
(i) by law or by the relevant competent authority for nature protection purposes; or
(ii) for the protection of rare, threatened or endangered ecosystems or species recognised by international agreements or included in lists drawn up by intergovernmental organisations or the International Union for the Conservation of Nature, subject to their recognition in accordance with the minimum requirements for good agricultural and environmental condition defined pursuant to Article 6(1) of that Regulation.

unless evidence is provided that the production of that raw material did not interfere with those nature protection purposes;
(c) highly biodiverse grassland that is:
(i) natural, namely grassland that would remain grassland in the absence of human intervention and which maintains the natural species composition and ecological characteristics and processes; or
(ii) non-natural, namely grassland that would cease to be grassland in the absence of human intervention and which is species-rich and not degraded, unless evidence is provided that the harvesting of the raw material is necessary to preserve its grassland status.

4. Biofuels and bioliquids taken into account for the purposes referred to in points (a), (b) and (c) of paragraph 1 shall not be made from raw material obtained from land with high carbon stock, namely land that had one of the following statuses in January 2008 and no longer has that status:
(a) wetlands, namely land that is covered with or saturated by water permanently or for a significant part of the year;
(b) continuously forested areas, namely land spanning more than one hectare with trees higher than five metres and a canopy cover of more than 30%, or trees able to reach those thresholds in situ;
(c) land spanning more than one hectare with trees higher than five metres and a canopy cover of between 10% and 30%, or trees able to reach those thresholds in situ, unless evidence is provided that the carbon stock of the area before and after conversion is such that, when the methodology laid down in part C of Annex V is applied, the conditions laid down in paragraph 2 of this Article would be fulfilled.

The provisions of this paragraph shall not apply if, at the time the raw material was obtained, the land had the same status as it had in January 2008.

5. Biofuels and bioliquids taken into account for the purposes referred to in points (a), (b) and (c) of paragraph 1 shall not be made from raw material obtained from land that was peatland in January 2008, unless evidence is provided that the cultivation and harvesting of that raw material does not involve drainage of previously undrained soil.

6. Agricultural raw materials cultivated in the Energy Community and used for the production of biofuels and bioliquids taken into account for the purposes referred to in points (a), (b) and (c) of paragraph 1 shall be obtained in accordance with the requirements and standards under the provisions referred to under the heading “Environment” in part A and in point 9 of Annex II to Council Regulation (EC) No 73/2009 of 19 January 2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers and in accordance with the minimum requirements for good agricultural and environmental condition defined pursuant to Article 6(1) of that Regulation.

7. …

8. For the purposes referred to in points (a), (b) and (c) of paragraph 1, Contracting Parties shall not refuse to take into account, on other sustainability grounds, biofuels and bioliquids obtained in compliance with this Article.

9. …

**Article 18**

**Verification of compliance with the sustainability criteria for biofuels and bioliquids**

1. Where biofuels and bioliquids are to be taken into account for the purposes referred to in points (a), (b) and (c) of Article 17(1), **Contracting Parties** shall require economic operators to show that the sustainability criteria set out in Article 17(2) to (5) have been fulfilled. For that purpose they shall require economic operators to use a mass balance system which:

(a) allows consignments of raw material or biofuel with differing sustainability characteristics to be mixed;
(b) requires information about the sustainability characteristics and sizes of the consignments referred to in point (a) to remain assigned to the mixture; and
(c) provides for the sum of all consignments withdrawn from the mixture to be described as having the same sustainability characteristics, in the same quantities, as the sum of all consignments added to the mixture.

2. ...

3. Contracting Parties shall take measures to ensure that economic operators submit reliable information and make available to the Contracting Party, on request, the data that were used to develop the information. Contracting Parties 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. It shall evaluate the frequency and methodology of sampling and the robustness of the data.

The information referred to in the first subparagraph shall include in particular information on compliance with the sustainability criteria set out in Article 17(2) to (5), appropriate and relevant information on measures taken for soil, water and air protection, the restoration of degraded land, the avoidance of excessive water consumption in areas where water is scarce and appropriate and relevant information concerning measures taken in order to take into account the issues referred to in the second subparagraph of Article 17(7).

... The obligations laid down in this paragraph shall apply whether the biofuels or bioliquids are produced within the Energy Community or imported.

Contracting Parties shall submit to the Energy Community Secretariat, in aggregated form, the information referred to in the first subparagraph of this paragraph. The Energy Community Secretariat shall publish that information on the transparency platform referred to in Article 24 in summary form preserving the confidentiality of commercially sensitive information.

4. The Energy Community shall endeavour to conclude bilateral or multilateral agreements with third countries containing provisions on sustainability criteria that correspond to those of this Directive. ... When those agreements are concluded, due consideration shall be given to measures taken for the conservation of areas that provide, in critical situations, basic ecosystem services (such as water protection and erosion control), for soil, water and air protection, indirect land-use changes, the restoration of degraded land, the avoidance of excessive water consumption in areas where water is scarce and to the issues referred to in the second subparagraph of Article 17(7).

5. Voluntary national or international schemes setting standards for the production of biomass products must meet adequate standards of reliability, transparency and independent auditing. In the case of schemes to measure greenhouse gas emission saving, such schemes shall also comply with the methodological requirements in Annex V. Lists of areas of high biodiversity value as referred to in Article 17(3)(b)(ii) shall meet adequate standards of objectivity and coherence with internationally recognised standards and provide for appropriate appeal procedures.

6. ...

7. When an economic operator provides proof or data obtained in accordance with an agreement or scheme that has been the subject of a decision pursuant to paragraph 4, to the extent covered by that decision, a Contracting Party shall not require the supplier to provide further evidence of compliance with the sustainability criteria set out in Article 17(2) to (5) nor information on measures referred to in the second subparagraph of paragraph 3 of this Article.

8. ...

9. ...
5. ...
6. ...

7. Annex V may be adapted to technical and scientific progress, including by the addition of values for further biofuel production pathways for the same or for other raw materials and by modifying the methodology laid down in part C ...

8. Detailed definitions, including technical specifications required for the categories set out in point 9 of part C of Annex V shall be established ...

Article 20
Implementing measures

The implementing measures referred to in the second subparagraph of Article 17(3), the third subparagraph of Article 18(3), Article 18(6), Article 18(8), Article 19(5), the first subparagraph of Article 19(7), and Article 19(8) shall also take full account of the purposes of Article 7a of Directive 98/70/EC.

Article 21
Specific provisions related to energy from renewable sources in transport

1. Contracting Parties shall ensure that information is given to the public on the availability and environmental benefits of all different renewable sources of energy for transport. When the percentages of biofuels, blended in mineral oil derivatives, exceed 10% by volume, Contracting Parties shall require this to be indicated at the sales points.

2. For the purposes of demonstrating compliance with national renewable energy obligations placed on operators and the target for the use of energy from renewable sources in all forms of transport referred to in Article 3(4), the contribution made by biofuels produced from wastes, residues, non-food cellulosic material, and ligno-cellulosic material shall be considered to be twice that made by other biofuels.

Article 22
Reporting by the Contracting Parties

Contracting Parties shall submit a report to the Secretariat on progress in the promotion and use of energy from renewable sources by 31 December 2014 and every two years thereafter. This progress report should cover those points referred to in Article 22 of Directive 2009/28/EC.

The report shall detail, in particular:

(a) the sectoral (electricity, heating and cooling, and transport) and overall shares of energy from renewable sources in the preceding two calendar years and the measures taken or planned at national level to promote the growth of energy from renewable sources taking into account the indicative trajectory in part B of Annex I, in accordance with Article 5;

(b) the introduction and functioning of support schemes and other measures to promote energy from renewable sources, and any developments in the measures used with respect to those set out in the Contracting Party’s national renewable energy action plan, and information on how supported electricity is allocated to final customers for purposes of Article 3(6) of Directive 2003/54/EC;

(c) how, where applicable, the Contracting Party has structured its support schemes to take into account renewable energy applications that give additional benefits in relation to other, comparable applications, but may also have higher costs, including biofuels made from wastes, residues, non-food cellulosic material, and ligno-cellulosic material;

(d) the functioning of the system of guarantees of origin for electricity and heating and cooling from renewable energy sources and the measures taken to ensure the reliability and protection against fraud of the system;

(e) progress made in evaluating and improving administrative procedures to remove regulatory and non-regulatory barriers to the development of energy from renewable sources;

(f) measures taken to ensure the transmission and distribution of electricity produced from renewable energy sources, and to improve the framework or rules for bearing and sharing of costs referred to in Article 16(3);

(g) developments in the availability and use of biomass resources for energy purposes;

(h) changes in commodity prices and land use within the Contracting Party associated with its increased use of biomass and other forms of energy from renewable sources;

(i) the development and share of biofuels made from wastes, residues, non-food cellulosic material, and ligno-cellulosic material;

(j) the estimated impact of the production of biofuels and bioliquids on biodiversity, water resources, water quality and soil quality within the Contracting Party;

(k) the estimated net greenhouse gas emission saving due to the use of energy from renewable sources;

(l) the estimated excess production of energy from renewable sources compared to the indicative trajectory which could be transferred to other Contracting Parties, as well as the estimated potential for joint projects, until 2020;

(m) the estimated demand for energy from renewable sources to be satisfied by means other than domestic production until 2020; and

(n) information on how the share of biodegradable waste in waste used for producing energy has been estimated, and what steps have been taken to improve and verify such estimates.

2. In estimating net greenhouse gas emission saving from the use of biofuels, the Contracting Party may, for the purpose of the reports referred to in paragraph 1, use the typical values given in part A and part B of Annex V.

3. In its first report, the Contracting Party shall outline whether it intends to:

(a) establish a single administrative body responsible for processing authorisation, certification and licensing applications for renewable energy installations and providing assistance to applicants;

(b) provide for automatic approval of planning and permit applications for renewable energy installations where the authorising body has not responded within the set time limits; or

(c) indicate geographical locations suitable for exploitation of energy from renewable sources in

\[\text{footnote text} \]
land-use planning and for the establishment of district heating and cooling.

4. In each report the Contracting Party may correct the data of the previous reports.

**Article 23**

Monitoring and reporting by the Energy Community Secretariat

The Secretariat shall monitor and review the application of Directive 2009/28/EC in the Contracting Parties. It shall submit an overall progress report to the Ministerial Council for the first time by 30 June 2015, and thereafter every two years. This progress report should cover those points referred to in Article 23 of Directive 2009/28/EC.13

1. The Energy Community Secretariat shall monitor the origin of biofuels and bioliquids consumed in the Energy Community and the impact of their production, including impact as a result of a displacement, on land use in the Energy Community and the main third countries of supply. Such monitoring shall be based on Contracting Parties’ reports, submitted pursuant to Article 22(1), and those of relevant third countries, intergovernmental organisations, scientific studies and any other relevant pieces of information. The Energy Community Secretariat shall also monitor the commodity price changes associated with the use of biomass for energy and any associated positive and negative effects on food security. The Energy Community Secretariat shall monitor all installations to which Article 19(6) applies.14

2. The Energy Community Secretariat shall maintain a dialogue and exchange information with third countries and biofuel producers, consumer organisations and civil society concerning the general implementation of the measures in this Directive relating to biofuels and bioliquids. It shall, within that framework, pay particular attention to the impact biofuel production may have on food prices.

3. ... 4. In reporting greenhouse gas emission saving from the use of biofuels, the Energy Community Secretariat shall use the values reported by Contracting Parties and shall evaluate whether and how the estimate would change if co-products were accounted for using the substitution approach.

5. In its reports, the Energy Community Secretariat shall, in particular, analyse:

(a) the relative environmental benefits and costs of different biofuels, the effects of the Energy Community’s import policies thereon, the security of supply implications and the ways of achieving a balanced approach between domestic production and imports;

(b) the impact of increased demand for biofuel on sustainability in the Energy Community and in third countries, considering economic and environmental impacts, including impacts on biodiversity;

(c) the scope for identifying, in a scientifically objective manner, geographical areas of high biodiversity value that are not covered in Article 17(3);

(d) the impact of increased demand for biomass on biomass using sectors;

(e) the availability of biofuels made from waste, residues, non-food cellulosic material and lignocellulosic material;

(f) indirect land-use changes in relation to all production pathways.

The Energy Community Secretariat shall, if appropriate, propose corrective action.

6. On the basis of the reports submitted by Contracting Parties pursuant to Article 22(3), the Energy Community Secretariat shall analyse the effectiveness of measures taken by Contracting Parties on establishing a single administrative body responsible for processing authorisation, certification and licensing applications and providing assistance to applicants.

7. ...

8. For the first time by 30 June 2015, and thereafter every two years15 the Energy Community Secretariat shall present a report, addressing, in particular, the following elements:

(a) a review of the minimum greenhouse gas emission saving thresholds to apply from the dates referred to in the second subparagraph of Article 17(2), on the basis of an impact assessment taking into account, in particular, technological developments, available technologies and the availability of first and second-generation bio-fuels with a high level of greenhouse gas emission saving;

(b) with respect to the target referred to in Article 3(4), a review of:

(i) the cost-efficiency of the measures to be implemented to achieve the target;

(ii) an assessment of the feasibility of reaching the target whilst ensuring the sustainability of biofuels production in the Energy Community and in third countries, and considering economic, environmental and social impacts, including indirect effects and impacts on biodiversity, as well as the commercial availability of second-generation biofuels;

(iii) the impact of the implementation of the target on the availability of foodstuffs at affordable prices;

(iv) the commercial availability of electric, hybrid and hydrogen powered vehicles, as well as the methodology chosen to calculate the share of energy from renewable sources consumed in the transport sector;

(v) the evaluation of specific market conditions, considering, in particular, markets on which transport fuels represent more than half of the final energy consumption, and markets which are fully dependent on imported biofuels;

(c) an evaluation of the implementation of this Directive, in particular with regard to cooperation mechanisms, in order to ensure that, together with the possibility for the Contracting Parties to continue to use national support schemes referred to in Article 3(3), those mechanisms enable Contracting Parties to achieve the national targets defined in Annex I on the best cost-benefit basis, of technological developments, ...  

9. ...

10. ...

13 The text displayed here corresponds to Article 15(2) of Decision 2012/04/MC-EnC.

14 The second subparagraph of Article 19(6) of Directive 2009/28/EC (not displayed here) reads as follows: “Such a proposal [by the Commission, related to a methodology for emissions from carbon stock changes caused by indirect land-use changes] shall include the necessary safeguards to provide certainty for investment undertaken before that methodology is applied. With respect to installations that produced biofuels before the end of 2013, the application of the measures referred to in the first subparagraph shall not, until 31 December 2017, lead to biofuels produced by those installations being deemed to have failed to comply with the sustainability requirements of this Directive if they would otherwise have done so, provided that those biofuels achieve a greenhouse gas emission saving of at least 45%. This shall apply to the capacities of the installations of biofuels at the end of 2012.”

15 Article 15(2) of Decision 2012/04/MC-EnC.
Article 27
Transposition

1. Without prejudice to Article 4(1), (2) and (3), each Contracting Party shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive, as adapted by the present Decision, by 1 January 2014. They shall forthwith inform the Energy Community Secretariat thereof.

When Contracting Parties adopt measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Contracting Parties.

2. Contracting Parties shall communicate to the Energy Community Secretariat the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 10 of Decision 2012/04/MC-EnC
Guidelines


2. The relevant Guidelines, which may need to be adapted to the institutional framework of the Energy Community, shall be adopted by the Permanent High Level Group, following the procedure laid down in Article 79 of the Treaty.

Article 16 of Decision 2012/04/MC-EnC
Review based on the experience

Based on the experience and progress in compliance with the requirements of EUROSTAT methodology for energy statistics, and taking into account the reports presented by the Secretariat under Article 15(2), the Ministerial Council, based on a proposal from the European Commission, may review the scope of the adaptations provided for in the present decision.

The European Commission may make such a proposal upon duly motivated request by a Contracting Party.

Articles 28 and 29
Entry into force and Addressees

This Decision enters into force upon its adoption and is addressed to the Contracting Parties.

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Adapted by Article 2 of Decision 2012/04/MC-EnC.

The text displayed here corresponds to Article 17 of Decision 2012/04/MC-EnC.
ANNEX II
NORMALISATION RULE FOR ACCOUNTING FOR ELECTRICITY GENERATED FROM HYDROPOWER AND WIND POWER

The following rule shall be applied for the purpose of accounting for electricity generated from hydropower in a given Contracting Party:

\[ Q_{\text{norm}} = \frac{Q}{C_n} \times \frac{N}{15} \]

where:

- \( Q_{\text{norm}} \) = normalised electricity generated by all hydropower plants of the Contracting Party in year \( N \), determined for accounting purposes;
- \( Q \) = the quantity of electricity actually generated in year \( i \) by all hydropower plants of the Contracting Party in GWh, excluding production from pumped storage units using water that has previously been pumped uphill;
- \( C_n \) = the total installed capacity, net of pumped storage, of all hydropower plants of the Contracting Party at the end of year \( N \), measured in MW.

The following rule shall be applied for the purpose of accounting for electricity generated from wind power in a given Contracting Party:

\[ Q_{\text{norm}} = \frac{Q}{C_j} \times \frac{n}{15} \]

where:

- \( Q_{\text{norm}} \) = normalised electricity generated by all wind power plants of the Contracting Party in year \( N \), determined for accounting purposes;
- \( Q \) = the quantity of electricity actually generated in year \( i \) by all wind power plants of the Contracting Party in GWh;
- \( C_j \) = the total installed capacity of all the wind power plants of the Contracting Party at the end of year \( j \), measured in MW;
- \( n \) = 4 or the number of years preceding year \( N \) for which capacity and production data are available for the Contracting Party in question, whichever is lower.

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PART II ACQUIS COMMUNAUTAIRE / RENEWABLE ENERGY / Directive 2009/28/EC

ANNEX I
NATIONAL OVERALL TARGETS FOR THE SHARE OF ENERGY FROM RENEWABLE SOURCES IN GROSS FINAL CONSUMPTION OF ENERGY IN 2020 [1]

A. National overall targets

<table>
<thead>
<tr>
<th>Contracting Party</th>
<th>Share of energy from renewable sources in gross final consumption of energy, 2009 (S2009)</th>
<th>Target for share of energy from renewable sources in gross final consumption of energy, 2020 (S2020)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Albania</td>
<td>31.2%</td>
<td>38%</td>
</tr>
<tr>
<td>Bosnia and Herzegovina</td>
<td>34.0%</td>
<td>40%</td>
</tr>
<tr>
<td>Croatia</td>
<td>12.6%(^{16})</td>
<td>20%</td>
</tr>
<tr>
<td>The Former Yugoslav Republic of Macedonia</td>
<td>21.9%</td>
<td>28%</td>
</tr>
<tr>
<td>Moldova</td>
<td>11.9%</td>
<td>17%</td>
</tr>
<tr>
<td>Montenegro</td>
<td>26.3%</td>
<td>33%</td>
</tr>
<tr>
<td>Serbia</td>
<td>21.2%</td>
<td>27%</td>
</tr>
<tr>
<td>Ukraine</td>
<td>5.5%</td>
<td>11%</td>
</tr>
<tr>
<td>Kosovo(^{*})</td>
<td>18.9%</td>
<td>25%</td>
</tr>
</tbody>
</table>

B. Indicative trajectory

The indicative trajectory referred to in Article 3(2) shall consist of the following shares of energy from renewable sources:

- \( S_{2009} + 0.20 (S_{2011} - S_{2009}) \), as an average for the two-year period 2011 to 2012;
- \( S_{2009} + 0.30 (S_{2013} - S_{2009}) \), as an average for the two-year period 2013 to 2014;
- \( S_{2009} + 0.45 (S_{2015} - S_{2009}) \), as an average for the two-year period 2015 to 2016; and
- \( S_{2009} + 0.65 (S_{2017} - S_{2009}) \), as an average for the two-year period 2017 to 2018,

where

- \( S_{2009} \) = the share for that Contracting Party in 2009 as indicated in the table in part A, and
- \( S_{2010} \) = the share for that Contracting Party in 2020 as indicated in the table in part A.

[1] In order to be able to achieve the national objectives set out in this Annex, it is underlined that the State aid guidelines for environmental protection recognise the continued need for national mechanisms of support for the promotion of energy from renewable sources.

\(^{16}\) The base year for Croatia is 2005, not 2009.
\(^{*}\) This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo declaration of independence.
ANNEX III
ENERGY CONTENT OF TRANSPORT FUELS

<table>
<thead>
<tr>
<th>Fuel</th>
<th>Energy content by weight (lower calorific value, MJ/kg)</th>
<th>Energy content by volume (lower calorific value MJ/l)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bioethanol (ethanol produced from biomass)</td>
<td>27</td>
<td>21</td>
</tr>
<tr>
<td>Bio-ETBE (ethyl-tetra-butyl-ether produced on the basis of bioethanol)</td>
<td>36 (of which 37% from renewable sources)</td>
<td>27 (of which 37% from renewable sources)</td>
</tr>
<tr>
<td>Biomethanol (methanol produced from biomass, to be used as biofuel)</td>
<td>20</td>
<td>16</td>
</tr>
<tr>
<td>Bio-MTBE (methyl-tetra-butyl-ether produced on the basis of bio-methanol)</td>
<td>35 (of which 22% from renewable sources)</td>
<td>26 (of which 22% from renewable sources)</td>
</tr>
<tr>
<td>Bio-DME (dimethylether produced from biomass, to be used as biofuel)</td>
<td>28</td>
<td>19</td>
</tr>
<tr>
<td>Bio-TAFE (tertiary-amyl-ethyl-ether produced on the basis of bio-ethanol)</td>
<td>38 (of which 29% from renewable sources)</td>
<td>29 (of which 29% from renewable sources)</td>
</tr>
<tr>
<td>Biodiesel (butanol produced from biomass, to be used as biofuel)</td>
<td>33</td>
<td>27</td>
</tr>
<tr>
<td>Fischer-Tropsch diesel (a synthetic hydrocarbon or mixture of synthetic hydrocarbons produced from biomass)</td>
<td>37</td>
<td>33</td>
</tr>
<tr>
<td>Hydrotreated vegetable oil (vegetable oil thermochemically treated with hydrogen)</td>
<td>44</td>
<td>34</td>
</tr>
<tr>
<td>Pure vegetable oil (oil produced from oil plants through pressing, extraction or comparable procedures, crude or refined but chemically unmodified, when compatible with the type of engines involved and the corresponding emission requirements)</td>
<td>37</td>
<td>34</td>
</tr>
<tr>
<td>Biogas (a fuel gas produced from biomass and/or from the biodegradable fraction of waste, that can be purified to natural gas quality, to be used as biofuel, or wood gas)</td>
<td>50</td>
<td>34</td>
</tr>
<tr>
<td>Petrol</td>
<td>43</td>
<td>32</td>
</tr>
<tr>
<td>Diesel</td>
<td>43</td>
<td>36</td>
</tr>
</tbody>
</table>

ANNEX IV
CERTIFICATION OF INSTALLERS

The certification schemes or equivalent qualification schemes referred to in Article 14(3) shall be based on the following criteria:
1. The certification or qualification process shall be transparent and clearly defined by the Contracting Party or the administrative body they appoint.
2. Biomass, heat pump, shallow geothermal and solar photovoltaic and solar thermal installers shall be certified by an accredited training programme or training provider.
3. The accreditation of the training programme or provider shall be effected by Contracting Parties or administrative bodies they appoint. The accrediting body shall ensure that the training programme offered by the training provider has continuity and regional or national coverage. The training provider shall have adequate technical facilities to provide practical training, including some laboratory equipment or corresponding facilities to provide practical training. The training provider shall also offer in addition to the basic training, shorter refresher courses on topical issues, including on new technologies, to enable life-long learning in installations. The training provider may be the manufacturer of the equipment or system, institutes or associations.
4. The training leading to installer certification or qualification shall include both theoretical and practical parts. At the end of the training, the installer must have the skills required to install the relevant equipment and systems to meet the performance and reliability needs of the customer, incorporate quality craftsmanship, and comply with all applicable codes and standards, including energy and eco-labelling.
5. The training course shall end with an examination leading to a certificate or qualification. The examination shall include a practical assessment of successfully installing biomass boilers or stoves, heat pumps, shallow geothermal installations, solar photovoltaic or solar thermal installations.
6. The certification schemes or equivalent qualification schemes referred to in Article 14(3) shall take due account of the following guidelines:
(a) Accredited training programmes should be offered to installers with work experience, who have undergone, or are undergoing, the following types of training:
(i) in the case of biomass boiler and stove installers: training as a plumber, pipe fitter, heating engineer or technician of sanitary and heating or cooling equipment as a prerequisite;
(ii) in the case of heat pump installers: training as a plumber or refrigeration engineer and have basic electrical and plumbing skills (cutting pipe, soldering pipe joints, gluing pipe joints, lagging, sealing fittings, testing for leaks and installation of heating or cooling system) as a prerequisite;
(iii) in the case of a solar photovoltaic or solar thermal installer: training as a plumber or electrician and have plumbing, electrical and roofing skills, including knowledge of soldering pipe joints, gluing pipe joints, sealing fittings, testing for plumbing leaks, ability to connect wiring, familiar with basic roof materials, flashing and sealing methods as a prerequisite; or
(iv) a vocational training scheme to provide an installer with adequate skills corresponding to a three years education in the skills referred to in point (a), (b) or (c) including both classroom and workplace learning.
(iv) for solar photovoltaic systems in particular, the ability to adapt the electrical design, including determining design currents, selecting appropriate conductor types and ratings for each electrical circuit, determining appropriate size, ratings and locations for all associated equipment and subsystems and selecting an appropriate interconnection point.

(e) The installer certification should be time restricted, so that a refresher seminar or event would be necessary for continued certification.
ANNEX V
RULES FOR CALCULATING THE GREENHOUSE GAS IMPACT OF BIOFUELS, BIOLIQUIDS AND THEIR FOSSIL FUEL COMPARATORS

A. Typical and default values for biofuels if produced with no net carbon emissions from land-use change

<table>
<thead>
<tr>
<th>Biofuel production pathway</th>
<th>Typical greenhouse gas emission saving</th>
<th>Default greenhouse gas emission saving</th>
</tr>
</thead>
<tbody>
<tr>
<td>sugar beet ethanol</td>
<td>61%</td>
<td>52%</td>
</tr>
<tr>
<td>wheat ethanol (process fuel not specified)</td>
<td>32%</td>
<td>16%</td>
</tr>
<tr>
<td>wheat ethanol (natural gas as process fuel in CHP plant)</td>
<td>45%</td>
<td>34%</td>
</tr>
<tr>
<td>wheat ethanol (natural gas as process fuel in conventional boiler)</td>
<td>53%</td>
<td>47%</td>
</tr>
<tr>
<td>waste wood ethanol</td>
<td>69%</td>
<td>69%</td>
</tr>
<tr>
<td>corn (maize) ethanol, Community produced (natural gas as process fuel in CHP plant)</td>
<td>56%</td>
<td>49%</td>
</tr>
<tr>
<td>sugar cane ethanol</td>
<td>71%</td>
<td>71%</td>
</tr>
<tr>
<td>the part from renewable sources of ethyl-tertio-butyl-ether (ETBE)</td>
<td>Equal to that of ethanol production pathway used</td>
<td></td>
</tr>
<tr>
<td>the part from renewable sources of tertiary-amyl-ethyl-ether (TAAE)</td>
<td>Equal to that of ethanol production pathway used</td>
<td></td>
</tr>
<tr>
<td>rape seed biodiesel</td>
<td>45%</td>
<td>38%</td>
</tr>
<tr>
<td>sunflower biodiesel</td>
<td>58%</td>
<td>51%</td>
</tr>
<tr>
<td>soybean biodiesel</td>
<td>40%</td>
<td>31%</td>
</tr>
<tr>
<td>palm oil biodiesel (process not specified)</td>
<td>36%</td>
<td>19%</td>
</tr>
<tr>
<td>palm oil biodiesel (process with methane capture at oil mill)</td>
<td>62%</td>
<td>56%</td>
</tr>
<tr>
<td>waste vegetable or animal (*) oil biodiesel</td>
<td>88%</td>
<td>83%</td>
</tr>
<tr>
<td>hydrotreated vegetable oil from rape seed</td>
<td>51%</td>
<td>47%</td>
</tr>
<tr>
<td>hydrotreated vegetable oil from sunflower</td>
<td>65%</td>
<td>62%</td>
</tr>
<tr>
<td>hydrotreated vegetable oil from palm oil (process not specified)</td>
<td>40%</td>
<td>26%</td>
</tr>
<tr>
<td>hydrotreated vegetable oil from palm oil (process with methane capture at oil mill)</td>
<td>68%</td>
<td>65%</td>
</tr>
<tr>
<td>pure vegetable oil from rape seed</td>
<td>58%</td>
<td>57%</td>
</tr>
<tr>
<td>biogas from municipal organic waste as compressed natural gas</td>
<td>80%</td>
<td>73%</td>
</tr>
<tr>
<td>biogas from wet manure as compressed natural gas</td>
<td>84%</td>
<td>81%</td>
</tr>
<tr>
<td>biogas from dry manure as compressed natural gas</td>
<td>86%</td>
<td>82%</td>
</tr>
</tbody>
</table>


B. Estimated typical and default values for future biofuels that were not on the market or were on the market only in negligible quantities in January 2008, if produced with no net carbon emissions from land-use change

<table>
<thead>
<tr>
<th>Biofuel production pathway</th>
<th>Typical greenhouse gas emission saving</th>
<th>Default greenhouse gas emission saving</th>
</tr>
</thead>
<tbody>
<tr>
<td>wheat straw ethanol</td>
<td>87%</td>
<td>85%</td>
</tr>
<tr>
<td>waste wood ethanol</td>
<td>80%</td>
<td>74%</td>
</tr>
<tr>
<td>farmed wood ethanol</td>
<td>76%</td>
<td>70%</td>
</tr>
<tr>
<td>waste wood Fischer-Tropsch diesel</td>
<td>95%</td>
<td>95%</td>
</tr>
<tr>
<td>farmed wood Fischer-Tropsch diesel</td>
<td>93%</td>
<td>93%</td>
</tr>
<tr>
<td>waste wood dimethylether (DME)</td>
<td>95%</td>
<td>95%</td>
</tr>
<tr>
<td>farmed wood DME</td>
<td>92%</td>
<td>92%</td>
</tr>
<tr>
<td>waste wood methanol</td>
<td>94%</td>
<td>94%</td>
</tr>
<tr>
<td>farmed wood methanol</td>
<td>91%</td>
<td>91%</td>
</tr>
<tr>
<td>the part from renewable sources of methyl-tertio-butyl-ether (MTBE)</td>
<td>Equal to that of methanol production pathway used</td>
<td></td>
</tr>
</tbody>
</table>

C. Methodology
1. Greenhouse gas emissions from the production and use of transport fuels, biofuels and bioliquids shall be calculated as:

\[ E = e_{ee} + e_l + e_p + e_{td} + e_u - e_{esca} - e_{ccr} - e_{eee} \]

where

- \( E \) = total emissions from the use of the fuel;
- \( e_{ee} \) = emissions from the extraction or cultivation of raw materials;
- \( e_l \) = annualised emissions from carbon stock changes caused by land-use change;
- \( e_p \) = emissions from processing;
- \( e_{td} \) = emissions from transport and distribution;
- \( e_u \) = emissions from the fuel in use;
- \( e_{esca} \) = emission saving from soil carbon accumulation via improved agricultural management;
- \( e_{ccr} \) = emission saving from carbon capture and geological storage;
- \( e_{eee} \) = emission saving from carbon capture and replacement; and
- \( e_{eee} \) = emission saving from excess electricity from cogeneration.

Emissions from the manufacture of machinery and equipment shall not be taken into account.

2. Greenhouse gas emissions from fuels, \( E \), shall be expressed in terms of grams of CO$_2$ equivalent per MJ of fuel, gCO$_2$/MJ.

3. By derogation from point 2, for transport fuels, values calculated in terms of gCO$_2$/MJ may be
adjusted to take into account differences between fuels in useful work done, expressed in terms of km/kWh. Such adjustments shall be made only where evidence of the differences in useful work done is provided.

4. Greenhouse gas emission saving from biofuels and bioliquids shall be calculated as:

\[ \text{SAVING} = \frac{(EF - EB)}{EF}, \]

where

\[ \text{EF} = \text{total emissions from the fossil fuel comparator}; \]

\[ \text{EB} = \text{total emissions from the biofuel or bioliquid; and} \]

5. For the purpose of calculating CO\(_2\) equivalence, those gases shall be valued as follows:

\[ \text{CO}_2 : 1 \]
\[ \text{N}_2\text{O} : 296 \]
\[ \text{CH}_4 : 23 \]

6. Emissions from the extraction of raw materials, eec, shall include emissions from the extraction or cultivation process itself; from the collection of raw materials; from waste and leakages; and from the production of chemicals or products used in extraction or cultivation. Capture of CO\(_2\) in the cultivation of raw materials shall be excluded. Certified reductions of greenhouse gas emissions from flaring at oil production sites anywhere in the world shall be deducted. Estimates of emissions from cultivation may be derived from the use of averages calculated for smaller geographical areas than those used in the calculation of the default values, as an alternative to using actual values.

7. Annualised emissions from carbon stock changes caused by land-use change, el, shall be calculated by dividing total emissions equally over 20 years. For the calculation of those emissions the following rule shall be applied:

\[ e_l = (CS_k - CS_s) \times 3.664 \times 1/20 \times 1/P - e_s (\%) \]

where

\[ e_l = \text{annualised greenhouse gas emissions from carbon stock change due to land-use change (measured as mass of CO}_2\text{-equivalent per unit biofuel energy)}; \]

\[ CS_k = \text{the carbon stock per unit area associated with the reference land use (measured as mass of carbon per unit area, including both soil and vegetation). The reference land use shall be the land use in January 2008 or 20 years before the raw material was obtained, whichever was the later;} \]

\[ CS_s = \text{the carbon stock per unit area associated with the actual land use (measured as mass of carbon per unit area, including both soil and vegetation). In cases where the carbon stock accumulate over more than one year, the value attributed to CS}_s \text{ shall be the estimated stock per unit area after 20 years or when the crop reaches maturity, whichever the earlier,} \]

\[ P = \text{the productivity of the crop (measured as biofuel or bioliquid energy per unit area per year); and} \]

\[ e_s = \text{bonus of 29 gCO}_2\text{eq/MJ biofuel of bioliquid if biomass is obtained from restored degraded land under the conditions provided for in point 8.} \]

8. The bonus of 29 gCO\(_2\)eq/MJ shall be attributed if evidence is provided that the land:

(a) was not in use for agriculture or any other activity in January 2008; and

(b) falls into one of the following categories:

(i) severely degraded land, including such land that was formerly in agricultural use;

(ii) heavily contaminated land.

The bonus of 29 gCO\(_2\)eq/MJ shall apply for a period of up to 10 years from the date of conversion of the land to agricultural use, provided that a steady increase in carbon stocks as well as a sizable reduction in erosion phenomena for land falling under (i) are ensured and that soil contamination for land falling under (ii) is reduced.

9. The categories referred to in point 8(b) are defined as follows:

(a) "severely degraded land" means land that, for a significant period of time, has either been significantly salinated or presented significantly low organic matter content and has been severely eroded;

(b) "heavily contaminated land" means land that is unfit for the cultivation of food and feed due to soil contamination.

Such land shall include land that has been the subject of a Commission decision in accordance with the fourth subparagraph of Article 18(4).\(^{20}\)


11. Emissions from processing, ep, shall include emissions from the processing itself; from waste and leakages; and from the production of chemicals or products used in processing.

In accounting for the consumption of electricity not produced within the fuel production plant, the greenhouse gas emission intensity of the production and distribution of that electricity shall be assumed to be equal to the average emission intensity of the production and distribution of electricity in a defined region. By derogation from this rule, producers may use an average value for an individual electricity production plant for electricity produced by that plant, if that plant is not connected to the electricity grid.

12. Emissions from transport and distribution, etc, shall include emissions from the transport and storage of raw and semi-finished materials and from the storage and distribution of finished materials. Emissions from transport and distribution to be taken into account under point 6 shall not be covered by this point.

13. Emissions from the fuel in use, eu, shall be taken to be zero for biofuels and bioliquids.

14. Emission saving from carbon capture and geological storage eccs, that have not already been accounted for in ep, shall be limited to emissions avoided through the capture and sequestration of emitted CO\(_2\), directly related to the extraction, transport, processing and distribution of fuel.

15. Emission saving from carbon capture and replacement, eccr, shall be limited to emissions avoided through the capture of CO\(_2\), of which the carbon originates from biomass and which is used to replace fossil-derived CO\(_2\) used in commercial products and services.

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\(^{20}\) Under Article 3(1)(f) of Decision D/2012/04/MC-EnC, the fourth subparagraph of Article 18(4) of the Directive is not applicable.
16. Emission saving from excess electricity from cogeneration, eee, shall be taken into account in relation to the excess electricity produced by fuel production systems that use cogeneration except where the fuel used for the cogeneration is a co-product other than an agricultural crop residue. In accounting for that excess electricity, the size of the cogeneration unit shall be assumed to be the minimum necessary for the cogeneration unit to supply the heat that is needed to produce the fuel. The greenhouse gas emission saving associated with that excess electricity shall be taken to equal the amount of greenhouse gas that would be emitted when an equal amount of electricity was generated in a power plant using the same fuel as the cogeneration unit.

17. Where a fuel production process produces, in combination, the fuel for which emissions are being calculated and one or more other products (co-products), greenhouse gas emissions shall be divided between the fuel or its intermediate product and the co-products in proportion to their energy content (determined by lower heating value in the case of co-products other than electricity).

18. For the purposes of the calculation referred to in point 17, the emissions to be divided shall be $e_{ee} + e_{el} +$ those fractions of $e_{et}$ and $e_{eee}$ that take place up to and including the process step at which a co-product is produced. If any allocation to co-products has taken place at an earlier process step in the life-cycle, the fraction of those emissions assigned in the last such process step to the intermediate fuel product shall be used for this purpose instead of the total of those emissions.

In the case of biofuels and bioliquids, all co-products, including electricity that does not fall under the scope of point 16, shall be taken into account for the purposes of that calculation, except for agricultural crop residues, including straw, bagasse, husks, cobs and nut shells. Co-products that have a negative energy content shall be considered to have an energy content of zero for the purpose of the calculation.

Wastes, agricultural crop residues, including straw, bagasse, husks, cobs and nut shells, and residues from processing, including crude glycerine (glycerine that is not refined), shall be considered to have zero life-cycle greenhouse gas emissions up to the process of collection of those materials.

In the case of fuels produced in refineries, the unit of analysis for the purposes of the calculation referred to in point 17 shall be the refinery.

19. For biofuels, for the purposes of the calculation referred to in point 4, the fossil fuel comparator $EF$ shall be the latest available actual average emissions from the fossil part of petrol and diesel consumed in the Energy Community as reported under Directive 98/70/EC. If no such data are available, the value used shall be 83.8 g CO$_2$/MJ.

For bioliquids used for electricity production, for the purposes of the calculation referred to in point 4, the fossil fuel comparator $EF$ shall be 91 g CO$_2$/MJ.

For bioliquids used for heat production, for the purposes of the calculation referred to in point 4, the fossil fuel comparator $EF$ shall be 77 g CO$_2$/MJ.

For bioliquids used for cogeneration, for the purposes of the calculation referred to in point 4, the fossil fuel comparator $EF$ shall be 85 g CO$_2$/MJ.

---

D. Disaggregated default values for biofuels and bioliquids

Disaggregated default values for cultivation: "e*" as defined in part C of this Annex

<table>
<thead>
<tr>
<th>Biofuel production pathway</th>
<th>Typical greenhouse gas emissions (gCO$_2$/MJ)</th>
<th>Default greenhouse gas emissions (gCO$_2$/MJ)</th>
</tr>
</thead>
<tbody>
<tr>
<td>sugar beet ethanol</td>
<td>12</td>
<td>12</td>
</tr>
<tr>
<td>wheat ethanol</td>
<td>23</td>
<td>23</td>
</tr>
<tr>
<td>corn (maize) ethanol, Community produced</td>
<td>20</td>
<td>20</td>
</tr>
<tr>
<td>sugar cane ethanol</td>
<td>14</td>
<td>14</td>
</tr>
<tr>
<td>the part from renewable sources of ETBE</td>
<td>Equal to that of ethanol production pathway used</td>
<td></td>
</tr>
<tr>
<td>the part from renewable sources of TAAE</td>
<td>Equal to that of ethanol production pathway used</td>
<td></td>
</tr>
<tr>
<td>rape seed biodiesel</td>
<td>29</td>
<td>29</td>
</tr>
<tr>
<td>sunflower biodiesel</td>
<td>18</td>
<td>18</td>
</tr>
<tr>
<td>soybean biodiesel</td>
<td>19</td>
<td>19</td>
</tr>
<tr>
<td>palm oil biodiesel</td>
<td>14</td>
<td>14</td>
</tr>
<tr>
<td>waste vegetable or animal (*) oil biodiesel</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>hydrotreated vegetable oil from rape seed</td>
<td>30</td>
<td>30</td>
</tr>
<tr>
<td>hydrotreated vegetable oil from sunflower</td>
<td>18</td>
<td>18</td>
</tr>
<tr>
<td>hydrotreated vegetable oil from palm oil</td>
<td>15</td>
<td>15</td>
</tr>
<tr>
<td>pure vegetable oil from rape seed</td>
<td>30</td>
<td>30</td>
</tr>
<tr>
<td>biogas from municipal organic waste as compressed natural gas</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>biogas from wet manure as compressed natural gas</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>biogas from dry manure as compressed natural gas</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

(*) Not including animal oil produced from animal by-products classified as category 3 material in accordance with Regulation (EC) No 1774/2002.
Disaggregated default values for processing (including excess electricity): “e\text{p} – e\text{ee}\text{e}” as defined in part C of this Annex

<table>
<thead>
<tr>
<th>Biofuel and bioliquid production pathway</th>
<th>Typical greenhouse gas emissions (gCO\text{2e} q/MJ)</th>
<th>Default greenhouse gas emissions (gCO\text{2e} q/MJ)</th>
</tr>
</thead>
<tbody>
<tr>
<td>sugar beet ethanol</td>
<td>19</td>
<td>26</td>
</tr>
<tr>
<td>wheat ethanol (process not specified)</td>
<td>32</td>
<td>45</td>
</tr>
<tr>
<td>wheat ethanol (lignite as process fuel in CHP plant)</td>
<td>32</td>
<td>45</td>
</tr>
<tr>
<td>wheat ethanol (natural gas as process fuel in conventional boiler)</td>
<td>21</td>
<td>30</td>
</tr>
<tr>
<td>wheat ethanol (natural gas as process fuel in CHP plant)</td>
<td>14</td>
<td>19</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Biofuel and bioliquid production pathway</th>
<th>Typical greenhouse gas emissions (gCO\text{2e} q/MJ)</th>
<th>Default greenhouse gas emissions (gCO\text{2e} q/MJ)</th>
</tr>
</thead>
<tbody>
<tr>
<td>wheat ethanol</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>corn (maize) ethanol, Community produced (natural gas as process fuel in CHP plant)</td>
<td>15</td>
<td>21</td>
</tr>
<tr>
<td>sugar cane ethanol</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>the part from renewable sources of ETBE</td>
<td>Equal to that of ethanol production pathway used</td>
<td>Equal to that of ethanol production pathway used</td>
</tr>
<tr>
<td>the part from renewable sources of TAEE</td>
<td>Equal to that of ethanol production pathway used</td>
<td>Equal to that of ethanol production pathway used</td>
</tr>
<tr>
<td>rape seed biodiesel</td>
<td>16</td>
<td>22</td>
</tr>
<tr>
<td>sunflower biodiesel</td>
<td>16</td>
<td>22</td>
</tr>
<tr>
<td>soybean biodiesel</td>
<td>18</td>
<td>26</td>
</tr>
<tr>
<td>palm oil biodiesel (process not specified)</td>
<td>35</td>
<td>49</td>
</tr>
<tr>
<td>palm oil biodiesel (process with methane capture at oil mill)</td>
<td>13</td>
<td>18</td>
</tr>
<tr>
<td>waste vegetable or animal oil biodiesel</td>
<td>9</td>
<td>13</td>
</tr>
<tr>
<td>hydrotreated vegetable oil from rape seed</td>
<td>10</td>
<td>13</td>
</tr>
<tr>
<td>hydrotreated vegetable oil from sunflower</td>
<td>10</td>
<td>13</td>
</tr>
<tr>
<td>hydrotreated vegetable oil from palm oil (process not specified)</td>
<td>30</td>
<td>42</td>
</tr>
<tr>
<td>hydrotreated vegetable oil from palm oil (process with methane capture at oil mill)</td>
<td>7</td>
<td>9</td>
</tr>
<tr>
<td>pure vegetable oil from rape seed</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>biogas from municipal organic waste as compressed natural gas</td>
<td>14</td>
<td>20</td>
</tr>
<tr>
<td>biogas from wet manure as compressed natural gas</td>
<td>8</td>
<td>11</td>
</tr>
<tr>
<td>biogas from dry manure as compressed natural gas</td>
<td>8</td>
<td>11</td>
</tr>
</tbody>
</table>

Disaggregated default values for transport and distribution: “e\text{a}” as defined in part C of this Annex

<table>
<thead>
<tr>
<th>Biofuel and bioliquid production pathway</th>
<th>Typical greenhouse gas emissions (gCO\text{2e} q/MJ)</th>
<th>Default greenhouse gas emissions (gCO\text{2e} q/MJ)</th>
</tr>
</thead>
<tbody>
<tr>
<td>sugar beet ethanol</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>wheat ethanol</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>corn (maize) ethanol, Community produced (natural gas as process fuel in CHP plant)</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>sugar cane ethanol</td>
<td>9</td>
<td>9</td>
</tr>
<tr>
<td>the part from renewable sources of ETBE</td>
<td>Equal to that of ethanol production pathway used</td>
<td>Equal to that of ethanol production pathway used</td>
</tr>
<tr>
<td>the part from renewable sources of TAEE</td>
<td>Equal to that of ethanol production pathway used</td>
<td>Equal to that of ethanol production pathway used</td>
</tr>
<tr>
<td>rape seed biodiesel</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>sunflower biodiesel</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>soybean biodiesel</td>
<td>13</td>
<td>13</td>
</tr>
<tr>
<td>palm oil biodiesel</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>waste vegetable or animal oil biodiesel</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>hydrotreated vegetable oil from rape seed</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>hydrotreated vegetable oil from sunflower</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>hydrotreated vegetable oil from palm oil</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>pure vegetable oil from rape seed</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>biogas from municipal organic waste as compressed natural gas</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>biogas from wet manure as compressed natural gas</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>biogas from dry manure as compressed natural gas</td>
<td>4</td>
<td>4</td>
</tr>
</tbody>
</table>

Total for cultivation, processing, transport and distribution...
### Biofuel and bioliquid production pathway

<table>
<thead>
<tr>
<th>Product</th>
<th>Typical greenhouse gas emissions (gCO₂em/MJ)</th>
<th>Default greenhouse gas emissions (gCO₂em/MJ)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sugar beet ethanol</td>
<td>33</td>
<td>40</td>
</tr>
<tr>
<td>Wheat ethanol (process not specified)</td>
<td>57</td>
<td>70</td>
</tr>
<tr>
<td>Wheat ethanol (lignite as process fuel in CHP plant)</td>
<td>57</td>
<td>70</td>
</tr>
<tr>
<td>Wheat ethanol (natural gas as process fuel in conventional boiler)</td>
<td>46</td>
<td>55</td>
</tr>
<tr>
<td>Wheat ethanol (natural gas as process fuel in CHP plant)</td>
<td>39</td>
<td>44</td>
</tr>
<tr>
<td>Wheat ethanol (straw as process fuel in CHP plant)</td>
<td>26</td>
<td>26</td>
</tr>
<tr>
<td>Corn (maize) ethanol, Community produced (natural gas as process fuel in CHP plant)</td>
<td>37</td>
<td>43</td>
</tr>
<tr>
<td>Sugar cane ethanol</td>
<td>24</td>
<td>24</td>
</tr>
<tr>
<td>The part from renewable sources of ETBE</td>
<td>Equal to that of ethanol production pathway used</td>
<td></td>
</tr>
<tr>
<td>The part from renewable sources of TAME</td>
<td>Equal to that of ethanol production pathway used</td>
<td></td>
</tr>
<tr>
<td>Rape seed biodiesel</td>
<td>46</td>
<td>52</td>
</tr>
<tr>
<td>Sunflower biodiesel</td>
<td>35</td>
<td>41</td>
</tr>
<tr>
<td>Soybean biodiesel</td>
<td>50</td>
<td>58</td>
</tr>
<tr>
<td>Palm oil biodiesel (process not specified)</td>
<td>54</td>
<td>68</td>
</tr>
<tr>
<td>Palm oil biodiesel (process with methane capture at oil mill)</td>
<td>32</td>
<td>37</td>
</tr>
<tr>
<td>Waste vegetable or animal oil biodiesel</td>
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</tr>
<tr>
<td>Hydrotreated vegetable oil from rape seed</td>
<td>41</td>
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</tr>
<tr>
<td>Hydrotreated vegetable oil from sunflower</td>
<td>29</td>
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</tr>
<tr>
<td>Hydrotreated vegetable oil from palm oil (process not specified)</td>
<td>50</td>
<td>62</td>
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<tr>
<td>Hydrotreated vegetable oil from palm oil (process with methane capture at oil mill)</td>
<td>27</td>
<td>29</td>
</tr>
<tr>
<td>Pure vegetable oil from rape seed</td>
<td>35</td>
<td>36</td>
</tr>
<tr>
<td>Biogas from municipal organic waste as compressed natural gas</td>
<td>17</td>
<td>23</td>
</tr>
<tr>
<td>Biogas from wet manure as compressed natural gas</td>
<td>13</td>
<td>16</td>
</tr>
<tr>
<td>Biogas from dry manure as compressed natural gas</td>
<td>12</td>
<td>15</td>
</tr>
</tbody>
</table>

### Disaggregated default values for cultivation: *eₚ* – *eₑₑ* as defined in part C of this Annex

<table>
<thead>
<tr>
<th>Product</th>
<th>Typical greenhouse gas emissions (gCO₂em/MJ)</th>
<th>Default greenhouse gas emissions (gCO₂em/MJ)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wheat straw ethanol</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Waste wood ethanol</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Farmed wood ethanol</td>
<td>6</td>
<td>6</td>
</tr>
<tr>
<td>Waste wood Fischer-Tropsch diesel</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Farmed wood Fischer-Tropsch diesel</td>
<td>4</td>
<td>4</td>
</tr>
<tr>
<td>Waste wood DME</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Farmed wood DME</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>Waste wood methanol</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Farmed wood methanol</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>The part from renewable sources of MTBE</td>
<td>Equal to that of methanol production pathway</td>
<td></td>
</tr>
</tbody>
</table>

### Disaggregated default values for processing (including excess electricity): *eₑₑ* – *eₑₑ* as defined in part C of this Annex

<table>
<thead>
<tr>
<th>Product</th>
<th>Typical greenhouse gas emissions (gCO₂em/MJ)</th>
<th>Default greenhouse gas emissions (gCO₂em/MJ)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wheat straw ethanol</td>
<td>5</td>
<td>7</td>
</tr>
<tr>
<td>Wood ethanol</td>
<td>12</td>
<td>17</td>
</tr>
<tr>
<td>Wood Fischer-Tropsch diesel</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Wood DME</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Wood methanol</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>The part from renewable sources of MTBE</td>
<td>Equal to that of methanol production pathway</td>
<td></td>
</tr>
</tbody>
</table>
ANNEX VI

MINIMUM REQUIREMENTS FOR THE HARMONISED TEMPLATE FOR NATIONAL RENEWABLE ENERGY ACTION PLANS

1. Expected final energy consumption:
   Gross final energy consumption in electricity, transport and heating and cooling for 2020 taking into account the effects of energy efficiency policy measures.

2. National sectoral 2020 targets and estimated shares of energy from renewable sources in electricity, heating and cooling and transport:

3. Measures for achieving the targets:
   (a) overview of all policies and measures concerning the promotion of the use of energy from renewable sources;
   (b) specific measures to fulfil the requirements of Articles 13, 14 and 16, including the need to extend or reinforce existing infrastructure to facilitate the integration of the quantities of energy from renewable sources needed to achieve the 2020 national target, measures to accelerate the authorisation procedures, measures to reduce non-technological barriers and measures concerning support schemes for the promotion of the use of energy from renewable sources in electricity applied by the Contracting Party or a group of Contracting Parties;
   (c) target share of energy from renewable sources in heating and cooling in 2020;
   (d) estimated trajectory for the share of energy from renewable sources in heating and cooling;
   (e) estimated trajectory for the share of energy from renewable sources in transport;
   (f) specific measures on the promotion of the use of energy from biomass, especially for new biomass mobilisation taking into account:
   (ii) measures to increase biomass availability, taking into account other biomass users (agriculture and forest-based sectors);
   (g) planned use of statistical transfers between Contracting Parties and planned participation in joint projects with other Contracting Parties and third countries:
   (i) the estimated excess production of energy from renewable sources compared to the indicative trajectory which could be transferred to other Contracting Parties;
   (ii) the estimated potential for joint projects;
(iii) the estimated demand for energy from renewable sources to be satisfied by means other than domestic production.

4. Assessments:
(a) the total contribution expected of each renewable energy technology to meet the mandatory 2020 targets and the indicative trajectory for the shares of energy from renewable sources in electricity, heating and cooling and transport;
(b) the total contribution expected of the energy efficiency and energy saving measures to meet the mandatory 2020 targets and the indicative trajectory for the shares of energy from renewable sources in electricity, heating and cooling and transport.

ANNEX VII

ACCOUNTING OF ENERGY FROM HEAT PUMPS

The amount of aerothermal, geothermal or hydrothermal energy captured by heat pumps to be considered energy from renewable sources for the purposes of this Directive, ERES, shall be calculated in accordance with the following formula:

\[ E_{\text{RES}} = Q_{\text{usable}} \times (1 - 1/\text{SPF}) \]

where
- \( Q_{\text{usable}} \) = the estimated total usable heat delivered by heat pumps fulfilling the criteria referred to in Article 5(4), implemented as follows: Only heat pumps for which SPF > 1.15 * 1/\( \eta \) shall be taken into account,
- SPF = the estimated average seasonal performance factor for those heat pumps,
- \( \eta \) is the ratio between total gross production of electricity and the primary energy consumption for electricity production and shall be calculated as an EU average based on Eurostat data.


The adaptations made by Ministerial Council Decision 2009/05/MC-EnC are highlighted in **bold and blue**.

Whereas:

(1) In the Community there is a need for improved energy end-use efficiency, managed demand for energy and promotion of the production of renewable energy, as there is relatively limited scope for any other influence on energy supply and distribution conditions in the short to medium term, either through the building of new capacity or through the improvement of transmission and distribution. This Directive thus contributes to improved security of supply.

(2) Improved energy end-use efficiency will also contribute to the reduction of primary energy consumption, to the mitigation of CO₂ and other greenhouse gas emissions and thereby to the prevention of dangerous climate change. These emissions continue to increase, making it more and more difficult to meet the Kyoto commitments. Human activities attributed to the energy sector cause as much as 78% of the Community greenhouse gas emissions. The Sixth Community Environment Action Programme, laid down by Decision No 1600/2002/EC of the European Parliament and of the Council, envisages that further reductions are required to achieve the United Nations Framework Convention on Climate Change long-term objective of stabilising greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. Therefore, concrete policies and measures are necessary.

(3) Improved energy end-use efficiency will make it possible to exploit potential cost-effective energy savings in an economically efficient way. Energy efficiency improvement measures could realise these energy savings and thus help the Community reduce its dependence on energy imports. Furthermore, a move towards more energy-efficient technologies can boost the Community’s innovativeness and competitiveness as underlined in the Lisbon strategy.

(4) The Communication from the Commission on the implementation of the first phase of the European Climate Change Programme listed a directive on energy demand management as one of the priority climate change measures to be taken at Community level.


(6) This Directive is without prejudice to Article 3 of Directive 2003/54/EC, which requires that Member States ensure that all household customers and, where Member States deem it appropriate, small enterprises, enjoy universal service, that is the right to be supplied with electricity of a specified quality within their territory at reasonable, easily and clearly comparable, and transparent prices.

(7) The aim of this Directive is not only to continue to promote the supply side of energy services,
but also to create stronger incentives for the demand side. The public sector in each Member State should thus set a good example regarding investments, maintenance and other expenditure on energy-using equipment, energy services and other energy efficiency improvement measures. Therefore, the public sector should be encouraged to integrate energy efficiency improvement considerations into its investments, depreciation allowances and operating budgets. Furthermore, the public sector should endeavour to use energy efficiency criteria in tendering procedures for public procurement, as a practice allowed under Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 and Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, the principle of which was confirmed by the judgment of 17 September 2002 of the Court of Justice in Case C-513/99. In view of the fact that administrative structures vary widely between Member States, the different types of measures which the public sector may take should be taken at the appropriate national, regional and/or local level.

(8) There is a large variety of ways in which the public sector can fulfil its exemplary role: besides the applicable measures listed in Annex III and VI, the public sector may, for example, initiate energy-efficiency pilot projects and stimulate energy-efficient behaviour of employees. In order to achieve the desired multiplier effect, a number of such actions should be communicated in an effective way to individual citizens and/or to companies, whilst emphasising the cost benefits.

(9) The liberalisation of the retail markets for natural gas, heating, and in some cases even district heating and cooling, has almost exclusively led to improved efficiency and lower costs on the energy generation, transformation and distribution side. This liberalisation has not led to significant competition in products and services which could have resulted in improved energy efficiency on the demand side.

(10) In its Resolution of 7 December 1998 on energy efficiency in the European Community [10], the Council endorsed a target for the Community as a whole to improve energy intensity of final consumption by an additional one percentage point per annum up to the year 2010.

(11) Member States should therefore adopt national indicative targets to promote energy end use efficiency and to ensure the continued growth and viability of the market for energy services, and thus contribute to the implementation of the Lisbon strategy. The adoption of national indicative targets to promote energy end-use efficiency provides effective synergy with other Community legislation that will, when applied, contribute to the achievement of those national targets.

(12) This Directive requires action to be undertaken by the Member States, with the fulfilment of its objectives depending on the effects that such action has on the final consumers of energy. The end result of Member States’ action is dependent on many external factors which influence the behaviour of consumers as regards their energy use and their willingness to implement energy saving methods and use energy saving devices. Therefore, even though Member States commit themselves to making efforts to achieve the target figure of 9%, the national energy savings target is indicative in nature and entails no legally enforceable obligation for Member States to achieve it.

(13) In aiming to achieve their national indicative targets, Member States may set themselves a target higher than 9%.

(14) The improvement of energy efficiency will benefit from an exchange of information, experience and best practice at all levels, including, in particular, the public sector. Therefore, Member States should list measures undertaken in the context of this Directive, and review their effect as far as possible, in energy efficiency action plans.

(15) When striving for energy efficiency on the basis of technological, behavioural and/or economic changes, substantial negative environmental impact should be avoided, and social priorities should be respected.

(16) The funding of supply and the costs of the demand side have an important role to play in energy services. The creation of funds to subsidise the implementation of energy efficiency programmes and other energy efficiency improvement measures and to promote the development of a market for energy services can constitute an appropriate tool for the provision of non-discriminatory start-up funding in such a market.

(17) Improved energy end-use efficiency can be achieved by increasing the availability of and demand for energy services or by other energy efficiency improvement measures.

(18) In order to realise the energy savings potential in certain market segments where energy audits are generally not sold commercially, such as households, Member States should ensure the availability of energy audits.

(19) The Council Conclusions of 5 December 2000 list the promotion of energy services through the development of a Community strategy as a priority area for action to improve energy efficiency.

(20) Energy distributors, distribution system operators and retail energy sales companies can improve energy efficiency in the Community if the energy services they market include efficient end-use, such as indoor thermal comfort, domestic hot water, refrigeration, product manufacturing, illumination and motive power. Profit maximisation for energy distributors, distribution system operators and retail energy sales companies thus becomes more closely related to selling energy services to as many customers as possible than to selling as much energy as possible to each customer. Member States should endeavour to avoid any distortion of competition in this area, in order to guarantee a level playing field between all energy service providers; they can, however, delegate this task to the national regulator.

(21) Taking full account of the national organisation of market actors in the energy sector and in order to favour the implementation of energy services and of the measures to improve energy efficiency provided for in this Directive, Member States should have the option of making it compulsory for energy distributors, distribution system operators or retail energy sales companies or, where appropriate, for two or all of these market actors, to provide such services and to participate in such measures.

(22) The use of third-party financing arrangements is an innovative practice that should be stimulated. In these, the beneficiary avoids investment costs by using part of the financial value of energy savings that result from the third party’s investment to repay the third party’s investment and interest costs.

(23) With a view to making tariffs and other regulations for net-bound energy more conducive to efficient energy end-use, unjustifiable volume-driving incentives should be removed.

(24) The promotion of the market for energy services can be achieved by a variety of means, including non-financial ones.

(25) The energy services, energy efficiency improvement programmes and other energy efficiency improvement measures put into effect to reach the energy savings target may be supported and/
or implemented through voluntary agreements between stakeholders and public sector bodies appointed by the Member States.

(26) The voluntary agreements which are covered by this Directive should be transparent and contain, where applicable, information on at least the following issues: quantified and staged objectives, monitoring and reporting.

(27) The motor fuel and transport sectors have an important role to play regarding energy efficiency and energy savings.

(28) In defining energy efficiency improvement measures, account should be taken of efficiency gains obtained through the widespread use of cost-effective technological innovations, for instance electronic metering. In the context of this Directive, competitively priced individual meters include accurate calorimeters.

(29) In order to enable final consumers to make better-informed decisions as regards their individual energy consumption, they should be provided with a reasonable amount of information thereon and with other relevant information, such as information on available energy efficiency improvement measures, comparative final consumer profiles or objective technical specifications for energy-using equipment, which may include “Factor Four” or similar equipment. It is recalled that some such valuable information should already be made available to final customers under Article 3(6) of Directive 2003/54/EC. In addition, consumers should be actively encouraged to check their own meter readings regularly.

(30) All types of information relating to energy-efficiency should be widely disseminated in an appropriate form, including through billing, to relevant target audiences. This can include information on financial and legal frameworks, communication and promotion campaigns, and the widespread exchange of best practice at all levels.


(32) Since the objectives of this Directive, namely to promote energy end-use efficiency and to develop a market for energy services, cannot be sufficiently achieved by the Member States and can be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. 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 those objectives.

(33) 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.

CHAPTER I

SUBJECT MATTER AND SCOPE

Article 1

Purpose

The purpose of this Directive is to enhance the cost-effective improvement of energy end-use efficiency in the Contracting Parties by:

(a) providing the necessary indicative targets as well as mechanisms, incentives and institutional, financial and legal frameworks to remove existing market barriers and imperfections that impede the efficient end use of energy;

(b) creating the conditions for the development and promotion of a market for energy services and for the delivery of other energy efficiency improvement measures to final consumers.

Article 2

Scope

This Directive shall apply to:

(a) providers of energy efficiency improvement measures, energy distributors, distribution system operators and retail energy sales companies. However, Contracting Parties may exclude small distributors, small distribution system operators and small retail energy sales companies from the application of Articles 6 and 13;

(b) final customers. However, this Directive shall not apply to those undertakings involved in categories of activities listed in Annex I to Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community;

(c) the armed forces, only to the extent that its application does not cause any conflict with the nature and primary aim of the activities of the armed forces and with the exception of material used exclusively for military purposes.

Article 3

Definitions

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

(a) “energy”: all forms of commercially available energy, including electricity, natural gas (including liquefied natural gas), liquefied petroleum gas, any fuel for heating and cooling (including district heating and cooling), coal and lignite, peat, transport fuels (excluding aviation and maritime bunker fuels) and biomass as defined in Directive 2001/77/EC of the European Parliament and of the Council of 27 September 2001 on the promotion of electricity produced from renewable energy sources in the internal electricity market;

(b) “energy efficiency”: a ratio between an output of performance, service, goods or energy, and
an input of energy;
(c) "energy efficiency improvement": an increase in energy end-use efficiency as a result of technological, behavioural and/or economic changes;
(d) "energy savings": an amount of saved energy determined by measuring and/or estimating consumption before and after implementation of one or more energy efficiency improvement measures, whilst ensuring normalisation for external conditions that affect energy consumption;
(e) "energy service": the physical benefit, utility or good derived from a combination of energy with energy efficient technology and/or with action, which may include the operations, maintenance and control necessary to deliver the service, which is delivered on the basis of a contract and in normal circumstances has proven to lead to verifiable and measurable or estimable energy efficiency improvement and/or primary energy savings;
(f) "energy efficiency mechanisms": general instruments used by governments or government bodies to create a supportive framework or incentives for market actors to provide and purchase energy services and other energy efficiency improvement measures;
(g) "energy efficiency improvement programmes": activities that focus on groups of final customers and that normally lead to verifiable and measurable or estimable energy efficiency improvement;
(h) "energy efficiency improvement measures": all actions that normally lead to verifiable and measurable or estimable energy efficiency improvement;
(i) "energy service company" (ESCO): a natural or legal person that delivers energy services and/or other energy efficiency improvement measures in a user’s facility or premises, and accepts some degree of financial risk in so doing. The payment for the services delivered is based (either wholly or in part) on the achievement of energy efficiency improvements and on the meeting of the other agreed performance criteria;
(j) "energy performance contracting": a contractual arrangement between the beneficiary and the provider (normally an ESCO) of an energy efficiency improvement measure, where investments in that measure are paid for in relation to a contractually agreed level of energy efficiency improvement;
(k) "third-party financing": a contractual arrangement involving a third party - in addition to the energy supplier and the beneficiary of the energy efficiency improvement measure - that provides the capital for that measure and charges the beneficiary a fee equivalent to a part of the energy savings achieved as a result of the energy efficiency improvement measure. That third party may or may not be an ESCO;
(l) "energy audit": a systematic procedure to obtain adequate knowledge of the existing energy consumption profile of a building or group of buildings, of an industrial operation and/or installation or of a private or public service, identify and quantify cost effective energy savings opportunities, and report the findings;
(m) "financial instruments for energy savings": all financial instruments such as funds, subsidies, tax rebates, loans, third-party financing, energy performance contracting, guarantee of energy savings contracts, energy outsourcing and other related contracts that are made available to the market place by public or private bodies in order to cover partly or totally the initial project cost for implementing energy efficiency improvement measures;
(n) "final customer": a natural or legal person that purchases energy for his own end use;
(o) "energy distributor": a natural or legal person responsible for transporting energy with a view to its delivery to final customers and to distribution stations that sell energy to final customers. This definition excludes electricity and natural gas distribution system operators, covered in point (p);
(p) "distribution system operator": a natural or legal person responsible for operating, ensuring the maintenance of and, if necessary, developing the distribution system of electricity or natural gas 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 electricity or natural gas;
(q) "retail energy sales company": a natural or legal person that sell energy to final customers;
(r) "small distributor, small distribution system operator and small retail energy sales company": a natural or legal person that distributes or sells energy to final customers, and that distributes or sells less than the equivalent of 75 GWh energy per year or employs fewer than 10 persons or whose annual turnover and/or annual balance sheet total does not exceed EUR 2000000;
(s) "white certificates": certificates issued by independent certifying bodies confirming the energy savings claims of market actors as a consequence of energy efficiency improvement measures.

**CHAPTER II**

**ENERGY SAVINGS TARGETS**

**Article 4**

**General target**

1. Contracting Parties shall adopt and aim to achieve an overall national indicative energy savings target of 9% for the ninth year of application of this Directive, to be reached by way of energy services and other energy efficiency improvement measures. Contracting Parties shall take cost-effective, practicable and reasonable measures designed to contribute towards achieving this target.

This national indicative energy savings target shall be set and calculated in accordance with the provisions and methodology set out in Annex I. For purposes of comparison of energy savings and for conversion to a comparable unit, the conversion factors set out in Annex II shall apply unless the use of other conversion factors can be justified. Examples of eligible energy efficiency improvement measures are given in Annex III. A general framework for the measurement and verification of energy savings is given in Annex IV. The national energy savings in relation to the national indicative energy savings target shall be measured as from 1 January 2008.

2. For the purpose of the first Energy Efficiency Action Plan (EEAP) to be submitted in accordance with Article 14, each Contracting Party shall establish an intermediate national indicative energy savings target for the third year of application of this Directive, and provide an overview of its strategy for the achievement of the intermediate and overall targets. This intermediate target shall be realistic and consistent with the overall national indicative energy savings target referred to in paragraph 1.

The Secretariat shall give an opinion on whether the intermediate national indicative target appears realistic and consistent with the overall target.
3. Each Contracting Party shall draw up programmes and measures to improve energy efficiency.

4. Contracting Parties shall assign to one or more new or existing authorities or agencies the overall control and responsibility for overseeing the framework set up in relation to the target mentioned in paragraph 1. These bodies shall thereafter verify the energy savings as a result of energy services and other energy efficiency improvement measures, including existing national energy efficiency improvement measures, and report the results.

5. After having reviewed and reported on the first three years of application of this Directive, the Commission shall examine whether it is appropriate to come forward with a proposal for a directive to further develop the market approach in energy efficiency improvement by means of white certificates.

**Article 5**

**Energy end-use efficiency in the public sector**

1. Contracting Parties shall ensure that the public sector fulfils an exemplary role in the context of this Directive. To this end, they shall communicate effectively the exemplary role and actions of the public sector to citizens and/or companies, as appropriate.

2. Contracting Parties shall facilitate and enable the exchange of best practices between public sector bodies, for example on energy-efficient public procurement practices, both at the national and international level; to this end, the organisation referred to in paragraph 2 shall cooperate with the Secretariat with regard to the exchange of best practice as referred to in Article 7(3).

3. Contracting Parties shall assign to a new or existing organisation or organisations the administrative, management and implementing responsibility for the integration of energy efficiency improvement requirements as set out in paragraph 1. These may be the same authorities or agencies as those referred to in Article 4(4).
sures when the objectives are not achieved or are not likely to be achieved. With a view to ensuring transparency, the voluntary agreements shall be made available to the public and published prior to application to the extent that applicable confidentiality provisions allow, and contain an invitation for stakeholders to comment.

3. Contracting Parties shall ensure that there are sufficient incentives, equal competition and level playing fields for market actors other than energy distributors, distribution system operators and retail energy sales companies, such as ESCOs, installers, energy advisors and energy consultants, to independently offer and implement the energy services, energy audits and energy efficiency improvement measures described in paragraph 2(a)(i) and (ii).

4. Under paragraphs 2 and 3, Contracting Parties may place responsibilities on distribution system operators only if this is consistent with the requirements relating to the unbundling of accounts laid down in Article 19(3) of Directive 2003/54/EC and in Article 17(3) of Directive 2003/55/EC.

5. The implementation of this Article shall be without prejudice to derogations or exemptions granted under Directives 2003/54/EC and 2003/55/EC.

Article 7
Availability of information

1. Contracting Parties shall ensure that information on energy efficiency mechanisms and financial and legal frameworks adopted with the aim of reaching the national indicative energy savings target is transparent and widely disseminated to the relevant market actors.

2. Contracting Parties shall ensure that greater efforts are made to promote energy end-use efficiency. They shall establish appropriate conditions and incentives for market operators to provide more information and advice to final customers on energy end-use efficiency.

3. The Secretariat shall ensure that information on best energy-saving practices in Contracting Parties is exchanged and widely disseminated.

Article 8
Availability of qualification, accreditation and certification schemes

With a view to achieving a high level of technical competence, objectivity and reliability, Contracting Parties shall ensure, where they deem it necessary, the availability of appropriate qualification, accreditation and/or certification schemes for providers of energy services, energy audits and energy efficiency improvement measures as referred to in Article 6(2)(a) (i) and (ii).

Article 9
Financial instruments for energy savings

1. Contracting Parties shall repeal or amend national legislation and regulations, other than those of a clearly fiscal nature, that unnecessarily or disproportionately impede or restrict the use of financial instruments for energy savings in the market for energy services or other energy efficiency improvement measures.

2. Contracting Parties shall make model contracts for those financial instruments available to existing and potential purchasers of energy services and other energy efficiency improvement measures in the public and private sectors. These may be issued by the authority or agency referred to in Article 4(4).

Article 10
Energy efficient tariffs and other regulations for net-bound energy

1. Contracting Parties shall ensure the removal of those incentives in transmission and distribution tariffs that unnecessarily increase the volume of distributed or transmitted energy. In this respect, in accordance with Article 3(2) of Directive 2003/54/EC and with Article 3(2) of Directive 2003/55/EC, Contracting Parties may impose public service obligations relating to energy efficiency on undertakings operating in the electricity and gas sectors respectively.

2. Contracting Parties may permit components of schemes and tariff structures with a social aim, provided that any disruptive effects on the transmission and distribution system are kept to the minimum necessary and are not disproportionate to the social aim.

Article 11
Funds and funding mechanisms

1. Without prejudice to Articles 87 and 88 of the Treaty, Contracting Parties may establish a fund or funds to subsidise the delivery of energy efficiency improvement programmes and other energy efficiency improvement measures and to promote the development of a market for energy efficiency improvement measures. Such measures shall include the promotion of energy auditing, financial instruments for energy savings and, where appropriate, improved metering and informative billing. The funds shall also target end-use sectors with higher transaction costs and higher risks.

2. If established, the funds may provide for grants, loans, financial guarantees and/or other types of financing that guarantee results.

3. The funds shall be open to all providers of energy efficiency improvement measures, such as ESCOs, independent energy advisors, energy distributors, distribution system operators, retail energy sales companies and installers. Contracting Parties may decide to open the funds to all final customers. Tendering or equivalent methods which ensure complete transparency shall be carried out in full compliance with applicable public procurement regulations. Contracting Parties shall ensure that such funds complement, and do not compete with, commercially-financed energy efficiency improvement measures.

Article 12
Energy audits

1. Contracting Parties shall ensure the availability of efficient, high-quality energy audit schemes which are designed to identify potential energy efficiency improvement measures and which are carried out in an independent manner, to all final consumers, including smaller domestic, commercial and small and medium-sized industrial customers.
2. Market segments that have higher transaction costs and non-complex facilities may be reached by other measures such as questionnaires and computer programmes made available on the Internet and/or sent to customers by mail. **Contracting Parties** shall ensure the availability of energy audits for market segments where they are not sold commercially, taking into account Article 11(1).

3. Certification in accordance with Article 7 of Directive 2002/91/EC of the European Parliament and of the Council of 16 December 2002 on the energy performance of buildings [15] shall be regarded as equivalent to an energy audit meeting the requirements set out in paragraphs 1 and 2 of this Article and as equivalent to an energy audit as referred to in Annex V(e) to this Directive. Furthermore, audits resulting from schemes based on voluntary agreements between organisations of stakeholders and an appointed body, supervised and followed up by the **Contracting Party** concerned in accordance with Article 6(2)(b) of this Directive, shall likewise be considered as having fulfilled the requirements set out in paragraphs 1 and 2 of this Article.

**Article 13**

**Metering and informative billing of energy consumption**

1. **Contracting Parties** shall ensure that, in so far as it is technically possible, financially reasonable and proportionate in relation to the potential energy savings, final customers for electricity, natural gas, district heating and/or cooling and domestic hot water are provided with competitively priced individual meters that accurately reflect the final customer’s actual energy consumption and that provide information on actual time of use.

When an existing meter is replaced, such competitively priced individual meters shall always be provided, unless this is technically impossible or not cost-effective in relation to the estimated potential savings in the long term. When a new connection is made in a new building or a building undergoes major renovations, as set out in Directive 2002/91/EC, such competitively priced individual meters shall always be provided.

2. **Contracting Parties** shall ensure that, where appropriate, billing performed by energy distributors, distribution system operators and retail energy sales companies is based on actual energy consumption, and is presented in clear and understandable terms. Appropriate information shall be made available with the bill to provide final customers with a comprehensive account of current energy costs. Billing on the basis of actual consumption shall be performed frequently enough to enable customers to regulate their own energy consumption.

3. **Contracting Parties** shall ensure that, where appropriate, the following information is made available to final customers in clear and understandable terms by energy distributors, distribution system operators or retail energy sales companies in or with their bills, contracts, transactions, and/or receipts at distribution stations:

(a) current actual prices and actual consumption of energy;
(b) comparisons of the final customer’s current energy consumption with consumption for the same period in the previous year, preferably in graphic form;
(c) wherever possible and useful, comparisons with an average normalised or benchmarked user of energy in the same user category;
(d) contact information for consumers’ organisations, energy agencies or similar bodies, including website addresses, from which information may be obtained on available energy efficiency improvement measures, comparative end-user profiles and/or objective technical specifications for energy-using equipment.

**CHAPTER IV**

**FINAL PROVISIONS**

**Article 14**

**Reports**

1. **Contracting Parties** that already use, for whatever purpose, calculation methods for measuring energy savings similar to those described in Annex IV at the time of the entry into force of this Directive may submit information at the appropriate level of detail to the **Secretariat**. Such submissions shall take place as soon as possible, preferably not later than **30 June 2010**. This information will enable the **Secretariat** to take due account of existing practices.

2. **Contracting Parties** shall submit to the Secretariat the following EEAPs:
   - a first EEAP not later than **30 June 2010**;
   - a second EEAP not later than **30 June 2013**;
   - a third EEAP not later than **30 June 2016**.

All EEAPs shall describe the energy efficiency improvement measures planned to reach the targets set out in Article 4(1) and (2), as well as to comply with the provisions on the exemplary role of the public sector and provision of information and advice to final customers set out in Articles 5(1) and 7(2) respectively.

The second and third EEAPs shall:
   - include a thorough analysis and evaluation of the preceding EEAP;
   - include the final results with regard to the fulfilment of the energy savings targets set out in Article 4(1) and (2);
   - include plans for - and information on the anticipated effects of - additional measures which address any existing or expected shortfall vis-à-vis the target;
   - in accordance with Article 15(4), use and gradually increase the use of harmonised efficiency indicators and benchmarks, both for the evaluation of past measures and estimated effects of planned future measures;
   - be based on available data, supplemented with estimates.

3. Not later than 17 May 2008, the Commission shall publish a cost/benefit impact assessment examining the linkages between EU standards, regulations, policies and measures on end use energy efficiency.

4. The EEAPs shall be assessed by the **Secretariat**:
   - the first EEAP shall be reviewed before **1 January 2011**;
   - the second EEAP shall be reviewed before **1 January 2014**;
   - the third EEAPs shall be reviewed before **1 January 2017**.
5. On the basis of the EEAPs, the Secretariat shall assess the extent to which Contracting Parties have made progress towards achieving their national indicative energy savings targets. The Secretariat shall publish reports with its conclusions:
- on the first EEAPs before 1 January 2011;
- on the second EEAPs before 1 January 2014;
- on the third EEAPs before 1 January 2017.

These reports shall include information on related action at Community level, including legislation currently in force and future legislation. The reports shall take into account the benchmarking system referred to in Article 15(4), identify best practices, identify cases where Contracting Parties are not making enough progress, and may contain recommendations.

The second report shall be followed, as appropriate and where necessary, by proposals to the Ministerial Council for additional measures including a possible extension of the period of application of targets. If the report concludes that insufficient progress has been made towards achieving the national indicative targets, these proposals shall address the level and nature of the targets.

Further to the specific monitoring duties conferred on it by Directive 2006/32/EC as adapted, the Secretariat shall monitor and review the implementation of Directive 2006/32/EC in the Contracting Parties and shall submit a progress report to the Permanent High Level Group by 30 June 2012.¹

Article 15
Review and adaptation of the framework

1. The values and calculation methods referred to in Annexes II, III, IV and V shall be adapted to technical progress in accordance with the procedure referred to in Article 16(2).
2. Before 1 January 2008, the Commission, in accordance with the procedure referred to in Article 16(2), shall further refine and complement as required points 2 to 6 of Annex IV, whilst respecting the general framework set out in Annex IV.
3. Before 1 January 2012, the Commission, in accordance with the procedure referred to in Article 16(2), shall raise the percentage of harmonised bottom-up calculations used in the harmonised calculation model referred to in point 1 of Annex IV, without prejudice to those Contracting Party schemes that already use a higher percentage. The new harmonised calculation model with a significantly higher percentage of bottom-up calculations shall first be used as from 1 January 2012.

Wherever practicable and possible, the measurement of total savings over the total period of application of the Directive shall use this harmonised calculation model, without prejudice to those Contracting Party schemes that use a higher percentage of bottom-up calculations.

4. Not later than 30 June 2008, the Commission, in accordance with the procedure set out in Article 16(2), shall develop a set of harmonised energy efficiency indicators and benchmarks based upon them, taking into account available data or data that can be collected in a cost-effective manner for each Contracting Party. For the development of these harmonised energy efficiency indicators and benchmarks the Commission shall use as a reference guide the indicative list set out in Annex V. Contracting Parties shall gradually integrate these indicators and benchmarks into the statistical data included in their EEAPs as referred to in Article 14, and use them as one of the tools at their disposal to decide on future priority areas in the EEAPs.

Not later than 17 May 2011, the Commission shall present to the European Parliament and the Council a report on the progress in setting indicators and benchmarks.

Article 16
Committee

1. The Commission shall be assisted by a Committee.
2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

3. The Committee shall adopt its rules of procedure.

Article 17
Repeal

Directive 93/76/EEC is hereby repealed.

Article 18
Transposition

1. Contracting Parties shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 31 December 2011, with the exception of the provisions of Article 14(1), (2) and (4), for which the date of transposition shall be, at the latest 31 December 2009. They shall forthwith inform the Secretariat thereof.

When Contracting Parties adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Contracting Parties.

2. Contracting Parties shall communicate to the Secretariat the text of the main provisions of national law which they adopt in the field covered by this Directive.

Articles 19 and 20
Entry into force and Addressees

This Decision enters into force upon its adoption and is addressed to the Contracting Parties.

¹ Article 1(4) of Decision 2009/05/MC-EnC.

² The text displayed here corresponds to Article 4 of Decision 2009/05/MC-EnC.
ANNEX I

METHODOLOGY FOR CALCULATING THE NATIONAL INDICATIVE ENERGY SAVINGS TARGET

The methodology used for calculating the national indicative energy savings target set out in Article 4 shall be the following:

1. **Contracting Parties** shall use the annual final inland energy consumption of all energy users within the scope of this Directive for the most recent five-year period previous to the implementation of this Directive for which official data are available, to calculate an annual average amount of consumption. This final energy consumption shall be the amount of energy distributed or sold to final customers during the five-year period, not adjusted for degree days, structural changes or production changes.

On the basis of this annual average amount of consumption, the national indicative energy savings target shall be calculated once and the resulting absolute amount of energy to be saved applied for the total duration of this Directive.

The national indicative energy savings target shall:

(a) consist of 9% of the annual average amount of consumption referred to above;

(b) be measured after the ninth year of application of this Directive;

(c) be the result of cumulative annual energy savings achieved throughout the nine-year application period of this Directive;

(d) be reached by way of energy services and other energy efficiency improvement measures.

This methodology for measuring energy savings ensures that the total energy savings prescribed by this Directive are a fixed amount, and thus independent of future GDP growth and of any future increase in energy consumption.

2. The national indicative energy savings target shall be expressed in absolute terms in GWh, or equivalent, calculated in accordance with Annex II.

3. Energy savings in a particular year following the entry into force of this Directive that result from energy efficiency improvement measures initiated in a previous year not earlier than 1995 and that have a lasting effect may be taken into account in the calculation of the annual energy savings. In certain cases, where circumstances can justify it, measures initiated before 1995 but not earlier than 1991 may be taken into account. Measures of a technological nature should either have been updated to take account of technological progress, or be assessed in relation to the benchmark for such measures. The Commission shall provide guidelines on how the effect of all such energy efficiency improving measures should be measured or estimated, based, wherever possible, on existing Community legislation, such as Directive 2004/8/EC of the European Parliament and of the Council of 11 February 2004 on the promotion of cogeneration based on a useful heat demand in the internal energy market [1] and Directive 2002/91/EC.

In all cases, the resulting energy savings must still be verifiable and measurable or estimable, in accordance with the general framework in Annex IV.

---

ANNEX II

ENERGY CONTENT OF SELECTED FUELS FOR END USE - CONVERSION TABLE

<table>
<thead>
<tr>
<th>Energy Community</th>
<th>kj (NCV)</th>
<th>kgoe (NCV)</th>
<th>kWh (NCV)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 kg coke</td>
<td>28500</td>
<td>0.676</td>
<td>7.917</td>
</tr>
<tr>
<td>1 kg hard coal</td>
<td>1720 – 30700</td>
<td>0.411 – 0.733</td>
<td>4.778 – 8.528</td>
</tr>
<tr>
<td>1 kg brown coal briquettes</td>
<td>20000</td>
<td>0.478</td>
<td>5.556</td>
</tr>
<tr>
<td>1 kg black lignite</td>
<td>10500 – 21000</td>
<td>0.251 – 0.502</td>
<td>2.917 – 5.833</td>
</tr>
<tr>
<td>1 kg brown coal</td>
<td>5600 – 10500</td>
<td>0.134 – 0.251</td>
<td>1.556 – 2.917</td>
</tr>
<tr>
<td>1 kg oil shale</td>
<td>8000 – 9000</td>
<td>0.191 – 0.215</td>
<td>2.222 – 2.500</td>
</tr>
<tr>
<td>1 kg peat</td>
<td>7800 – 13800</td>
<td>0.186 – 0.330</td>
<td>2.167 – 3.833</td>
</tr>
<tr>
<td>1 kg peat briquettes</td>
<td>16000 – 16800</td>
<td>0.382 – 0.401</td>
<td>4.444 – 4.667</td>
</tr>
<tr>
<td>1 kg residual fuel (heavy oil)</td>
<td>40000</td>
<td>0.955</td>
<td>11.111</td>
</tr>
<tr>
<td>1 kg light fuel oil</td>
<td>42300</td>
<td>1.010</td>
<td>11.750</td>
</tr>
<tr>
<td>1 kg motor spirit (petrol)</td>
<td>44000</td>
<td>1.051</td>
<td>12.222</td>
</tr>
<tr>
<td>1 kg paraffin</td>
<td>40000</td>
<td>0.955</td>
<td>11.111</td>
</tr>
<tr>
<td>1 kg liquefied petroleum gas</td>
<td>46000</td>
<td>1.099</td>
<td>12.778</td>
</tr>
<tr>
<td>1 kg natural gas (1)</td>
<td>47200</td>
<td>1.126</td>
<td>13.10</td>
</tr>
<tr>
<td>1 kg liquefied natural gas</td>
<td>45190</td>
<td>1.079</td>
<td>12.553</td>
</tr>
<tr>
<td>1 kg wood (25% humidity) (2)</td>
<td>13800</td>
<td>0.330</td>
<td>3.833</td>
</tr>
<tr>
<td>1 kg pellets/wood bricks</td>
<td>16800</td>
<td>0.401</td>
<td>4.667</td>
</tr>
<tr>
<td>1 kg waste</td>
<td>7400 – 10700</td>
<td>0.177 – 0.256</td>
<td>2.056 – 2.972</td>
</tr>
<tr>
<td>1 kg MI derived heat</td>
<td>1000</td>
<td>0.024</td>
<td>0.278</td>
</tr>
<tr>
<td>1 kWh electrical energy</td>
<td>3600</td>
<td>0.086</td>
<td>1 (3)</td>
</tr>
</tbody>
</table>

Source: Eurostat

[1] 93% methane.

[2] **Contracting Parties** may apply other values depending on the type of wood most used in the respective **Contracting Party**.

[3] For savings in kWh electricity **Contracting Parties** may apply a default co-efficient of 2.5 reflecting the estimated 40% average EU generation efficiency during the target period. **Contracting Parties** may apply a different co-efficient provided they can justify it.

(1) **Contracting Parties** may apply different conversion factors if these can be justified.
ANNEX III

INDICATIVE LIST OF EXAMPLES OF ELIGIBLE ENERGY EFFICIENCY IMPROVEMENT MEASURES

This Annex provides examples of areas in which energy efficiency improvement programmes and other energy efficiency improvement measures may be developed and implemented in the context of Article 4.

To be taken into account, these energy efficiency improvement measures must result in energy savings that can be clearly measured and verified or estimated in accordance with the guidelines in Annex IV, and their impacts on energy savings must not already be counted in other specific measures. The following lists are not exhaustive but are intended to provide guidance.

Examples of eligible energy efficiency improvement measures:

Residential and tertiary sectors
(a) heating and cooling (e.g. heat pumps, new efficient boilers, installation/efficient update of district heating/cooling systems);
(b) insulation and ventilation (e.g. wall cavity and roof insulation, double/triple glazing of windows, passive heating and cooling);
(c) hot water (e.g. installation of new devices, direct and efficient use in space heating, washing machines);
(d) lighting (e.g. new efficient bulbs and ballasts, digital control systems, use of motion detectors for lighting systems in commercial buildings);
(e) cooking and refrigeration (e.g. new efficient devices, heat recovery systems);
(f) other equipment and appliances (e.g. combined heat and power appliances, new efficient devices, time control for optimised energy use, stand-by loss reduction, installation of capacitors to reduce reactive power, transformers with low losses);
(g) domestic generation of renewable energy sources, whereby the amount of purchased energy is reduced (e.g. solar thermal applications, domestic hot water, solar-assisted space heating and cooling);

Industry sector
(h) product manufacturing processes (e.g. more efficient use of compressed air, condensate and switches and valves, use of automatic and integrated systems, efficient stand-by modes);
(i) motors and drives (e.g. increase in the use of electronic controls, variable speed drives, integrated application programming, frequency conversion, electrical motor with high efficiency);
(j) fans, variable speed drives and ventilation (e.g. new devices/systems, use of natural ventilation);
(k) demand response management (e.g. load management, peak shaving control systems);
(l) high-efficiency cogeneration (e.g. combined heat and power appliances);

Transport sector
(m) mode of travel used (e.g. promotion of energy-efficient vehicles, energy-efficient use of vehicles including tyre pressure adjustment schemes, energy efficiency devices and add-on devices for vehicles, fuel additives which improve energy efficiency, high-lubricity oils and low-resistance tyres);
(n) modal shifts of travel (e.g. car free home/office transportation arrangements, car sharing, modal shifts from more energy-consuming modes of transport to less energy-consuming ones, per passenger-km or tonne-km);
(o) car-free days;

Cross-sectoral measures
(p) standards and norms that aim primarily at improving the energy efficiency of products and services, including buildings;
(q) energy labelling schemes;
(r) metering, intelligent metering systems such as individual metering instruments managed by remote, and informative billing;
(s) training and education that lead to application of energy-efficient technology and/or techniques;

Horizontal measures
(t) regulations, taxes etc. that have the effect of reducing energy end-use consumption;
(u) focused information campaigns that promote energy efficiency improvement and energy efficiency improvement measures.

ANNEX IV

GENERAL FRAMEWORK FOR MEASUREMENT AND VERIFICATION OF ENERGY SAVINGS

1. Energy savings measurements and calculations and their normalisation

1.1. Measuring energy savings

General
In measuring the realised energy savings as set out in Article 4 with a view to capturing the overall improvement in energy efficiency and to ascertaining the impact of individual measures, a harmonised calculation model which uses a combination of top-down and bottom-up calculation methods shall be used to measure the annual improvements in energy efficiency for the EEAPs referred to in Article 14.

In developing the harmonised calculation model in accordance with Article 15(2), the Committee shall aim to use, to the extent possible, data which are already routinely provided by Eurostat and/or the national statistical agencies.

Top-down calculations
A top-down calculation method means that the amount of energy savings is calculated using the national or larger-scale aggregated sectoral levels of energy savings as the starting point. Adjustments of the annual data are then made for extraneous factors such as degree days, structural changes, product mix, etc. to derive a measure that gives a fair indication of total energy efficiency improvement, as described in point 1.2. This method does not provide exact measurements at a detailed level nor does it show cause and effect relationships between measures and their resulting energy savings.
However, it is usually simpler and less costly and is often referred to as "energy efficiency indicators" because it gives an indication of developments.

In developing the top-down calculation method used in this harmonised calculation model, the Committee shall base its work, to the extent possible, on existing methodologies such as the ODEX model.

**Bottom-up calculations**

A bottom-up calculation method means that energy savings obtained through the implementation of a specific energy efficiency improvement measure are measured in kilowatt-hours (kWh), in Joules (J) or in kilogram oil equivalent (kgoe) and added to energy savings results from other specific energy efficiency improvement measures. The authorities or agencies referred to in Article 4(4) will ensure that double counting of energy savings, which results from a combination of energy efficiency improvement measures (including mechanisms), is avoided. For the bottom-up calculation method, data and methods referred to in points 2.1 and 2.2 may be used.

Before 1 January 2008, the Commission shall develop a harmonised bottom-up model. This model shall cover a level between 20 and 30% of the annual final inland energy consumption for sectors falling within the scope of this Directive, subject to due consideration of the factors referred to in points (a), (b) and (c) below.

Until 1 January 2012, the Commission shall continue to develop this harmonised bottom-up model, which shall cover a significantly higher level of the annual final inland energy consumption for sectors falling within the scope of this Directive, subject to due consideration of the factors referred to in points (a), (b) and (c) below.

In the development of the harmonised bottom-up model, the Commission shall take the following factors into account and justify its decision accordingly:

- (a) experience with the harmonised calculation model during its first years of application;
- (b) expected potential increase in accuracy as a result of a larger share of bottom-up calculations;
- (c) estimated potential added cost and/or administrative burden.

In developing this harmonised bottom-up model in accordance with Article 15(2), the Committee shall aim to use standardised methods which entail a minimum of administrative burden and cost, notably by using the measurement methods referred to in points 2.1 and 2.2 and by focusing on those sectors where the harmonised bottom-up model can be most cost efficiently applied.

**Contracting Parties** that so wish may use further bottom-up measurements in addition to the part prescribed by the harmonised bottom-up model subject to the agreement of the Commission, in accordance with the procedure referred to in Article 16(2), on the basis of a description of the methodology presented by the **Contracting Party** concerned.

If bottom-up calculations are not available for certain sectors, top-down indicators or mixtures of top-down and bottom-up calculations shall be used in the reports to the Commission, subject to the agreement of the Commission, in accordance with the procedure referred to in Article 16(2). In particular, when assessing requests to this effect within the context of the first EEAP described in Article 14(2), the Commission shall demonstrate the appropriate flexibility. Some top-down calculations will be necessary to measure the impact of measures implemented after 1995 (and in certain cases as early as 1991) that continue to have impact.

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2.2. Data and methods based on estimates

Simple engineering estimated data: Non-inspection

Simple engineering estimated data calculation without on-site inspection is the most common method for obtaining data for measuring deemed energy savings. Data may be estimated using engineering principles, without using on-site data, but with assumptions based on equipment specifications, performance characteristics, operation profiles of measures installed and statistics, etc.

Enhanced engineering estimated data: Inspection

Energy data may be calculated on the basis of information obtained by an external expert during an audit of, or other type of visit to, one or several targeted sites. On this basis, more sophisticated algorithms/simulation models could be developed and be applied to a larger population of sites (e.g. buildings, facilities, vehicles). This type of measurement can often be used to complement and calibrate simple engineering estimated data.

3. How to deal with uncertainty

All the methods listed in point 2 may entail some degree of uncertainty. Uncertainty may derive from:

(a) instrumentation errors: these typically occur because of errors in specifications given by the product manufacturer;

(b) modelling errors: these typically refer to errors in the model used to estimate parameters for the data collected;

(c) sampling errors: these typically refer to errors resulting from the fact that a sample of units was observed rather than the entire set of units under study.

Uncertainty may also derive from planned and unplanned assumptions; these are typically associated with estimates, stipulations and/or the use of engineering data. The occurrence of errors is also related to the chosen system of data collection that is outlined in points 2.1 and 2.2. A further specification of uncertainty is advised.

Contracting Parties may choose to use the method of quantified uncertainty when reporting on the targets set out in this Directive. Quantified uncertainty shall then be expressed in a statistically meaningful way, declaring both accuracy and confidence level. For example, “the quantifiable error is found with 90% confidence to be ± 20%”.

If the method of quantified uncertainty is used, Contracting Parties are also to take into account that the acceptable level of uncertainty required in energy savings calculations is a function of the level of savings and the cost-effectiveness of decreasing uncertainty.

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4. Harmonised lifetimes of energy efficiency improvement measures in bottom-up calculations

Some energy efficiency improvement measures last for decades while other measures last for a shorter period of time. The list below gives some examples of the average lifetime of energy efficiency improvement measures:

<table>
<thead>
<tr>
<th>Measure</th>
<th>Lifetime</th>
</tr>
</thead>
<tbody>
<tr>
<td>Loft insulation of private dwellings</td>
<td>30 years</td>
</tr>
<tr>
<td>Cavity wall insulation of private dwellings</td>
<td>40 years</td>
</tr>
<tr>
<td>Glazing E to C (in m²)</td>
<td>20 years</td>
</tr>
<tr>
<td>Boilers B to A rated</td>
<td>15 years</td>
</tr>
<tr>
<td>Heating controls - upgrade with boiler replacement</td>
<td>15 years</td>
</tr>
<tr>
<td>CFLs - retail</td>
<td>16 years</td>
</tr>
</tbody>
</table>

Source: Energy Efficiency Commitment 2005 - 2008, UK

To ensure that all Contracting Parties apply the same lifetimes for similar measures, these lifetimes will be harmonised on a European level. The Commission, assisted by the Committee established under Article 16, shall therefore replace the above list with an agreed preliminary list of the average lifetime of different energy efficiency improvement measures not later than 17 November 2006.

5. How to deal with multiplier effects of energy savings and how to avoid double counting in mixed top-down and bottom-up calculation methods

The implementation of one energy efficiency improvement measure, e.g. hot water tank and pipe insulation in a building, or another measure with equivalent effect, may have future multiplier effects in the market, meaning that the market will implement a measure automatically without any further involvement from the authorities or agencies referred to in Article 4(4) or any private-sector energy services provider. A measure with multiplier potential would in most cases be more cost-effective than measures that need to be repeated on a regular basis.

Contracting Parties shall estimate the energy savings potential of such measures including their multiplier effects and verify the total effects in an ex-post evaluation using indicators when appropriate.

With regard to the evaluation of horizontal measures, energy efficiency indicators may be used, provided that the way in which they would have developed without the horizontal measures can be determined. However, it must be possible to rule out, as far as possible, double counting with savings achieved through targeted energy efficiency programmes, energy services and other policy instruments. This applies particularly to energy or CO₂ taxes and information campaigns.

Corrections shall be made for double counting of energy savings. The use of matrices that enable the summation of impacts of measures is encouraged.

Potential energy savings resulting after the target period shall not be taken into account when Contracting Parties report on the overall target set out in Article 4. Measures that promote long-term market effects should in any case be encouraged and measures that have already resulted in multiplier energy savings effects should be taken into account when reporting on the targets set out in Article 4, provided they can be measured and verified using the guidance given in this Annex.

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1 A model for establishing a level of quantifiable uncertainty based on these three errors is given in Appendix B in the International Performance Measurement & Verification Protocol (IPMVP).
6. How to verify energy savings
If deemed cost-effective and necessary, the energy savings obtained through a specific energy service or other energy efficiency improvement measure shall be verified by a third party. This may be done by independent consultants, ESCOs or other market actors. The appropriate Contracting Party authorities or agencies referred to in Article 4(4) may provide further instructions on this matter.

Sources: A European Ex-post Evaluation Guidebook for DSM and EE Service Programmes; IEA, INDEEP database; IPMVP, Volume 1 (Version March 2002).

ANNEX V

INDICATIVE LIST OF ENERGY CONVERSION MARKETS AND SUB-MARKETS FOR WHICH BENCHMARKS CAN BE WORKED OUT:

1. The market for household appliances/information technology and lighting:
   1.1. Kitchen appliances (white goods);
   1.2. Entertainment/information technology;
   1.3. Lighting.
2. The market for domestic heating technology:
   2.1. Heating;
   2.2. Hot-water provision;
   2.3. Air conditioning;
   2.4. Ventilation;
   2.5. Heat insulation;
   2.6. Windows.
3. The market for industrial ovens.
4. The market for motorised power in industry.
5. The market for public-sector institutions:
   5.1. Schools/public administration;
   5.2. Hospitals;
   5.3. Swimming pools;
   5.4. Street lighting.
6. The market for transport services.

ANNEX VI

LIST OF ELIGIBLE ENERGY EFFICIENT PUBLIC PROCUREMENT MEASURES

Without prejudice to national and Community public procurement legislation, Contracting Parties shall ensure that the public sector applies at least two requirements from the following list in the context of the exemplary role of the public sector as referred to in Article 5:
(a) requirements concerning the use of financial instruments for energy savings, including energy performance contracting, that stipulate the delivery of measurable and pre-determined energy savings (including whenever public administrations have outsourced responsibilities);
(b) requirements to purchase equipment and vehicles based on lists of energy-efficient product specifications of different categories of equipment and vehicles to be drawn up by the authorities or agencies referred to in Article 4(4), using, where applicable, minimised life-cycle cost analysis or comparable methods to ensure cost-effectiveness;
(c) requirements to purchase equipment that has efficient energy consumption in all modes, including in standby mode, using, where applicable, minimised life-cycle cost analysis or comparable methods to ensure cost-effectiveness;
(d) requirements to replace or retrofit existing equipment and vehicles with the equipment listed in points (b) and (c);
(e) requirements to use energy audits and implement the resulting cost-effective recommendations;
(f) requirements to purchase or rent energy-efficient buildings or parts thereof, or requirements to replace or retrofit purchased or rented buildings or parts thereof in order to render them more energy-efficient.
Directive 2010/30/EU of 19 May 2010 on the indication by labelling and standard product information of the consumption of energy and other resources by energy-related products


The adaptations made by Ministerial Council Decision 2010/02/MC-EnC are highlighted in bold and blue.

Whereas:

(1) Council Directive 92/75/EEC of 22 September 1992 on the indication by labelling and standard product information of the consumption of energy and other resources by household appliances has been substantially amended. Since further amendments have to be made, it should be recast in the interests of clarity.

(2) The scope of Directive 92/75/EEC is restricted to household appliances. The Commission Communication of 16 July 2008 on the Sustainable Consumption and Production and Sustainable Industrial Policy Action Plan has shown that the extension of the scope of Directive 92/75/EEC to energy-related products which have a significant direct or indirect impact on energy consumption during use could reinforce potential synergies between existing legislative measures, and in particular Directive 2009/125/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for the setting of ecodesign requirements for energy related products. This Directive should not prejudice the application of Directive 2009/125/EC. Together with that Directive and other Union instruments, this Directive forms part of a broader legal framework and, in the context of a holistic approach, brings about additional energy savings and environmental gains.

(3) The Presidency conclusions of the European Council of 8 and 9 March 2007 emphasised the need to increase energy efficiency in the Union so as to achieve the objective of saving 20% of the Union’s energy consumption by 2020, set targets for the EU-wide development of renewable energies and the reduction of greenhouse gas emissions and called for a thorough and rapid implementation of the key areas identified in the Commission Communication of 19 October 2006 entitled “Action Plan for Energy Efficiency: Realising the Potential”. The action plan highlighted the enormous energy savings opportunities in the products sector.

(4) Improving the efficiency of energy-related products through informed consumer choice benefits the EU economy overall.

(5) The provision of accurate, relevant and comparable information on the specific energy consumption of energy-related products should influence the end-user’s choice in favour of those products which consume or indirectly result in consuming less energy and other essential resources during use, thus prompting manufacturers to take steps to reduce the consumption of energy and other essential resources of the products which they manufacture. It should also, indirectly, encourage the efficient use of these products in order to contribute to the EU’s 20% energy efficiency target. In the absence of this information, the operation of market forces alone will fail to promote the rational use of energy and other essential resources for these products.

(6) It should be recalled that Union and national legislation exists which gives certain rights to consumers with respect to purchased products, including compensation or exchange of the product.
(7) The Commission should provide a priority list of energy-related products that could be covered by a delegated act under this Directive. Such a list could be included in the Working Plan referred to in Directive 2009/125/EC.

(8) Information plays a key role in the operation of market forces and it is therefore necessary to introduce a uniform label for all products of the same type, to provide potential purchasers with supplementary standardised information on those products’ costs in terms of energy and the consumption of other essential resources and to take measures to ensure that potential end-users who do not see the product displayed, and thus have no opportunity to see the label, are also supplied with this information. In order to be efficient and successful, the label should be easily recognisable to end-users, simple and concise. To this end the existing layout of the label should be retained as the basis to inform end-users about the energy efficiency of products. Energy consumption of and other information concerning the products should be measured in accordance with harmonised standards and methods.

(9) As pointed out in the Commission’s Impact Assessment accompanying its proposal for this Directive, the energy labelling scheme has been followed as a model in different countries around the world.

(10) Member States should regularly monitor compliance with this Directive, and include the relevant information in the report that they are obliged to submit every four years to the Commission under this Directive, with special regard to the responsibilities of suppliers and dealers.


(12) A completely voluntary scheme would lead to only some products being labelled, or supplied with standard product information, with the risk that this might result in confusion or even misinformation for some end-users. The present scheme should therefore ensure that for all the products concerned, the consumption of energy and other essential resources is indicated by labelling and standard product fiches.

(13) Energy-related products have a direct or indirect impact on the consumption of a wide variety of forms of energy during use, electricity and gas being the most important. This Directive should therefore cover energy-related products having a direct or indirect impact on the consumption of any form of energy during use.

(14) Energy-related products which have a significant direct or indirect impact on consumption of energy or, where relevant, of essential resources during use and which afford adequate scope for increased efficiency should be covered by a delegated act, when provision of information through labelling may stimulate end-users to purchase more efficient products.

(15) In order to meet the Union climate change and energy security objectives, and given that the total energy consumed by products is expected to continue to rise in the longer term, the delegated acts under this Directive could, where relevant, also highlight on the label the high total energy consumption of the product.

(16) A number of Member States have public procurement policies in place which require contracting authorities to procure energy efficient products. A number of Member States also have put in place incentives for energy efficient products. The criteria for products to be eligible for public procurement or incentives can substantially differ from one Member State to another. To refer to performance classes as levels for particular products, as set out in delegated acts under this Directive, may reduce fragmentation of public procurement and incentives and facilitate the uptake of efficient products.

(17) Incentives which Member States may provide for the promotion of efficient products might constitute State aid. This Directive does not prejudice the outcome of any future State aid procedure that may be undertaken in accordance with Articles 107 and 108 of the Treaty on the Functioning of the European Union (TFEU) in respect of such incentives and should not cover taxation and fiscal matters. Member States are free to decide on the nature of such incentives.

(18) The promotion of energy efficient products through labelling, public procurement and incentives should not be to the detriment of the overall environmental performance and the functioning of such products.

(19) The Commission should be empowered to adopt delegated acts in accordance with Article 290 TFEU in respect of labelling and standard product information of the consumption of energy and other essential resources by energy-related products during use. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level.

(20) The Commission should regularly submit to the European Parliament and the Council a synthesis, covering the EU and each Member State separately, of the reports on enforcement activities and the level of compliance submitted by Member States under this Directive.

(21) The Commission should be responsible for adapting the label classifications with the aim of ensuring predictability for the industry and comprehension for consumers.

(22) To a varying extent according to the product concerned, technological development and the potential for additional significant energy savings could make further product differentiation necessary and justify a review of the classification. Such review should include in particular the possibility of rescaling. This review should be carried out as expeditiously as possible in the case of products which, due to their very innovative characteristics, can make a significant contribution to energy efficiency.

(23) When the Commission reviews progress and reports on the implementation of the Sustainable Consumption and Production and Sustainable Industrial Policy Action Plan in 2012, it will in particular analyse whether further action to improve the energy and environmental performance of products is needed, including, inter alia the possibility to provide consumers with information on the carbon footprint of products or the products’ environmental impact during their life cycle.

(24) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive change as compared with Directive 92/75/ECC. The obligation to transpose the provisions which are unchanged arises under the Directive 92/75/ECC.

(25) When Member States implement the provisions of this Directive, they should endeavour to refrain from adopting measures that could impose unnecessarily bureaucratic and unwieldy obligations on the market participants concerned, in particular small and medium-sized enterprises.

(26) This Directive should be without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law and application of Directive 92/75/ECC.

(27) In accordance with point 34 of the Interinstitutional Agreement on better law-making, Member
States are encouraged to draw up, for themselves and in the interest of the Union, their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public.

**Article 1**

**Scope**

1. This Directive establishes a framework for the harmonisation of national measures on end-user information, particularly by means of labelling and standard product information, on the consumption of energy and where relevant of other essential resources during use, and supplementary information concerning energy-related products, thereby allowing end-users to choose more efficient products.

2. This Directive shall apply to energy-related products which have a significant direct or indirect impact on the consumption of energy and, where relevant, on other essential resources during use.

3. This Directive shall not apply to:
   (a) second-hand products;
   (b) any means of transport for persons or goods;
   (c) the rating plate or its equivalent affixed for safety purposes to products.

**Article 2**

**Definitions**

For the purpose of this Directive:

(a) “energy-related product” or “product” means any good having an impact on energy consumption during use, which is placed on the market and/or put into service in the **Energy Community**, including parts intended to be incorporated into energy-related products covered by this Directive which are placed on the market and/or put into service as individual parts for end-users and of which the environmental performance can be assessed independently;

(b) “fiche” means a standard table of information relating to a product;

(c) “other essential resources” means water, chemicals or any other substance consumed by a product in normal use;

(d) “supplementary information” means other information concerning the performance and features of a product which relate to, or are helpful in evaluating, its use of energy or other essential resources based on measurable data;

(e) “direct impact” means the impact of products that actually consume energy during use;

(f) “indirect impact” means the impact of products that do not consume energy, but contribute to energy conservation during use;

(g) “dealer” means a retailer or other person who sells, hires, offers for hire-purchase or displays products to end-users;

(h) “supplier” means the manufacturer or its authorised representative in the **Energy Community** or the importer who places or puts into service the product on the **Energy Community** market. In their absence, any natural or legal person who places on the market or puts into service products covered by this Directive shall be considered a supplier;

(i) “placing on the market” means making a product available for the first time on the **Energy Community** market with a view to its distribution or use within the **Energy Community**, whether for reward or free of charge and irrespective of the selling technique;

(j) “putting into service” means the first use of a product for its intended purpose in the **Energy Community**;

(k) “unauthorised use of the label” means the use of the label, other than by **Contracting Party** authorities or EU institutions, in a manner not provided for in this Directive or a delegated act.

**Article 3**

**Responsibilities of Contracting Parties**

1. **Contracting Parties** shall ensure that:
   (a) all suppliers and dealers established in their territory fulfil the obligations laid down in Articles 5 and 6;
   (b) with respect to products covered by this Directive, the display of other labels, marks, symbols or inscriptions which do not comply with the requirements of this Directive and of the relevant delegated acts is prohibited, if such display is likely to mislead or confuse end-users with respect to the consumption of energy or, where relevant, other essential resources during use;
   (c) the introduction of the system of labels and fiches concerning energy consumption or conservation is accompanied by educational and promotional information campaigns aimed at promoting energy efficiency and more responsible use of energy by end-users;
   (d) appropriate measures are taken in order to encourage the relevant national or regional authorities responsible for implementing this Directive to cooperate and provide each other and the **Secretariat** with information in order to assist the application of this Directive. The administrative cooperation and exchange of information shall take the utmost advantage of electronic means of communication, shall be cost-effective and may be supported by relevant EU programmes. Such cooperation shall guarantee the security and confidentiality of processing and the protection of sensitive information provided during that procedure, where necessary. The **Secretariat** shall take appropriate measures in order to encourage and contribute to the cooperation between **Contracting Parties** referred to in this point.

2. Where a **Contracting Party** ascertains that a product does not comply with all the relevant requirements set out in this Directive and its delegated acts for the label and the fiche, the supplier shall be obliged to make the product compliant with those requirements under effective and proportionate conditions imposed by the **Contracting Party**.

Where there is sufficient evidence that a product may be non-compliant, the **Contracting Party** concerned shall take the necessary preventive measures and measures aimed at ensuring compliance within a precise time-frame, taking into account the damage caused.

Where non-compliance continues, the **Contracting Party** concerned shall take a decision restricting or prohibiting the placing on the market and/or putting into service of the product in question or ensuring that it is withdrawn from the market. In cases of withdrawal of the product from the market
or prohibition on placing the product on the market, the Secretariat and the other Contracting Parties shall be immediately informed.

3. Every four years, the Contracting Parties shall submit a report to the Secretariat including details about their enforcement activities and the level of compliance in their territory. The Secretariat may specify the details of the common content of these reports, through the setting of guidelines.

4. The Secretariat shall regularly provide a synthesis of those reports to the Ministerial Council for information.

**Article 4**  
Information requirements

**Contracting Parties** shall ensure that:

(a) information relating to the consumption of electric energy, other forms of energy and where relevant other essential resources during use, and supplementary information is, in accordance with delegated acts under this Directive, brought to the attention of end-users by means of a fiche and a label related to products offered for sale, hire, hire-purchase or displayed to end-users directly or indirectly by any means of distance selling, including the Internet;

(b) the information referred to in point (a) is provided in respect of built-in or installed products only where required by the applicable delegated act;

(c) any advertisement for a specific model of energy-related products covered by a delegated act under this Directive includes, where energy-related or price information is disclosed, a reference to the energy efficiency class of the product;

(d) any technical promotional material concerning energy-related products which describes the specific technical parameters of a product, namely, technical manuals and manufacturers’ brochures, whether printed or online, is provided to end-users with the necessary information regarding energy consumption or shall include a reference to the energy efficiency class of the product.

**Article 5**  
Responsibilities of suppliers

**Contracting Parties** shall ensure that:

(a) suppliers placing on the market or putting into service products covered by a delegated act supply a label and a fiche in accordance with this Directive and the delegated act;

(b) suppliers produce technical documentation which is sufficient to enable the accuracy of the information contained in the label and the fiche to be assessed. That technical documentation shall include:

(i) a general description of the product;

(ii) where relevant, the results of design calculations carried out;

(iii) test reports, where available, including those carried out by relevant notified organisations as defined under other Union legislation;

(iv) where values are used for similar models, the references allowing identification of those models. To this end suppliers may use documentation already established in accordance with requirements laid down in relevant Union legislation;

(c) suppliers make the technical documentation available for inspection purposes for a period ending five years after the last product concerned was manufactured.

Suppliers make available an electronic version of the technical documentation on request to the market surveillance authorities of the Contracting Parties and to the Secretariat within 10 working days on receipt of a request by the competent authority of a Contracting Party or the Secretariat;

(d) in respect of labelling and product information, suppliers provide the necessary labels free of charge to dealers.

Without prejudice to the suppliers’ choice of system for delivery of labels, suppliers promptly deliver labels on request from dealers;

(e) in addition to the labels, suppliers provide a product fiche;

(f) suppliers include a product fiche in all product brochures. Where product brochures are not provided by the supplier, the supplier provides fiches with other literature provided with the product;

(g) suppliers are responsible for the accuracy of the labels and fiches that they supply;

(h) suppliers are considered to have given consent to the publication of the information provided on the label or in the fiche.

**Article 6**  
Responsibilities of dealers

**Contracting Parties** shall ensure that:

(a) dealers display labels properly, in a visible and legible manner, and make the fiche available in the product brochure or other literature that accompanies products when sold to end-users;

(b) whenever a product covered by a delegated act is displayed, dealers attach an appropriate label, in the clearly visible position specified in the applicable delegated act, and in the relevant language version.

**Article 7**  
Distance selling and other forms of selling

Where products are offered for sale, hire or hire-purchase by mail order, by catalogue, through the Internet, telemarketing or by any other means which imply that the potential end-user cannot be expected to see the product displayed, delegated acts shall make provision to ensure that potential end-users are provided with the information specified on the label for the product and in the fiche before buying the product. Delegated acts shall, where appropriate, specify the way in which the label or the fiche or the information specified on the label or in the fiche shall be displayed or provided to the potential end-user.
Article 8
Free movement

1. Contracting Parties shall not prohibit, restrict or impede the placing on the market or putting into service, within their territories, of products which are covered by and comply with this Directive and the applicable delegated act.

2. Unless they have evidence to the contrary, Contracting Parties shall consider labels and fiches as complying with the provisions of this Directive and the delegated acts. Contracting Parties shall require suppliers to provide evidence within the meaning of Article 5 concerning the accuracy of the information supplied on their labels or fiches when they have reason to suspect that such information is incorrect.

Article 9
Public procurement and incentives

1. Where a product is covered by a delegated act, contracting authorities which conclude public works, supply or service contracts as referred to in Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, which are not excluded by virtue of Articles 12 to 18 thereof, shall endeavour to procure only such products which comply with the criteria of having the highest performance levels and belonging to the highest energy efficiency class. Contracting Parties may also require the contracting authorities to procure only products fulfilling those criteria. Contracting Parties may make the application of those criteria subject to cost-effectiveness, economical feasibility and technical suitability and sufficient competition.

2. Paragraph 1 shall apply to contracts having a value equal to or greater than the thresholds laid down in Article 7 of Directive 2004/18/EC.

3. Where Contracting Parties provide any incentives for a product covered by a delegated act they shall aim at the highest performance levels including the highest class of energy efficiency laid down in the applicable delegated act. Taxation and fiscal measures do not constitute incentives for the purpose of this Directive.

4. Where Contracting Parties provide incentives for products, both for end-users using highly efficient products and for industries which promote and produce such products, they shall express the performance levels in terms of classes as defined in the applicable delegated act, except where they impose higher performance levels than the threshold for the highest energy efficiency class in the delegated act. Contracting Parties may impose higher performance levels than the threshold for the highest energy efficiency class in the delegated act.

Article 10
Delegated acts

1. The Commission shall lay down details relating to the label and the fiche by means of delegated acts in accordance with Articles 11 to 13, relating to each type of product in accordance with this Article.

2. Unless they have evidence to the contrary, Contracting Parties shall consider labels and fiches as complying with the provisions of this Directive and the delegated acts. Contracting Parties shall require suppliers to provide evidence within the meaning of Article 5 concerning the accuracy of the information supplied on their labels or fiches when they have reason to suspect that such information is incorrect.

3. In preparing a draft delegated act, the Commission shall:

   (a) take into account those environmental parameters set out in Annex I, Part 1, to Directive 2009/125/EC which are identified as significant in the relevant implementing measure adopted under Directive 2009/125/EC and which are relevant for the end-user during use;

   (b) assess the impact of the act on the environment, end-users and manufacturers, including small and medium-sized enterprises (SMEs), in terms of competitiveness including on markets outside the Union, innovation, market access and costs and benefits;

   (c) carry out appropriate consultation with stakeholders;

   (d) set implementing date(s), any staged or transitional measures or periods, taking into account in particular possible impacts on SMEs or on specific product groups manufactured primarily by SMEs.

4. The delegated acts shall specify in particular:

   (a) the exact definition of the type of products to be included;

   (b) the measurement standards and methods to be used in obtaining the information referred to in Article 1(1);

   (c) the details of the technical documentation required pursuant to Article 5;

   (d) the design and content of the label referred to in Article 4, which as far as possible shall have uniform design characteristics across product groups and shall in all cases be clearly visible and legible. The format of the label shall retain as a basis the classification using letters from A to G; the steps of the classification shall correspond to significant energy and cost savings from the end-user perspective.

   Three additional classes may be added to the classification if required by technological progress. Those additional classes will be A++, A+++ , and A++++ for the most efficient class. In principle the total...
number of classes will be limited to seven, unless more classes are still populated.
The colour scale shall consist of no more than seven different colours from dark green to red. The colour code of only the highest class shall always be dark green. If there are more than seven classes, only the red colour can be duplicated.
The classification shall be reviewed in particular when a significant proportion of products on the internal market achieves the two highest energy efficiency classes and when additional savings may be achieved by further differentiating products.
Detailed criteria for a possible reclassification of products are, where appropriate, to be determined on a case-by-case basis in the relevant delegated act;
(e) the location where the label shall be fixed to the product displayed and the manner in which the label and/or information are to be provided in the case of offers for sale as covered by Article 7. Where appropriate, the delegated acts may provide for the label to be attached to the product or printed on the packaging, or for the details of the labelling requirements for printing in catalogues, for distance selling and Internet sales;
(f) the content and, where appropriate, the format and other details concerning the fiche or further information specified in Article 4 and Article 5(c). The information on the label shall also be included on the fiche;
(g) the specific content of the label for advertising, including, as appropriate, the energy class and other relevant performance level(s) of the given product in a legible and visible form;
(h) the duration of label classification(s), where appropriate, in accordance with point (d);
(i) the level of accuracy in the declarations on the label and fiches;
(j) the date for the evaluation and possible revision of the delegated act, taking into account the speed of technological progress.

Article 12
Revocation of the delegation
1. The delegation of powers referred to in Article 10 may be revoked by the European Parliament or by the Council.
2. The institution which has commenced an internal procedure for deciding whether to revoke the delegation of powers shall endeavour to inform the other institution and the Commission within a reasonable time before the final decision is taken, indicating the delegated powers which could be subject to revocation and possible reasons for a revocation.
3. The decision of revocation shall put an end to the delegation of the powers specified in that decision. It shall take effect immediately or at a later date specified therein. It shall not affect the validity of the delegated acts already in force. It shall be published in the Official Journal of the European Union.

Article 13
Objections to delegated acts
The Ministerial Council may object to the application of a delegated act to the Contracting Parties of the Energy Community at the meeting following notification. If, at that meeting, the Ministerial Council has not objected to the delegated act, it shall become binding on the Contracting Parties, subject to possible adaptation. If the Ministerial Council objects to a delegated act, it shall not be applicable in the Energy Community. The Ministerial Council shall state the reasons for objecting to the delegated act.

Article 14
Evaluation
Not later than 31 December 2014, the Commission shall review the effectiveness of this Directive and of its delegated acts and submit a report to the European Parliament and the Council. On that occasion, the Commission shall also assess:
(a) the contribution of Article 4(c) to the aim of this Directive;
(b) the effectiveness of Article 9(1);
(c) in the light of technical evolution and the understanding by consumers of the label layout, the need for amending Article 10(4)(d).

Article 15
Penalties
Contracting Parties shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and its delegated acts, including unauthorised use of the label, and shall take the necessary measures to ensure that they are implemented. The penalties...
provided for shall be effective, proportionate and dissuasive. The Contracting Parties shall notify these provisions to the Secretariat by 31 December 2011 and shall notify the Secretariat without delay of any subsequent amendment affecting those provisions.

**Article 16**

**Transposition**

1. **Contracting Parties** shall bring into force, by 31 December 2011 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Secretariat the text of those provisions. They shall apply those provisions from 31 December 2011.

When **Contracting Parties** adopt those provisions, 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 to the effect that references in existing laws, regulations and administrative provisions to Directive 92/75/EEC shall be construed as references to this Directive. **Contracting Parties** shall determine how such reference is to be made and how that statement is to be formulated.

2. **Contracting Parties** shall communicate to the Secretariat the text of the main provisions of national law which they adopt in the field covered by this Directive.

**Article 17**

**Repeal**

Directive 92/75/EEC, as amended by the Regulation indicated in Annex I, Part A, is repealed with effect from 21 July 2011, without prejudice to the obligations of the **Contracting Parties** relating to the time-limits for transposition into national law and application of that Directive set out in Annex I, Part B.

References to Directive 92/75/EEC shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex II.

**Articles 18 and 19**

**Entry into force and Addressees**

This Decision [2010/02/MC-EnC] enters into force upon its adoption and is addressed to the Contracting Parties.

Points (d), (g) and (h) of Article 5 shall apply from 31 December 2011.

**Article 2(5) of Decision 2010/02/MC-EnC**

The Secretariat shall monitor and review the implementation of [this] Directive ... in the Contracting Parties and shall submit a progress report to the Permanent High Level Group by 30 June 2012.

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1 Adapted by Articles 2(2)(b) and 2(3)(a)(ii) of the Decision 2010/02/MC-EnC.
Directive 2010/31/EU of 19 May 2010 on the energy performance of buildings


The adaptations made by Ministerial Council Decision 2010/02/MC-EnC are highlighted in bold and blue.

Whereas:

(1) Directive 2002/91/EC of the European Parliament and of the Council of 16 December 2002 on the energy performance of buildings has been amended. Since further substantive amendments are to be made, it should be recast in the interests of clarity.

(2) An efficient, prudent, rational and sustainable utilisation of energy applies, inter alia, to oil products, natural gas and solid fuels, which are essential sources of energy, but also the leading sources of carbon dioxide emissions.

(3) Buildings account for 40% of total energy consumption in the Union. The sector is expanding, which is bound to increase its energy consumption. Therefore, reduction of energy consumption and the use of energy from renewable sources in the buildings sector constitute important measures needed to reduce the Union’s energy dependency and greenhouse gas emissions. Together with an increased use of energy from renewable sources, measures taken to reduce energy consumption in the Union would allow the Union to comply with the Kyoto Protocol to the United Nations Framework Convention on Climate Change (UNFCCC), and to honour both its long term commitment to maintain the global temperature rise below 2 °C, and its commitment to reduce, by 2020, overall greenhouse gas emissions by at least 20% below 1990 levels, and by 30% in the event of an international agreement being reached. Reduced energy consumption and an increased use of energy from renewable sources also have an important part to play in promoting security of energy supply, technological developments and in creating opportunities for employment and regional development, in particular in rural areas.

(4) Management of energy demand is an important tool enabling the Union to influence the global energy market and hence the security of energy supply in the medium and long term.

(5) The European Council of March 2007 emphasised the need to increase energy efficiency in the Union so as to achieve the objective of reducing by 20% the Union’s energy consumption by 2020 and called for a thorough and rapid implementation of the priorities established in the Commission Communication entitled “Action plan for energy efficiency: realising the potential”. That action plan identified the significant potential for cost-effective energy savings in the buildings sector. The European Parliament, in its resolution of 31 January 2008, called for the strengthening of the provisions of Directive 2002/91/EC, and has called at various times, on the latest occasion in its resolution of 3 February 2009 on the Second Strategic Energy Review, for the 20% energy efficiency target in 2020 to be made binding. Moreover, Decision No 406/2009/EC of the European Parliament and of the Council of 23 April 2009 on the effort of Member States to reduce their greenhouse gas emissions to meet the Community's greenhouse gas emission reduction commitments up to 2020, sets national binding targets for CO₂ reduction for which energy efficiency in the building sector will be crucial, and Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources provides for the promotion of energy...
efficiency in the context of a binding target for energy from renewable sources accounting for 20% of total Union energy consumption by 2020.

(6) The European Council of March 2007 reaffirmed the Union's commitment to the Union-wide development of energy from renewable sources by endorsing a mandatory target of a 20% share of energy from renewable sources by 2020. Directive 2009/28/EC establishes a common framework for the promotion of energy from renewable sources.

(7) It is necessary to lay down more concrete actions with a view to achieving the great unrealised potential for energy savings in buildings and reducing the large differences between Member States’ results in this sector.

(8) Measures to improve further the energy performance of buildings should take into account climatic and local conditions as well as indoor climate environment and cost-effectiveness. These measures should not affect other requirements concerning buildings such as accessibility, safety and the intended use of the building.

(9) The energy performance of buildings should be calculated on the basis of a methodology, which may be differentiated at national and regional level. That includes, in addition to thermal characteristics, other factors that play an increasingly important role such as heating and air-conditioning installations, application of energy from renewable sources, passive heating and cooling elements, shading, indoor air-quality, adequate natural light and design of the building. The methodology for calculating energy performance should be based not only on the season in which heating is required, but should cover the annual energy performance of a building. That methodology should take into account existing European standards.

(10) It is the sole responsibility of Member States to set minimum requirements for the energy performance of buildings and building elements. Those requirements should be set with a view to achieving the cost-optimal balance between the investments involved and the energy costs saved throughout the lifecycle of the building, without prejudice to the right of Member States to set minimum requirements which are more energy efficient than cost-optimal energy efficiency levels. Provision should be made for the possibility for Member States to review regularly their minimum energy performance requirements for buildings in the light of technical progress.

(11) The objective of cost-effective or cost-optimal energy efficiency levels may, in certain circumstances, for example in the light of climatic differences, justify the setting by Member States of cost-effective or cost-optimal requirements for building elements that would in practice limit the installation of building products that comply with standards set by Union legislation, provided that such requirements do not constitute an unjustifiable market barrier.

(12) When setting energy performance requirements for technical building systems, Member States should use, where available and appropriate, harmonised instruments, in particular testing and calculation methods and energy efficiency classes developed under measures implementing Directive 2009/125/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for the setting of ecodesign requirements for energy-related products [8] and Directive 2010/30/EU of the European Parliament and of the Council of 19 May 2010 on the indication by labelling and standard product information of the consumption of energy and other resources by energy-related products [9], with a view to ensuring coherence with related initiatives and minimise, to the extent possible, potential fragmentation of the market.

(13) This Directive is without prejudice to Articles 107 and 108 of the Treaty on the Functioning of the European Union (TFEU). The term “incentive” used in this Directive should not therefore be interpreted as constituting State aid.

(14) The Commission should lay down a comparative methodology framework for calculating cost-optimal levels of minimum energy performance requirements. Member States should use this framework to compare the results with the minimum energy performance requirements which they have adopted. Should significant discrepancies, i.e. exceeding 15%, exist between the calculated cost-optimal levels of minimum energy performance requirements and the minimum energy performance requirements in force, Member States should justify the difference or plan appropriate steps to reduce the discrepancy. The estimated economic lifecycle of a building or building element should be determined by Member States, taking into account current practices and experience in defining typical economic lifecycles. The results of this comparison and the data used to reach these results should be regularly reported to the Commission. These reports should enable the Commission to assess and report on the progress of Member States in reaching cost-optimal levels of minimum energy performance requirements.

(15) Buildings have an impact on long-term energy consumption. Given the long renovation cycle for existing buildings, new, and existing buildings that are subject to major renovation, should therefore meet minimum energy performance requirements adapted to the local climate. As the application of alternative energy supply systems is not generally explored to its full potential, alternative energy supply systems should be considered for new buildings, regardless of their size, pursuant to the principle of first ensuring that energy needs for heating and cooling are reduced to cost-optimal levels.

(16) Major renovations of existing buildings, regardless of their size, provide an opportunity to take cost-effective measures to enhance energy performance. For reasons of cost-effectiveness, it should be possible to limit the minimum energy performance requirements to the renovated parts that are most relevant for the energy performance of the building. Member States should be able to choose to define a “major renovation” either in terms of a percentage of the surface of the building envelope or in terms of the value of the building. If a Member State decides to define a major renovation in terms of the value of the building, values such as the actuarial value, or the current value based on the cost of reconstruction, excluding the value of the land upon which the building is situated, could be used.

(17) Measures are needed to increase the number of buildings which not only fulfil current minimum energy performance requirements, but are also more energy efficient, thereby reducing both energy consumption and carbon dioxide emissions. For this purpose Member States should draw up national plans for increasing the number of nearly zero-energy buildings and regularly report such plans to the Commission.

(18) Union financial instruments and other measures are being put into place or adapted with the aim of stimulating energy efficiency-related measures. Such financial instruments at Union level include, inter alia, Regulation (EC) No 1080/2006 of the European Parliament and of the Council of 5 July 2006 on the European Regional Development Fund [10], amended to allow increased investments in energy efficiency in housing; the public-private partnership on a “European energy-efficient buildings” initiative to promote green technologies and the development of energy-efficient systems and materials in new and renovated buildings; the EC-European Investment Bank (EIB) initiative “EU sustainable energy financing initiative” which aims to enable, inter alia, investments for energy efficiency and the EIB-led “Marguerite Fund”: the 2002 European Fund for Energy, Climate Change and Infrastructure; Council Directive 2009/47/EC of 5 May 2009 amending Directive 2006/112/EC.
as regards reduced rates of value added tax, structural and cohesion funds instrument Jeremie (Joint European Resources for micro to medium enterprises; the Energy Efficiency Finance Facility; the Competitiveness and Innovation Framework Programme including the Intelligent Energy Europe II Programme focused specifically on removing market barriers related to energy efficiency and energy from renewable sources through for example the technical assistance facility ELENA (European Local Energy Assistance); the Covenant of Mayors; the Entrepreneurship and Innovation programme; the ICT Policy Support Programme 2010, and the Seventh Research Framework Programme. The European Bank for Reconstruction and Development also provides funding with the aim of stimulating energy-efficiency-related measures.

(19) Union financial instruments should be used to give practical effect to the objectives of this Directive, without however substituting national measures. In particular, they should be used for providing appropriate and innovative means of financing to catalyse investment in energy efficiency measures. They could play an important role in the development of national, regional and local energy efficiency funds, instruments, or mechanisms, which deliver such financing possibilities to private property owners, to small and medium-sized enterprises and to energy efficiency service companies.

(20) In order to provide the Commission with adequate information, Member States should draw up lists of existing and proposed measures, including those of a financial nature, other than those required by this Directive, which promote the objectives of this Directive. The existing and proposed measures listed by Member States may include, in particular, measures that aim to reduce existing legal and market barriers and encourage investments and/or other activities to increase the energy efficiency of new and existing buildings, thus potentially contributing to reducing energy poverty. Such measures could include, but should not be limited to, free or subsidised technical assistance and advice, direct subsidies, subsidised loan schemes or low interest loans, grant schemes and loan guarantee schemes. The public authorities and other institutions which provide those measures of a financial nature could link the application of such measures to the indicated energy performance and the recommendations from energy performance certificates.

(21) In order to limit the reporting burden on Member States it should be possible to integrate the reports required by this Directive into the Energy Efficiency Action Plans referred to in Article 14(2) of Directive 2006/32/EC of the European Parliament and of the Council of 5 April 2006 on energy end-use efficiency and energy services. The public sector in each Member State should lead the way in the field of energy performance of buildings, and therefore the national plans should set more ambitious targets for the buildings occupied by public authorities.

(22) The prospective buyer and tenant of a building or building unit should, in the energy performance certificate, be given correct information about the energy performance of the building and practical advice on improving such performance. Information campaigns may serve to further encourage owners and tenants to improve the energy performance of their building or building unit. Owners and tenants of commercial buildings should also be encouraged to exchange information regarding actual energy consumption, in order to ensure that all the data are available to make informed decisions about necessary improvements. The energy performance certificate should also provide information about the actual impact of heating and cooling on the energy needs of the building, on its primary energy consumption and on its carbon dioxide emissions.

(23) Public authorities should lead by example and should endeavour to implement the recommendations included in the energy performance certificate. Member States should include within their national plans measures to support public authorities to become early adopters of energy efficiency improvements and to implement the recommendations included in the energy performance certificate as soon as feasible.

(24) Buildings occupied by public authorities and buildings frequently visited by the public should set an example by showing that environmental and energy considerations are being taken into account and therefore those buildings should be subject to energy certification on a regular basis. The dissemination to the public of information on energy performance should be enhanced by clearly displaying these energy performance certificates, in particular in buildings of a certain size which are occupied by public authorities or which are frequently visited by the public, such as shops and shopping centres, supermarkets, restaurants, theatres, banks and hotels.

(25) Recent years have seen a rise in the number of air-conditioning systems in European countries. This creates considerable problems at peak load times, increasing the cost of electricity and disrupting the energy balance. Priority should be given to strategies which enhance the thermal performance of buildings during the summer period. To that end, there should be focus on measures which avoid overheating, such as shading and sufficient thermal capacity in the building construction, and further development and application of passive cooling techniques, primarily those that improve indoor climatic conditions and the micro-climate around buildings.

(26) Regular maintenance and inspection of heating and air-conditioning systems by qualified personnel contributes to maintaining their correct adjustment in accordance with the product specification and in that way ensures optimal performance from an environmental, safety and energy point of view. An independent assessment of the entire heating and air-conditioning system should occur at regular intervals during its lifecycle in particular before its replacement or upgrading. In order to minimise the administrative burden on building owners and tenants, Member States should endeavour to combine inspections and certifications as far as possible.

(27) A common approach to the energy performance certification of buildings and to the inspection of heating and air-conditioning systems, carried out by qualified and/or accredited experts, whose independence is to be guaranteed on the basis of objective criteria, will contribute to a level playing field as regards efforts made in Member States to energy saving in the buildings sector and will introduce transparency for prospective owners or users with regard to energy performance in the Union property market. In order to ensure the quality of energy performance certificates and of the inspection of heating and air-conditioning systems throughout the Union, an independent control mechanism should be established in each Member State.

(28) Since local and regional authorities are critical for the successful implementation of this Directive, they should be consulted and involved, as and when appropriate in accordance with applicable national legislation, on planning issues, the development of programmes to provide information, training and awareness-raising, and on the implementation of this Directive at national or regional level. Such consultations may also serve to promote the provision of adequate guidance to local planners and building inspectors to carry out the necessary tasks. Furthermore, Member States should enable and encourage architects and planners to properly consider the optimal combination of improvements in energy efficiency, use of energy from renewable sources and use of district heating and cooling when planning, designing, building and renovating industrial or residential areas.

(29) Installers and builders are critical for the successful implementation of this Directive. Therefore, an adequate number of installers and builders should, through training and other measures, have the appropriate level of competence for the installation and integration of the energy efficient and
renewable energy technology required.

(30) Member States should take account of Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications with regard to the mutual recognition of professional experts which are addressed by this Directive, and the Commission should continue its activities under the Intelligent Energy Europe Programme on guidelines and recommendations for standards for the training of such professional experts.

(31) In order to enhance the transparency of energy performance in the Union's non-residential property market, uniform conditions for a voluntary common certification scheme for the energy performance of non-residential buildings should be established. In accordance with Article 291 TFEU, rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers shall be laid down in advance by a regulation adopted in accordance with the ordinary legislative procedure. Pending the adoption of that new regulation, Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission continues to apply, with the exception of the regulatory procedure with scrutiny, which is not applicable.

(32) The Commission should be empowered to adopt delegated acts in accordance with Article 290 TFEU in respect of the adaptation to technical progress of certain parts of the general framework set out in Annex I, and in respect of the establishment of a methodology framework for calculating cost-optimal levels of minimum energy performance requirements. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level.

(33) Since the objective of this Directive, namely of enhancing the energy performance of buildings, cannot be sufficiently achieved by the Member States, due to the complexity of the buildings sector and the inability of the national housing markets to adequately address the challenges of energy efficiency, and can by the reason of the scale and the effects of the action be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principles of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

(34) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive change as compared with Directive 2002/91/EC. The obligation to transpose the provisions which are unchanged arises under that Directive.

(35) This Directive should be without prejudice to the obligations of the Member States relating to the time limits for transposition into national law and application of the Directive 2002/91/EC.

(36) In accordance with point 34 of the Interinstitutional Agreement on better law-making, Member States are encouraged to draw up, for themselves and in the interest of the Union, their own tables, illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public.

Article 1

Subject matter

1. This Directive promotes the improvement of the energy performance of buildings within the Energy Community, taking into account outdoor climatic and local conditions, as well as indoor climate requirements and cost-effectiveness.

2. This Directive lays down requirements as regards:
   (a) the common general framework for a methodology for calculating the integrated energy performance of buildings and building units;
   (b) the application of minimum requirements to the energy performance of new buildings and new building units;
   (c) the application of minimum requirements to the energy performance of:
      (i) existing buildings, building units and building elements that are subject to major renovation;
      (ii) building elements that form part of the building envelope and that have a significant impact on the energy performance of the building envelope when they are retrofitted or replaced; and
      (iii) technical building systems whenever they are installed, replaced or upgraded;
   (d) national plans for increasing the number of nearly zero-energy buildings;
   (e) energy certification of buildings or building units;
   (f) regular inspection of heating and air-conditioning systems in buildings; and
   (g) independent control systems for energy performance certificates and inspection reports.

3. The requirements laid down in this Directive are minimum requirements and shall not prevent any Contracting Party from maintaining or introducing more stringent measures. Such measures shall be compatible with the Treaty on the Functioning of the European Union. They shall be notified to the Secretariat.

Article 2

Definitions

For the purpose of this Directive, the following definitions shall apply:

1. “building” means a roofed construction having walls, for which energy is used to condition the indoor climate;

2. “nearly zero-energy building” means a building that has a very high energy performance, as determined in accordance with Annex I. The nearly zero or very low amount of energy required should be covered to a very significant extent by energy from renewable sources, including energy from renewable sources produced on-site or nearby;

3. “technical building system” means technical equipment for the heating, cooling, ventilation, hot water, lighting or for a combination thereof, of a building or building unit;

4. “energy performance of a building” means the calculated or measured amount of energy needed to meet the energy demand associated with a typical use of the building, which includes, inter alia, energy used for heating, cooling, ventilation, hot water and lighting;
Part II


5. “primary energy” means energy from renewable and non-renewable sources which has not undergone any conversion or transformation process;
6. “energy from renewable sources” means energy from renewable non-fossil sources, namely wind, solar, aerothermal, geothermal, hydrothermal and ocean energy, hydropower, biomass, landfill gas, sewage treatment plant gas and biogases;
7. “building envelope” means the integrated elements of a building which separate its interior from the outdoor environment;
8. “building unit” means a section, floor or apartment within a building which is designed or altered to be used separately;
9. “building element” means a technical building system or an element of the building envelope;
10. “major renovation” means the renovation of a building where:
   (a) the total cost of the renovation relating to the building envelope or the technical building systems is higher than 25% of the value of the building, excluding the value of the land upon which the building is situated; or
   (b) more than 25% of the surface of the building envelope undergoes renovation;

Contracting Parties may choose to apply option (a) or (b).
11. “European standard” means a standard adopted by the European Committee for Standardisation, the European Committee for Electrotechnical Standardisation or the European Telecommunications Standards Institute and made available for public use;
12. “energy performance certificate” means a certificate recognised by a Contracting Party, or by a legal person designated by it, which indicates the energy performance of a building or building unit, calculated according to a methodology adopted in accordance with Article 3;
13. “cogeneration” means simultaneous generation in one process of thermal energy and electrical and/or mechanical energy;
14. “cost-optimal level” means the energy performance level which leads to the lowest cost during the estimated economic lifecycle, where:
   (a) the lowest cost is determined taking into account energy-related investment costs, maintenance and operating costs (including energy costs and savings, the category of building concerned, earnings from energy produced), where applicable, and disposal costs, where applicable; and
   (b) the estimated economic lifecycle is determined by each Contracting Party. It refers to the remaining estimated economic lifecycle of a building where energy performance requirements are set for the building as a whole, or to the estimated economic lifecycle of a building element where energy performance requirements are set for building elements.
The cost-optimal level shall lie within the range of performance levels where the cost benefit analysis calculated over the estimated economic lifecycle is positive;
15. “air-conditioning system” means a combination of the components required to provide a form of indoor air treatment, by which temperature is controlled or can be lowered;
16. “boiler” means the combined boiler body-burner unit, designed to transmit to fluids the heat released from burning;
17. “effective rated output” means the maximum calorific output, expressed in kW, specified and guaranteed by the manufacturer as being deliverable during continuous operation while complying with the useful efficiency indicated by the manufacturer;
18. “heat pump” means a machine, a device or installation that transfers heat from natural surroundings such as air, water or ground to buildings or industrial applications by reversing the natural flow of heat such that it flows from a lower to a higher temperature. For reversible heat pumps, it may also move heat from the building to the natural surroundings;
19. “district heating” or “district cooling” means the distribution of thermal energy in the form of steam, hot water or chilled liquids, from a central source of production through a network to multiple buildings or sites, for the use of space or process heating or cooling.

Article 3

Adoption of a methodology for calculating the energy performance of buildings

Contracting Parties shall apply a methodology for calculating the energy performance of buildings in accordance with the common general framework set out in Annex I.

This methodology shall be adopted at national or regional level.

Article 4

Setting of minimum energy performance requirements

1. Contracting Parties shall take the necessary measures to ensure that minimum energy performance requirements for buildings or building units are set with a view to achieving cost-optimal levels. The energy performance shall be calculated in accordance with the methodology referred to in Article 3. Cost-optimal levels shall be calculated in accordance with the comparative methodology framework referred to in Article 5 once the framework is in place.

Contracting Parties shall take the necessary measures to ensure that minimum energy performance requirements are set for building elements that form part of the building envelope and that have a significant impact on the energy performance of the building envelope when they are replaced or retrofitted, with a view to achieving cost-optimal levels.

When setting requirements, Contracting Parties may differentiate between new and existing buildings and between different categories of buildings.

These requirements shall take account of general indoor climate conditions, in order to avoid possible negative effects such as inadequate ventilation, as well as local conditions and the designated function and the age of the building.

A Contracting Party shall not be required to set minimum energy performance requirements which are not cost-effective over the estimated economic lifecycle.

Minimum energy performance requirements shall be reviewed at regular intervals which shall not be longer than five years and, if necessary, shall be updated in order to reflect technical progress in the building sector.

2. Contracting Parties may decide not to set or apply the requirements referred to in paragraph 1 to the following categories of buildings:
   (a) buildings officially protected as part of a designated environment or because of their special architectural or historical merit, in so far as compliance with certain minimum energy performance requirements
requirements would unacceptably alter their character or appearance;
(b) buildings used as places of worship and for religious activities;
(c) temporary buildings with a time of use of two years or less, industrial sites, workshops and non-
residential agricultural buildings with low energy demand and non-residential agricultural buildings which are in use by a sector covered by a national sectoral agreement on energy performance;
(d) residential buildings which are used or intended to be used for either less than four months of the year or, alternatively, for a limited annual time of use and with an expected energy consumption of less than 25% of what would be the result of all-year use;
(e) stand-alone buildings with a total useful floor area of less than 50 m².

**Article 5**

**Calculation of cost-optimal levels of minimum energy performance requirements**

1. The Commission shall establish by means of delegated acts in accordance with Articles 23, 24 and 25 by 30 June 2011 a comparative methodology framework for calculating cost-optimal levels of minimum energy performance requirements for buildings and building elements. The comparative methodology framework shall be established in accordance with Annex III and shall differentiate between new and existing buildings and between different categories of buildings.

2. **Contracting Parties** shall calculate cost-optimal levels of minimum energy performance requirements using the comparative methodology framework established in accordance with paragraph 1 and relevant parameters, such as climatic conditions and the practical accessibility of energy infrastructure, and compare the results of this calculation with the minimum energy performance requirements in force.

**Contracting Parties** shall report to the Secretariat all input data and assumptions used for those calculations and the results of those calculations. The report may be included in the Energy Efficiency Action Plans referred to in Article 14(2) of Directive 2006/32/EC. **Contracting Parties** shall submit those reports to the Secretariat at regular intervals, which shall not be longer than five years. The first report shall be submitted by 30 June 2013.

3. If the result of the comparison performed in accordance with paragraph 2 shows that the minimum energy performance requirements in force are significantly less energy efficient than cost-optimal levels of minimum energy performance requirements, the **Contracting Party** concerned shall justify this difference in writing to the Secretariat in the report referred to in paragraph 2, accompanied, to the extent that the gap cannot be justified, by a plan outlining appropriate steps to significantly reduce the gap by the next review of the energy performance requirements as referred to in Article 4(1).

4. The Secretariat shall publish a report on the progress of the **Contracting Parties** in reaching cost-optimal levels of minimum energy performance requirements.

**Article 6**

**New buildings**

1. **Contracting Parties** shall take the necessary measures to ensure that new buildings meet the minimum energy performance requirements set in accordance with Article 4. For new buildings, **Contracting Parties** shall ensure that, before construction starts, the technical, environmental and economic feasibility of high-efficiency alternative systems such as those listed below, if available, is considered and taken into account:

   (a) decentralised energy supply systems based on energy from renewable sources;
   (b) cogeneration;
   (c) district or block heating or cooling, particularly where it is based entirely or partially on energy from renewable sources;
   (d) heat pumps.

2. **Contracting Parties** shall ensure that the analysis of alternative systems referred to in paragraph 1 is documented and available for verification purposes.

3. That analysis of alternative systems may be carried out for individual buildings or for groups of similar buildings or for common typologies of buildings in the same area. As far as collective heating and cooling systems are concerned, the analysis may be carried out for all buildings connected to the system in the same area.

**Article 7**

**Existing buildings**

**Contracting Parties** shall take the necessary measures to ensure that when buildings undergo major renovation, the energy performance of the building or the renovated part thereof is upgraded in order to meet minimum energy performance requirements set in accordance with Article 4 in so far as this is technically, functionally and economically feasible. Those requirements shall be applied to the renovated building or building unit as a whole. Additionally or alternatively, requirements may be applied to the renovated building elements.

**Contracting Parties** shall in addition take the necessary measures to ensure that when a building element that forms part of the building envelope and has a significant impact on the energy performance of the building envelope, is retrofitted or replaced, the energy performance of the building element meets minimum energy performance requirements in so far as this is technically, functionally and economically feasible.

**Contracting Parties** shall determine these minimum energy performance requirements in accordance with Article 4. **Contracting Parties** shall encourage, in relation to buildings undergoing major renovation, the consideration and taking into account of high-efficiency alternative systems, as referred to in Article 6(1), in so far as this is technically, functionally and economically feasible.
Article 8

Technical building systems

1. Contracting Parties shall, for the purpose of optimising the energy use of technical building systems, set system requirements in respect of the overall energy performance, the proper installation, and the appropriate dimensioning, adjustment and control of the technical building systems which are installed in existing buildings. Contracting Parties may also apply these system requirements to new buildings.

System requirements shall be set for new, replacement and upgrading of technical building systems and shall be applied in so far as they are technically, economically and functionally feasible. The system requirements shall cover at least the following:

(a) heating systems;
(b) hot water systems;
(c) air-conditioning systems;
(d) large ventilation systems;
or a combination of such systems.

2. Contracting Parties shall encourage the introduction of intelligent metering systems whenever a building is constructed or undergoes major renovation, whilst ensuring that this encouragement is in line with point 2 of Annex I to 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. Contracting Parties may furthermore encourage, where appropriate, the installation of active control systems such as automation, control and monitoring systems that aim to save energy.

Article 9

Nearly zero-energy buildings

1. Contracting Parties shall ensure that:

(a) by 30 June 2021, all new buildings are nearly zero-energy buildings; and
(b) after 30 June 2019, new buildings occupied and owned by public authorities are nearly zero-energy buildings.

Contracting Parties shall draw up national plans for increasing the number of nearly zero-energy buildings. These national plans may include targets differentiated according to the category of building.

2. Contracting Parties shall furthermore, following the leading example of the public sector, develop policies and take measures such as the setting of targets in order to stimulate the transformation of buildings that are refurbished into nearly zero-energy buildings, and inform the Secretariat thereof in their national plans referred to in paragraph 1.

3. The national plans shall include, inter alia, the following elements:

(a) the Contracting Party’s detailed application in practice of the definition of nearly zero-energy buildings, reflecting their national, regional or local conditions, and including a numerical indicator of primary energy use expressed in kWh/m² per year. Primary energy factors used for the determination of the primary energy use may be based on national or regional yearly average values and may take into account relevant European standards;
(b) intermediate targets for improving the energy performance of new buildings, by 2015, with a view to preparing the implementation of paragraph 1;
(c) information on the policies and financial or other measures adopted in the context of paragraphs 1 and 2 for the promotion of nearly-zero-energy buildings, including details of national requirements and measures concerning the use of energy from renewable sources in new buildings and existing buildings undergoing major renovation in the context of Article 13(4) of Directive 2009/28/EC and Articles 6 and 7 of this Directive.

4. The Secretariat shall evaluate the national plans referred to in paragraph 1, notably the adequacy of the measures envisaged by the Contracting Party in relation to the objectives of this Directive. The Secretariat, taking due account of the principle of subsidiarity, may request further specific information regarding the requirements set out in paragraphs 1, 2 and 3. In that case, the Contracting Party concerned shall submit the requested information or propose amendments within nine months following the request from the Secretariat. Following its evaluation, the Secretariat may propose a recommendation to the Ministerial Council.

5. The Secretariat shall by 31 December 2013 and every three years thereafter publish a report on the progress of Contracting Parties in increasing the number of nearly zero-energy buildings. On the basis of that report the Secretariat shall develop an action plan and, if necessary, propose measures to increase the number of those buildings and encourage best practices as regards the cost-effective transformation of existing buildings into nearly zero-energy buildings.

6. Contracting Parties may decide not to apply the requirements set out in points (a) and (b) of paragraph 1 in specific and justifiable cases where the cost-benefit analysis over the economic lifecycle of the building in question is negative. Contracting Parties shall inform the Secretariat of the principles of the relevant legislative regimes.

Article 10

Financial incentives and market barriers

1. In view of the importance of providing appropriate financing and other instruments to catalyse the energy performance of buildings and the transition to nearly zero-energy buildings, Contracting Parties shall take appropriate steps to consider the most relevant such instruments in the light of national circumstances.

2. Contracting Parties shall draw up, by 30 June 2013, a list of existing and, if appropriate, proposed measures and instruments including those of a financial nature, other than those required by this Directive, which promote the objectives of this Directive.

Contracting Parties shall update this list every three years. Contracting Parties shall communicate these lists to the Secretariat, which they may do by including them in the Energy Efficiency Action Plans referred to in Article 14(2) of Directive 2006/32/EC.

3. The Secretariat shall examine the effectiveness of the listed existing and proposed measures referred to in paragraph 2 as well as of relevant Union instruments, in supporting the implementation of this Directive. On the basis of that examination, and taking due account of the principle of subsid-
Article 11

Energy performance certificates

1. **Contracting Parties** shall lay down the necessary measures to establish a system of certification of the energy performance of buildings. The energy performance certificate shall include the energy performance of a building and reference values such as minimum energy performance requirements in order to make it possible for owners or tenants of the building or building unit to compare and assess its energy performance.

The energy performance certificate may include additional information such as the annual energy consumption for non-residential buildings and the percentage of energy from renewable sources in the total energy consumption.

2. The energy performance certificate shall include recommendations for the cost-optimal or cost-effective improvement of the energy performance of a building or building unit, unless there is no reasonable potential for such improvement compared to the energy performance requirements in force.

The recommendations included in the energy performance certificate shall cover:

(a) measures carried out in connection with a major renovation of the building envelope or technical building system(s); and

(b) measures for individual building elements independent of a major renovation of the building envelope or technical building system(s).

3. The recommendations included in the energy performance certificate shall be technically feasible for the specific building and may provide an estimate for the range of payback periods or cost-benefits over its economic lifecycle.

4. The energy performance certificate shall provide an indication as to where the owner or tenant can receive more detailed information, including as regards the cost-effectiveness of the recommendations made in the energy performance certificate. The evaluation of cost effectiveness shall be based on a set of standard conditions, such as the assessment of energy savings and underlying energy prices and a preliminary cost forecast. In addition, it shall contain information on the steps to be taken to implement the recommendations. Other information on related topics, such as energy audits or incentives of a financial or other nature and financing possibilities may also be provided to the owner or tenant.

5. Subject to national rules, **Contracting Parties** shall encourage public authorities to take into account the leading role which they should play in the field of energy performance of buildings, inter alia, by implementing the recommendations included in the energy performance certificate issued for buildings owned by them within its validity period.

6. Certification for building units may be based:

(a) on a common certification of the whole building; or

(b) on the assessment of another representative building unit with the same energy-relevant characteristics in the same building.

7. Certification for single-family houses may be based on the assessment of another representative building of similar design and size with a similar actual energy performance quality if such correspondence can be guaranteed by the expert issuing the energy performance certificate.

8. The validity of the energy performance certificate shall not exceed 10 years.

9. The Commission shall, by 2011, in consultation with the relevant sectors, adopt a voluntary common European Union certification scheme for the energy performance of non-residential buildings. That measure shall be adopted in accordance with the advisory procedure referred to in Article 26(2). **Contracting Parties** are encouraged to recognise or use the scheme, or use part thereof by adapting it to national circumstances.

Article 12

Issue of energy performance certificates

1. **Contracting Parties** shall ensure that an energy performance certificate is issued for:

(a) buildings or building units which are constructed, sold or rented out to a new tenant; and

(b) buildings where a total useful floor area over 500 m² is occupied by a public authority and frequently visited by the public. On 30 September 2015, this threshold of 500 m² shall be lowered to 250 m².

The requirement to issue an energy performance certificate does not apply where a certificate, issued
in accordance with either Directive 2002/91/EC or this Directive, for the building or building unit concerned is available and valid.

2. Contracting Parties shall require that, when buildings or building units are constructed, sold or rented out, the energy performance certificate or a copy thereof is shown to the prospective new tenant or buyer and handed over to the buyer or new tenant.

3. Where a building is sold or rented out in advance of construction, Contracting Parties may require the seller to provide an assessment of its future energy performance, as a derogation from paragraphs 1 and 2; in this case, the energy performance certificate shall be issued at the latest once the building has been constructed.

4. Contracting Parties shall require that when:
   - buildings having an energy performance certificate,
   - building units in a building having an energy performance certificate, and
   - building units having an energy performance certificate, are offered for sale or for rent, the energy performance indicator of the energy performance certificate of the building or the building unit, as applicable, is stated in the advertisements in commercial media.

5. The provisions of this Article shall be implemented in accordance with applicable national rules on joint ownership or common property.

6. Contracting Parties may exclude the categories of buildings referred to in Article 4(2) from the application of paragraphs 1, 2, 4 and 5 of this Article.

7. The possible effects of energy performance certificates in terms of legal proceedings, if any, shall be decided in accordance with national rules.

**Article 13**

Display of energy performance certificates

1. Contracting Parties shall take measures to ensure that where a total useful floor area over 500 m² of a building for which an energy performance certificate has been issued in accordance with Article 12(1) is occupied by public authorities and frequently visited by the public, the energy performance certificate is displayed in a prominent place clearly visible to the public.

On 30 September 2015, this threshold of 500 m² shall be lowered to 250 m².

2. Contracting Parties shall require that where a total useful floor area over 500 m² of a building for which an energy performance certificate has been issued in accordance with Article 12(1) is frequently visited by the public, the energy performance certificate is displayed in a prominent place clearly visible to the public.

3. The provisions of this Article do not include an obligation to display the recommendations included in the energy performance certificate.

**Article 14**

Inspection of heating systems

1. Contracting Parties shall lay down the necessary measures to establish a regular inspection of the accessible parts of systems used for heating buildings, such as the heat generator, control system and circulation pump(s), with boilers of an effective rated output for space heating purposes of more than 20 kW. That inspection shall include an assessment of the boiler efficiency and the boiler sizing compared with the heating requirements of the building. The assessment of the boiler sizing does not have to be repeated as long as no changes were made to the heating system or as regards the heating requirements of the building in the meantime.

Contracting Parties may reduce the frequency of such inspections or lighten them as appropriate, where an electronic monitoring and control system is in place.

2. Contracting Parties may set different inspection frequencies depending on the type and effective rated output of the heating system whilst taking into account the costs of the inspection of the heating system and the estimated energy cost savings that may result from the inspection.

3. Heating systems with boilers of an effective rated output of more than 100 kW shall be inspected at least every two years.

For gas boilers, this period may be extended to four years.

4. As an alternative to paragraphs 1, 2 and 3 Contracting Parties may opt to take measures to ensure the provision of advice to users concerning the replacement of boilers, other modifications to the heating system and alternative solutions to assess the efficiency and appropriate size of the boiler. The overall impact of this approach shall be equivalent to that arising from the provisions set out in paragraphs 1, 2 and 3.

Where Contracting Parties choose to apply the measures referred to in the first subparagraph, they shall submit to the Secretariat a report on the equivalence of those measures to measures referred to in paragraphs 1, 2 and 3 of this Article by 30 June 2013 at the latest. Contracting Parties shall submit these reports to the Secretariat every three years. The reports may be included in the Energy Efficiency Action Plans referred to in Article 14(2) of Directive 2006/32/EC.

5. After receiving the national report from a Contracting Party about the application of the option as described in paragraph 4, the Secretariat may request further specific information regarding the requirements and equivalence of the measures set out in that paragraph. In that case, the Contracting Party concerned shall present the requested information or propose amendments within nine months.

**Article 15**

Inspection of air-conditioning systems

1. Contracting Parties shall lay down the necessary measures to establish a regular inspection of the accessible parts of air-conditioning systems of an effective rated output of more than 12 kW. The inspection shall include an assessment of the air-conditioning efficiency and the sizing compared to the cooling requirements of the building. The assessment of the sizing does not have to be repeated as long as no changes were made to this air-conditioning system or as regards the cooling require-
2. The inspection report shall be handed over to the owner or tenant of the building.

Contracting Parties may reduce the frequency of such inspections or lighten them, as appropriate, where an electronic monitoring and control system is in place.

2. The Contracting Parties may set different inspection frequencies depending on the type and effective rated output of the air-conditioning system, whilst taking into account the costs of the inspection of the air-conditioning system and the estimated energy cost savings that may result from the inspection.

3. In laying down the measures referred to in paragraphs 1 and 2 of this Article, Contracting Parties shall, as far as is economically and technically feasible, ensure that inspections are carried out in accordance with the inspection of heating systems and other technical systems referred to in Article 14 of this Directive and the inspection of leakages referred to in Regulation (EC) No 842/2006 of the European Parliament and of the Council of 17 May 2006 on certain fluorinated greenhouse gases.

4. As an alternative to paragraphs 1, 2 and 3 Contracting Parties may opt to take measures to ensure the provision of advice to users on the replacement of air-conditioning systems or on other modifications to the air-conditioning system which may include inspections to assess the efficiency and appropriate size of the air-conditioning system. The overall impact of this approach shall be equivalent to that arising from the provisions set out in paragraphs 1, 2 and 3.

Where Contracting Parties apply the measures referred to in the first subparagraph, they shall, by 30 June 2013 at the latest, submit to the Secretariat a report on the equivalence of those measures to the measures referred to in paragraphs 1, 2 and 3 of this Article. Contracting Parties shall submit these reports to the Secretariat every three years. The reports may be included in the Energy Efficiency Action Plans referred to in Article 14(2) of Directive 2006/32/EC.

5. After receiving the national report from a Contracting Party about the application of the option as described in paragraph 4, the Secretariat may request further specific information regarding the requirements and equivalence of the measures set in that paragraph. In this case, the Contracting Party concerned shall present the requested information or propose amendments within nine months.

**Article 16**

Reports on the inspection of heating and air-conditioning systems

1. An inspection report shall be issued after each inspection of a heating or air-conditioning system. The inspection report shall contain the result of the inspection performed in accordance with Article 14 or 15 and include recommendations for the cost-effective improvement of the energy performance of the inspected system.

The recommendations may be based on a comparison of the energy performance of the system inspected with that of the best available feasible system and a system of similar type for which all relevant components achieve the level of energy performance required by the applicable legislation.

2. The inspection report shall be handed over to the owner or tenant of the building.

**Article 17**

Independent experts

Contracting Parties shall ensure that the energy performance certification of buildings and the inspection of heating systems and air-conditioning systems are carried out in an independent manner by qualified and/or accredited experts, whether operating in a self-employed capacity or employed by public bodies or private enterprises.

Experts shall be accredited taking into account their competence.

Contracting Parties shall make available to the public information on training and accreditations.

Contracting Parties shall ensure that either regularly updated lists of qualified and/or accredited experts or regularly updated lists of accredited companies which offer the services of such experts are made available to the public.

**Article 18**

Independent control system

1. Contracting Parties shall ensure that independent control systems for energy performance certificates and reports on the inspection of heating and air-conditioning systems are established in accordance with Annex II. Contracting Parties may establish separate systems for the control of energy performance certificates and for the control of reports on the inspection of heating and air-conditioning systems.

2. The Contracting Parties may delegate the responsibilities for implementing the independent control systems.

Where the Contracting Parties decide to do so, they shall ensure that the independent control systems are implemented in compliance with Annex II.

3. Contracting Parties shall require the energy performance certificates and the inspection reports referred to in paragraph 1 to be made available to the competent authorities or bodies on request.

**Article 19**

Review

The Commission, assisted by the Committee established by Article 26, shall evaluate this Directive by 1 January 2017 at the latest, in the light of the experience gained and progress made during its application, and, if necessary, make proposals.

**Article 20**

Information

1. Contracting Parties shall take the necessary measures to inform the owners or tenants of buildings or building units of the different methods and practices that serve to enhance energy performance.

2. Contracting Parties shall in particular provide information to the owners or tenants of build-
ings on energy performance certificates and inspection reports, their purpose and objectives, on cost-effective ways to improve the energy performance of the building and, where appropriate, on financial instruments available to improve the energy performance of the building.

At the request of the Contracting Parties, the Secretariat shall assist Contracting Parties in staging information campaigns for the purposes of paragraph 1 and the first subparagraph of this paragraph, which may be dealt with in Union programmes.

3. Contracting Parties shall ensure that guidance and training are made available for those responsible for implementing this Directive. Such guidance and training shall address the importance of improving energy performance, and shall enable consideration of the optimal combination of improvements in energy efficiency, use of energy from renewable sources and use of district heating and cooling when planning, designing, building and renovating industrial or residential areas.

4. The Commission is invited to continuously improve its information services, in particular the website that has been set up as a European portal for energy efficiency in buildings directed towards citizens, professionals and authorities, in order to assist Contracting Parties in their information and awareness-raising efforts. Information displayed on this website might include links to relevant European Union and national, regional and local legislation, links to Europa websites that display the National Energy Efficiency Action Plans, links to available financial instruments, as well as best practice examples at national, regional and local level. In the context of the European Regional Development Fund, the Commission shall continue and further intensify its information services with the aim of facilitating the use of available funds by providing assistance and information to interested stakeholders, including national, regional and local authorities, on funding possibilities, taking into account the latest changes in the regulatory framework.

Article 21
Consultation

In order to facilitate the effective implementation of the Directive, Contracting Parties shall consult the stakeholders involved, including local and regional authorities, in accordance with the national legislation applicable and as relevant. Such consultation is of particular importance for the application of Articles 9 and 20.

Article 22
Adaptation of Annex I to technical progress

The Commission shall adapt points 3 and 4 of Annex I to technical progress by means of delegated acts in accordance with Articles 23, 24 and 25.

Article 23
Exercise of delegation

1. The powers to adopt the delegated acts referred to in Article 22 shall be conferred on the Commission for a period of five years beginning on 8 July 2010. The Commission shall make a report in respect of the delegated powers not later than six months before the end of the five-year period. The delegation of powers shall be automatically extended for periods of an identical duration, unless the European Parliament or the Council revokes it in accordance with Article 24.

2. Without prejudice to the deadline referred to in Article 5(1), the powers to adopt the delegated acts referred to in Article 5 shall be conferred on the Commission until 30 June 2012.

3. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the Ministerial Council, who shall put it on the agenda of its next meeting.

4. The powers to adopt delegated acts are conferred on the Commission subject to the conditions laid down in Articles 24 and 25.

Article 24
Revocation of the delegation

The Ministerial Council may object to the application of a delegated act to the Contracting Parties of the Energy Community at the meeting following notification. If, at that meeting, the Ministerial Council has not objected to the delegated act, it shall become binding on the Contracting Parties, subject to possible adaptation. In the Ministerial Council objects to a delegated act, it shall not be applicable in the Energy Community. The Ministerial Council shall state the reasons for objecting to the delegated act.

Article 25
Objections to delegated acts

1. The European Parliament or the Council may object to a delegated act within a period of two months from the date of notification. At the initiative of the European Parliament or the Council that period shall be extended by two months.

2. If, on expiry of that period, neither the European Parliament nor the Council has objected to the delegated act it shall be published in the Official Journal of the European Union and enter into force on the date stated therein. The delegated act may be published in the Official Journal of the European Union and enter into force before the expiry of that period, if the European Parliament and the Council have both informed the Commission of their intention not to raise objections.

3. If the European Parliament or the Council objects to a delegated act, it shall not enter into force. The institution which objects shall state the reasons for objecting to the delegated act.

Article 26
Committee procedure

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.
**Article 30 and 31**

**Entry into force and Addressees**

This Decision [2010/02/MC-EnC] enters into force upon its adoption and is addressed to the Contracting Parties.

**Article (4) of Decision 2010/02/MC-EnC**

The Secretariat shall monitor and review the implementation of Directive 2010/31/EU in the Contracting Parties and shall submit a progress report to the Permanent High Level Group by 31 March 2013.

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**Article 27**

**Penalties**

**Contracting Parties** shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. **Contracting Parties** shall communicate those provisions to the Secretariat by 31 March 2013 at the latest and shall notify it without delay of any subsequent amendment affecting them.

**Article 28**

**Transposition**

1. **Contracting Parties** shall adopt and publish, by 30 September 2012 at the latest, the laws, regulations and administrative provisions necessary to comply with Articles 2 to 18, and with Articles 20 and 27.

They shall apply those provisions as far as Articles 2, 3, 9, 11, 12, 13, 17, 18, 20 and 27 are concerned, from 31 March 2013 at the latest.

They shall apply those provisions as far as Articles 4, 5, 6, 7, 8, 14, 15 and 16 are concerned, to buildings occupied by the public authorities from 31 March 2013 at the latest and to other buildings from 30 September 2013 at the latest.

They may defer the application of Article 12(1) and (2) to single building units that are rented out, until 31 March 2016. This shall however not result in fewer certificates being issued than would have been the case under the application of the Directive 2002/91/EC in the Contracting Party concerned.

When **Contracting Parties** adopt 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 Directive 2002/91/EC shall be construed as references to this Directive. **Contracting Parties** shall determine how such reference is to be made and how that statement is to be formulated.

2. **Contracting Parties** shall communicate to the Secretariat the text of the main provisions of national law which they adopt in the field covered by this Directive.

**Article 29**

**Repeal**

Directive 2002/91/EC, as amended by the Regulation indicated in Annex IV, Part A, is hereby repealed with effect from 1 February 2012, without prejudice to the obligations of the **Contracting Parties** relating to the time limit for transposition into national law and application of the Directive set out in Annex IV, Part B.

References to Directive 2002/91/EC shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex V.

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The text displayed here corresponds to Article 3 of Decision 2010/02/MC-EnC.
ANNEX I

COMMON GENERAL FRAMEWORK FOR THE CALCULATION OF ENERGY PERFORMANCE OF BUILDINGS
(referred to in Article 3)

1. The energy performance of a building shall be determined on the basis of the calculated or actual annual energy that is consumed in order to meet the different needs associated with its typical use and shall reflect the heating energy needs and cooling energy needs (energy needed to avoid overheating) to maintain the envisaged temperature conditions of the building, and domestic hot water needs.

2. The energy performance of a building shall be expressed in a transparent manner and shall include an energy performance indicator and a numeric indicator of primary energy use, based on primary energy factors per energy carrier, which may be based on national or regional annual weighted averages or a specific value for on-site production.

The methodology for calculating the energy performance of buildings should take into account European standards and shall be consistent with relevant Union legislation, including Directive 2009/28/EC.

3. The methodology shall be laid down taking into consideration at least the following aspects:
   (a) the following actual thermal characteristics of the building including its internal partitions:
      (i) thermal capacity;
      (ii) insulation;
      (iii) passive heating;
      (iv) cooling elements; and
      (v) thermal bridges;
   (b) heating installation and hot water supply, including their insulation characteristics;
   (c) air-conditioning installations;
   (d) natural and mechanical ventilation which may include air-tightness;
   (e) built-in lighting installation (mainly in the non-residential sector);
   (f) the design, positioning and orientation of the building, including outdoor climate;
   (g) passive solar systems and solar protection;
   (h) indoor climatic conditions, including the designed indoor climate;
   (i) internal loads.
4. The positive influence of the following aspects shall, where relevant in the calculation, be taken into account:
   (a) local solar exposure conditions, active solar systems and other heating and electricity systems based on energy from renewable sources;
   (b) electricity produced by cogeneration;
   (c) district or block heating and cooling systems;
   (d) natural lighting.

ANNEX II

INDEPENDENT CONTROL SYSTEMS FOR ENERGY PERFORMANCE CERTIFICATES AND INSPECTION REPORTS

1. The competent authorities or bodies to which the competent authorities have delegated the responsibility for implementing the independent control system shall make a random selection of at least a statistically significant percentage of all the energy performance certificates issued annually and subject those certificates to verification.

The verification shall be based on the options indicated below or on equivalent measures:
   (a) validity check of the input data of the building used to issue the energy performance certificate and the results stated in the certificate;
   (b) check of the input data and verification of the results of the energy performance certificate, including the recommendations made;
   (c) full check of the input data of the building used to issue the energy performance certificate, full verification of the results stated in the certificate, including the recommendations made, and on-site visit of the building, if possible, to check correspondence between specifications given in the energy performance certificate and the building certified.

2. The competent authorities or bodies to which the competent authorities have delegated the responsibility for implementing the independent control system shall make a random selection of at least a statistically significant percentage of all the inspection reports issued annually and subject those reports to verification.
ANNEX III

COMPARATIVE METHODOLOGY FRAMEWORK TO IDENTIFY COST-OPTIMAL LEVELS OF ENERGY PERFORMANCE REQUIREMENTS FOR BUILDINGS AND BUILDING ELEMENTS

The comparative methodology framework shall enable Contracting Parties to determine the energy performance of buildings and building elements and the economic aspects of measures relating to the energy performance, and to link them with a view to identifying the cost-optimal level. The comparative methodology framework shall be accompanied by guidelines outlining how to apply this framework in the calculation of cost-optimal performance levels. The comparative methodology framework shall allow for taking into account use patterns, outdoor climate conditions, investment costs, building category, maintenance and operating costs (including energy costs and savings), earnings from energy produced, where applicable, and disposal costs, where applicable. It should be based on relevant European standards relating to this Directive.

The Commission shall also provide:

- guidelines to accompany the comparative methodology framework; these guidelines will serve to enable the Contracting Parties to undertake the steps listed below,
- information on estimated long-term energy price developments.

For the application of the comparative methodology framework by Contracting Parties, general conditions, expressed by parameters, shall be laid down at Contracting Party level.

The comparative methodology framework shall require Contracting Parties to:

- define reference buildings that are characterised by and representative of their functionality and geographic location, including indoor and outdoor climate conditions. The reference buildings shall cover residential and non-residential buildings, both new and existing ones,
- define energy efficiency measures to be assessed for the reference buildings. These may be measures for individual buildings as a whole, for individual building elements, or for a combination of building elements,
- assess the final and primary energy need of the reference buildings and the reference buildings with the defined energy efficiency measures applied,
- calculate the costs (i.e. the net present value) of the energy efficiency measures (as referred to in the second indent) during the expected economic lifecycle applied to the reference buildings (as referred to in the first indent) by applying the comparative methodology framework principles.

By calculating the costs of the energy efficiency measures during the expected economic lifecycle, the cost-effectiveness of different levels of minimum energy performance requirements is assessed by the Contracting Parties. This will allow the determination of cost-optimal levels of energy performance requirements.
Directive 2008/92/EC of 22 October 2008 concerning a Community procedure to improve the transparency of gas and electricity prices charged to industrial end-users (recast)

Incorporated by Ministerial Council Decision 2012/02/MC-EnC of 18 October 2012 concerning the implementation of the rules of energy statistics in the Energy Community

Whereas:

(1) 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 has been significantly amended on several occasions. Now that new amendments are being made to the said Directive, it is desirable, for reasons of clarity, that the provisions in question should be recast.

(2) Energy price transparency, to the extent that it reinforces the conditions ensuring that competition is not distorted in the common market, is essential to the achievement and smooth functioning of the internal energy market.

(3) Transparency can help to obviate discrimination against users by increasing their freedom to choose between different energy sources and different suppliers.

(4) At present, the degree of transparency varies from one energy source and one Member State or one Community region to another, thus calling into question the achievement of an internal energy market.

(5) However, the price paid by industry in the Community for the energy which it uses is one of the factors which influence its competitiveness and should therefore remain confidential.

(6) The system of standard consumers used by the Statistical Office of the European Communities (Eurostat) in its price publications and the price system introduced for major industrial electricity users ensure that transparency is not an obstacle to confidentiality.

(7) It is necessary to extend the consumer categories used by Eurostat up to the limits at which the consumers remain representative.

(8) In this way end-users price transparency would be achieved without endangering the necessary confidentiality of contracts. In order to respect confidentiality there must be at least three consumers in a given consumption category for a price to be published.

(9) This information, which concerns gas and electricity consumed by industry for energy end-users, will also enable comparisons to be drawn with other energy sources (oil, coal, fossil and renewable energy sources) and other consumers.

(10) Undertakings which supply gas and electricity as well as industrial gas and electricity consumers remain, independently of the application of this Directive, subject to the Treaty's competition rules and consequently the Commission can require communication of prices and conditions of sale.

(11) Knowledge of the price systems in force forms part of price transparency.

(12) Knowledge of the breakdown of consumers by category and their respective market shares also forms part of price transparency.

(13) The communication to Eurostat of prices and conditions of sale to consumers and price systems in operation as well as the breakdown of consumers by consumption category should inform the Commission sufficiently for it to decide, as necessary, on appropriate action or proposals in the light
of the situation of the internal energy market.

(14) The data supplied to Eurostat will be more reliable if the undertakings themselves compile these data.

(15) Familiarity with the taxation and parafiscal charges existing in each Member State is important to ensure price transparency.

(16) It must be possible to check the reliability of the data supplied to Eurostat.

(17) The achievement of transparency presupposes the publication and circulation of prices and price systems as widely as possible among consumers.

(18) To implement energy price transparency the system should be based on the proven expertise and methods developed and applied by Eurostat regarding the processing, checking and publication of data.

(19) With the prospect of the achievement of the internal market in energy, the system of price transparency should be rendered operational as soon as possible.

(20) The uniform implementation of this Directive can only take place in all the Member States when the natural gas market, in particular with regard to infrastructure, has reached a sufficient level of development.

(21) 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.

(22) In particular, the Commission should be empowered to make the necessary changes to Annexes I and II in the light of specific problems identified. Since those measures are of general scope and are designed to amend non-essential elements of this Directive, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.

(23) Since the new elements introduced into this Directive concern committee procedure only, they do not need to be transposed by the Member States.

(24) This Directive should be without prejudice to the obligations of the Member States relating to the time limits for transposition into national law of the Directives set out in Annex III, Part B.

**Article 1**

Member States shall take the steps necessary to ensure that undertakings which supply gas or electricity to industrial end-users, as defined in Annexes I and II, communicate to the Statistical Office of the European Communities (Eurostat) in the form provided for in Article 3:

1. the prices and terms of sale of gas and electricity to industrial end-users;
2. the price systems in use;
3. the breakdown of consumers and the corresponding volumes by category of consumption to ensure the representativeness of these categories at national level.

**Article 2**

1. The undertakings referred to in Article 1 shall assemble the data provided for in Article 1(1) and (2) on 1 January and 1 July of each year. These data, drawn up in conformity with the provisions referred to in Article 3, shall be sent to Eurostat and the competent authorities of the Member States within two months.

2. On the basis of the data referred to in paragraph 1, Eurostat shall publish each May and each November, in an appropriate form, the prices of gas and electricity for industrial users in the Member States and the pricing systems used to that end.

3. The information provided for in Article 1(3) shall be sent every two years to Eurostat and to the Member States’ competent authorities. This information shall not be published.

**Article 3**

The implementing provisions concerning the form, content and all other features of the information provided for in Article 1 are set out in Annexes I and II.

**Article 4**

Eurostat shall not disclose data supplied to it pursuant to Article 1 which might, by their nature, be subject to commercial confidentiality. Such confidential statistical data transmitted to Eurostat shall be accessible only to officials of Eurostat and may be used only for statistical purposes.

The first paragraph shall not, however, prevent the publication of such data in an aggregated form which does not enable individual commercial transactions to be identified.

**Article 5**

Where Eurostat notes statistically significant anomalies or inconsistencies in data transmitted under this Directive, it may ask the national bodies to allow it to inspect the appropriate disaggregated data as well as the methods of calculation or evaluation upon which the aggregated data are based, in order to assess, or even amend, any information deemed irregular.

**Article 6**

Where appropriate, the Commission shall make the necessary changes to Annexes I and II in the light of specific problems identified. Those measures, designed to amend non-essential elements of this Directive, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 7(2).

Such changes shall, however, cover only the technical features of Annexes I and II and shall not be of a nature such as to alter the general structure of the system.
**ANNEX I**

**GAS PRICES**

Gas prices for industrial end-users [1] to be collected and compiled according to the following methodology.

(a) Prices to be reported are prices paid by industrial end-users buying natural gas distributed through mains for their own use.

(b) All industrial uses of gas are considered. However, the system excludes consumers who use gas:
- for electricity generation in power plants or in CHP plants,
- in non-energy uses (e.g. in the chemical industry),
- above 4000000 gigajoule (GJ) per year.

(c) Prices recorded to be based on a system of standard consumption bands defined by a range of annual gas consumption.

(d) Prices will be collected twice per year, at the beginning of each six-month period (January and July) and will refer to the average prices paid by industrial end-users for gas over the previous six months.

(e) Prices must be expressed in national currency per gigajoule. The unit of energy used is measured in gigajoule (GJ).

(f) Prices must include all charges payable: network charges plus energy consumed minus any rebates or premiums, plus other charges (meter rental, standing charges, etc.). Initial connection charges are not to be included.

(g) Prices are to be recorded as national average prices.

(h) The Member States develop and implement cost-effective procedures to ensure a representative data compilation system based on the following rules:
- prices will represent weighted average prices, using the market shares of the gas supply undertakings surveyed as weighting factors; arithmetic average prices will be provided only when weighted figures cannot be calculated. In either case, Member States will ensure that a representative share of the national market is covered by the survey,
- market shares should be based on the quantity of gas invoiced by the gas supply undertakings to industrial end-users. If possible, the market shares will be calculated separately for each band. The information used for calculating weighted average prices will be managed by Member States, respecting confidentiality rules,
- in the interest of confidentiality, data relating to prices will be communicated only where there are, in the Member State concerned, at least three end-users in each of the categories referred to under point (j).

(i) Three levels of prices are to be provided:
- prices excluding taxes and levies,
- prices excluding VAT and other recoverable taxes,
- prices including all taxes, levies and VAT.

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1 The text displayed here corresponds to Article 3 of Decision 2012/02/MC-EnC.
2 The text displayed here corresponds to Article 4 of Decision 2012/02/MC-EnC.
(j) Gas prices will be surveyed for the following categories of industrial end-user:

(k) Once every two years, together with the January price reporting, information about the compilation system applied will be communicated to Eurostat and particularly: a description of the survey and its scope (number of supply undertakings surveyed, aggregated percentage of the market represented, etc.) and the criteria used to calculate weighted average prices as well as the aggregated consumption volumes represented by each band. The first communication related to the compilation system will concern the situation on January 1, 2008.

(i) Once per year, together with the January price reporting, information about the main average characteristics and factors affecting the prices reported for each consumption band will be communicated to Eurostat.

The information will include:
- average load factors for industrial end-users corresponding to each consumption band calculated on the basis of the total energy supplied and average maximum demand,
- a description on discounts given for interruptible supplies,
- a description of standing charges, meter rentals or any other charges relevant at national level.

(m) Once per year, together with the January reporting, the rates and method of calculation as well as a description of the taxes levied on gas sales to industrial end-users should also be reported. The description must include any non-tax levy covering system costs and public service obligations.

The description of taxes to be provided will include three clearly separated sections:
- taxes, levies, non-tax levies, fees and any other fiscal charges not identified in the invoices provided to industrial end-users. The items described under this point will be included under the reported figures for the price level: “Prices excluding taxes and levies”;
- taxes and levies identified in the invoices provided to industrial end-users and considered as non-recoverable. The items described under this point will therefore be included under the reported figures for the price level: “Prices excluding VAT and other recoverable taxes”; and
- value added tax (VAT) and other recoverable taxes identified in the invoices provided to industrial end-users. The items described under this point will be included under the reported figures for the price level: “Prices including all taxes, levies and VAT”.

An outline of the different taxes, levies, non-tax levies, fees and fiscal charges applicable are:
- value added tax,
- concession fees. This usually refers to licences and fees for the occupation of land and public or private property by networks or other gas devices,
- environmental taxes or levies. This usually refers either to the promotion of renewable energy sources or CHP or as a burden for CO₂, SO₂, or another agent emissions related to climate change,
- other taxes or levies linked with the energy sector: public service obligations/charges, levies to financing energy regulatory authorities, etc.,
- other taxes or levies not linked with the energy sector: national, local or regional fiscal taxes on energy consumed, taxes on gas distribution, etc.

Taxes on income, property-related taxes, oil for motor cars, road taxes, taxes on licences for telecom, radio, advertising, fees for licences, taxes on waste, etc. will not be taken into consideration and are excluded from this description, because they are undoubtedly part of the operators’ costs and apply also to other industries or activities.

(n) In Member States where one company covers all the industrial sales, the information may be communicated by that company. In Member States where more than one company operates, the information should be communicated by an independent statistical body.

[1] Industrial end-user may include other non-residential users.

ANNEX II

ELECTRICITY PRICES

Electricity prices for industrial end-users [1] to be collected and compiled according to the following methodology:

(a) Prices to be reported are prices paid by industrial end-users buying electricity for their own use.

(b) All industrial uses of electricity are considered.

(c) Prices recorded to be based on a system of standard consumption bands defined by a range of annual electricity consumption.

(d) Prices will be collected twice per year, at the beginning of each six-month period (January and July) and will refer to the average prices paid by the industrial end-user for electricity over the previous six months. The first communication of price data to Eurostat will refer to the situation on January 1, 2008.

(e) Prices must be expressed in national currency per kWh.

(f) Prices must include all charges payable: network charges plus energy consumed minus any rebates or premiums, plus other charges (capacity charges, commercialisation, meter rental, etc.). Initial connection charges are not to be included.

(g) Prices are to be recorded as national average prices.

(h) The Member States develop and implement cost-effective procedures to ensure a representative data compilation system based on the following rules:

- prices will represent weighted average prices, using the market share of the electricity supply undertakings surveyed as weighting factors. Arithmetic average prices will be provided only when weighted figures cannot be calculated. In either case, Member States will ensure that a representative share of the national market is covered in the survey,
- market shares should be based on the quantity of electricity invoiced by electricity supply undertakings to industrial end-users. If possible, the market shares will be calculated separately for each band. The information used for calculating weighted average prices will be managed by Member States, respecting confidentiality rules,
- in the interest of confidentiality, data relating to prices will be communicated only where there are, in the Member State concerned, at least three end-users in each of the categories referred to under point (j).

(i) Three levels of prices are to be provided:

- prices excluding taxes and levies,
- prices excluding VAT and other recoverable taxes,
- prices including all taxes, levies and VAT.

(i) Electricity prices will be surveyed for the following categories of industrial end-user:

<table>
<thead>
<tr>
<th>Industrial end-user</th>
<th>Annual electricity consumption (MWh)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Lowest</td>
</tr>
<tr>
<td>Band 1A</td>
<td></td>
</tr>
<tr>
<td>Band 1B</td>
<td>20</td>
</tr>
<tr>
<td>Band 1C</td>
<td>500</td>
</tr>
<tr>
<td>Band 1D</td>
<td>2000</td>
</tr>
<tr>
<td>Band 1E</td>
<td>20000</td>
</tr>
<tr>
<td>Band 1F</td>
<td>70000</td>
</tr>
</tbody>
</table>

(k) Once every two years, together with the January price reporting, information about the compilation system applied will be communicated to Eurostat and particularly: a description of the survey and its scope (number of supply undertakings surveyed, aggregated percentage of the market represented, etc.) and the criteria used to calculate the weighted average prices as well as the aggregated consumption volumes represented by each band. The first communication related to the compilation system will concern the situation on 1 January 2008.

(l) Once per year, together with the January price reporting, information about the main average characteristics and factors affecting the prices reported for each consumption band will be communicated to Eurostat.

The information to be provided will include:
- average load factors for industrial end-users corresponding to each consumption band calculated on the basis of the total energy supplied and average maximum demand,
- a table indicating the voltage limits per country,
- a description of standing charges, meter rentals or any other charges relevant at national level.

(m) Once per year, together with the January price reporting, the rates and method of calculation as well as a description of the taxes levied on electricity sales to industrial end-users should be reported. The description must include any non-tax levy covering system costs and public service obligations.

The description on taxes to be provided will include three clearly separated sections:
- taxes, levies, non-tax levies, fees and any other fiscal charges not identified in the invoices provided to industrial end-users. The items described under this point will be included under the reported figure for the price level: “Prices excluding taxes and levies”,
- taxes and levies identified in the invoices provided to industrial end-users and considered as non-recoverable. The items described under this point will be included under the reported figures for the price level: “Prices excluding VAT and other recoverable taxes”,
- value added tax (VAT) and other recoverable taxes identified in the invoices provided to industrial end-users. The items described under this point will be included under the reported figures for the price level: “Prices including all taxes, levies and VAT”.

An outline of the different taxes, levies, non-tax levies, fees and fiscal charges that can be applicable are:
- value added tax,
- concession fees. This usually refers to licences and fees for the occupation of land or public or private property by networks or other electricity devices,
- environmental taxes or levies. This usually refers either to the promotion of renewable energy sources or CHP, or as a burden for CO₂, SO₂ or another agents emissions related with the climate change,
- nuclear and other inspection taxes: nuclear decommissioning charges, inspection and fees for nuclear installations, etc.,
- other taxes or levies linked with the energy sector: public service obligations/charges, levies to financing energy regulatory authorities, etc.,
- other taxes or levies not linked with the energy sector: national, local or regional fiscal taxes on energy consumed, taxes on electricity distribution, etc.

Taxes on income, property-related taxes, excise duties on oil products and fuels other than for electricity generation, oil for motor cars, road taxes, taxes on licences for telecom, radio, advertising, fees for licences, taxes on waste, etc., will not be taken into consideration and are excluded from this description, because they are undoubtedly part of the operators’ costs and apply to other industries or activities.

(n) Once per year, together with the January price reporting, a breakdown of electricity prices into their main components will be communicated to Eurostat. This breakdown of electricity prices into their main components will be based on the following methodology.

The complete price for electricity per consumption band can be considered as the global sum of “network” prices, “energy and supply” prices (i.e. from generation to commercialisation, except networks) and all taxes and levies.

- “network” price is the ratio between the revenue related to transmission and distribution tariffs and (if possible) the corresponding volume of kWh per consumption band. If separate volumes of kWh per band are not available, estimates should be provided,
- “energy and supply” price is the total price minus the “network” price and minus all taxes and levies,
- taxes and levies. For this component an additional breakdown will be provided:
- taxes and levies on “network” prices,
- taxes and levies on “energy and supply” prices,
- VAT and other recoverable taxes.

N.B.: If complementary services are identified separately, then they can be allocated into one of the two main components as follows:
- “network” price will include the following costs: transmission and distribution tariffs, transmission and distribution losses, network costs, after-sale services, system service costs and meter rental,
- “energy and supply” price will include the following costs: generation, aggregation, balancing energy, supplied energy costs, customer services, after-sales management, metering, and other supply costs,
- other specific costs. This item represents costs which are neither network costs nor energy and supply costs nor taxes. If this kind of costs exists, they will be reported separately.

(o) In Member States where one company covers all the industrial sales, the information may be communicated by that company. In Member States where more than one company operates, the information should be communicated by an independent statistical body.

[1] Industrial end-user may include other non-residential user.
Regulation (EC) No 1099/2008 of 22 October 2008 on energy statistics

Incorporated by Ministerial Council Decision 2012/02/MC-EnC of 18 October 2012 concerning the implementation of the rules of energy statistics in the Energy Community

Whereas:

(1) The Community needs to have precise and timely data on energy quantities, their forms, sources, generation, supply, transformation and consumption, for the purpose of monitoring the impact and consequences of its policy work on energy.

(2) Energy statistics have traditionally been focused on energy supply and on fossil energies. In the coming years, greater focus is needed on increased knowledge and monitoring of final energy consumption, renewable energy and nuclear energy.

(3) The availability of accurate, up-to-date information on energy is essential for assessing the impact of energy consumption on the environment, in particular in relation to the emission of greenhouse gases. This information is required by Decision No 280/2004/EC of the European Parliament and of the Council of 11 February 2004 concerning a mechanism for monitoring Community greenhouse gas emissions and for implementing the Kyoto Protocol.


(6) The Green Papers of the Commission of 22 June 2005 on Energy Efficiency and of 8 March 2006 on a European Strategy for Sustainable, Competitive and Secure Energy discuss EU energy policies for which the availability of EU energy statistics are required, including for the purpose of establishing a European Energy Market Observatory.

(7) The establishment of a public domain energy forecast model, as called for by the European Parliament in its Resolution of 14 December 2006 on a European Strategy for Sustainable, Competitive and Secure Energy requires detailed, up-to-date energy data.

(8) In the coming years, greater attention should be paid to the security of supply of the most important fuels and more timely and more accurate data at EU level is needed to anticipate and coordinate EU solutions to possible supply crises.

(9) The liberalisation of the energy market and its growing complexity make it increasingly difficult
to obtain reliable, timely energy data in the absence, in particular, of a legal basis concerning the provision of such data.

(10) In order for the energy statistics system to assist political decision-making by the European Union and its Member States and promote public debate which includes citizens, it must afford guarantees of comparability, transparency, flexibility and ability to evolve. Thus, in the near future, statistics on nuclear energy should be incorporated and relevant data concerning renewable energy should be developed more. Similarly, with regard to energy efficiency, the availability of detailed statistics on habitat and transport would be extremely useful.


(12) Since the objective of this Regulation, namely establishing a common framework for the production, transmission, evaluation and dissemination of comparable energy statistics in the Community cannot be sufficiently achieved by the Member States and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary to achieve that objective.

(13) In the production and dissemination of Community statistics under this Regulation, the national and Community statistical authorities should take account of the principles set out in the European Statistics Code of Practice, which was adopted on 24 February 2005 by the Statistical Programme Committee, established by Council Decision 89/382/EEC, Euratom and attached to the Recommendation of the Commission on the independence, integrity and accountability of the national and Community statistical authorities.

(14) The measures necessary for the implementation of this Regulation 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.

(15) In particular, power should be conferred on the Commission to modify the list of data sources, the national statistics and the applicable clarifications or definitions as well as the transmission arrangements and to establish and modify the annual nuclear statistics, once incorporated, to modify the renewable energy statistics, once incorporated, and to establish and modify the final energy consumption statistics. Since those measures are of general scope and are designed to amend non-essential elements of this Regulation, inter alia, by supplementing it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5(a) of Decision 1999/468/EC.

(16) It is necessary to provide that the Commission may grant exemptions or derogations to Member States from those aspects of the energy data collection that would lead to an excessive burden on respondents. The exemptions or derogations should be granted only upon receipt of a proper justification which indicates the present situation and the excessive burden transparently. The period for which they remain in force should be limited to the shortest time necessary.

(17) The measures provided for in this Regulation are in accordance with the opinion of the Statistical Programme Committee.

Article 1
Subject matter and scope

1. This Regulation establishes a common framework for the production, transmission, evaluation and dissemination of comparable energy statistics in the Community.

2. This Regulation shall apply to statistical data concerning energy products and their aggregates in the Community.

Article 2
Definitions

For the purpose of this Regulation, the following definitions shall apply:

(a) “Community statistics” mean Community statistics as defined in the first indient of Article 2 of Regulation (EC) No 322/97;

(b) “production of statistics” means production of statistics as defined in the second indient of Article 2 of Regulation (EC) No 322/97;

(c) “Commission (Eurostat)” means the Community authority as defined in the fourth indient of Article 2 of Regulation (EC) No 322/97;

(d) “energy products” mean combustible fuels, heat, renewable energy, electricity, or any other form of energy;

(e) “aggregates” mean data aggregated at national level on the treatment or use of energy products, namely production, trade, stocks, transformation, consumption, and structural characteristics of the energy system such as installed capacities for electricity generation or production capacities for oil products;

(f) “quality of data” means the following aspects of statistical quality: relevance, accuracy, timeliness and punctuality, accessibility and clarity, comparability, coherence and completeness.

Article 3
Data sources

1. While applying the principles of maintaining a reduced burden on respondents and of administrative simplification, Member States shall compile data concerning energy products and their aggregates in the Community from the following sources:

(a) specific statistical surveys addressed to the primary and transformed energy producers and traders, distributors and transporters, importers and exporters of energy products;

(b) other statistical surveys addressed to final energy users in the sectors of manufacturing industry, transport, and other sectors, including households;

(c) other statistical estimation procedures or other sources, including administrative sources, such as regulators of the electricity and gas markets.

2. Member States shall lay down the detailed rules concerning the reporting of the data needed for the national statistics as specified in Article 4 by undertakings and other sources.
3. The list of data sources may be modified in accordance with the regulatory procedure with scrutiny referred to in Article 11(2).

**Article 4**

**Aggregates, energy products and the transmission frequency of national statistics**

1. The national statistics to be reported shall be as set out in the Annexes. They shall be transmitted with the following frequencies:
   (a) annual, for the energy statistics in Annex B;
   (b) monthly, for the energy statistics in Annex C;
   (c) short-term monthly, for the energy statistics in Annex D.

2. Applicable clarifications or definitions of the technical terms used are provided in the individual Annexes and also in Annex A (Clarifications of terminology).

3. The data to be forwarded and the applicable clarifications or definitions may be modified in accordance with the regulatory procedure with scrutiny referred to in Article 11(2).

**Article 5**

**Transmission and dissemination**

1. Member States shall transmit to the Commission (Eurostat) the national statistics referred to in Article 4.

2. The arrangements for their transmission, including the applicable time limits, derogations and exemptions therefrom, shall be as set out in the Annexes.

3. The arrangements for the transmission of the national statistics may be modified in accordance with the regulatory procedure with scrutiny referred to in Article 11(2).

4. At the duly justified request of a Member State, additional exemptions or derogations may be granted by the Commission in accordance with the regulatory procedure referred to in Article 11(3), for those parts of the national statistics for which the collection would lead to an excessive burden on respondents.

5. The Commission (Eurostat) shall disseminate yearly energy statistics by 31 January of the second year following the reported period.

**Article 6**

**Quality assessment and reports**

1. Member States shall ensure the quality of the data transmitted.


3. For the purposes of this Regulation, the following quality assessment dimensions shall apply to the data to be transmitted:
   (a) “relevance” shall refer to the degree to which statistics meet current and potential needs of the users;
   (b) “accuracy” shall refer to the closeness of estimates to the unknown true values;
   (c) “timeliness” shall refer to the delay between the availability of the information and the event or phenomenon it describes;
   (d) “punctuality” shall refer to the delay between the date of the release of the data and the target date when it should have been delivered;
   (e) “accessibility” and “clarity” shall refer to the conditions and modalities by which users can obtain, use and interpret data;
   (f) “comparability” shall refer to the measurement of the impact of differences in applied statistical concepts and measurement tools and procedures where statistics are compared between geographical areas, sectoral domains or over time;
   (g) “coherence” shall refer to the adequacy of the data to be reliably combined in different ways and for various uses.

4. Every five years, Member States shall provide the Commission (Eurostat) with a report on the quality of the data transmitted as well as on any methodological changes that have been made.

5. Within six months of receipt of a request from the Commission (Eurostat), and in order to allow it to assess the quality of the data transmitted, Member States shall send to the Commission (Eurostat) a report containing any relevant information concerning the implementation of this Regulation.

**Article 7**

**Time reference and frequency**

Member States shall compile all data specified in this Regulation from the beginning of the calendar year following the adoption of this Regulation, and shall transmit them from then onwards with the frequencies laid down in Article 4(1).

**Article 8**

**Annual nuclear statistics**

The Commission (Eurostat) shall, in cooperation with the nuclear energy sector in the EU, define a set of annual nuclear statistics which shall be reported and disseminated from 2009 onwards, that year being the first reported period, without prejudice to confidentiality, where it is necessary, and avoiding any duplication of data collection, while at the same time keeping production costs low and the reporting burden reasonable.

The set of annual nuclear statistics shall be established and may be modified in accordance with the regulatory procedure with scrutiny referred to in Article 11(2).
Article 9
Renewable energy statistics and final energy consumption statistics
1. With a view to improving the quality of renewable energy and final energy consumption statistics, the Commission (Eurostat), in collaboration with the Member States, shall make sure that these statistics are comparable, transparent, detailed and flexible by:
(a) reviewing the methodology used to generate renewable energy statistics in order to make available additional, pertinent, detailed statistics on each renewable energy source, annually and in a cost-effective manner. The Commission (Eurostat) shall present and disseminate the statistics generated from 2010 (reference year) onwards;
(b) reviewing and determining the methodology used at national and Community level to generate final energy consumption statistics (sources, variables, quality, costs) based on the current situation, existing studies and feasibility pilot studies, as well as cost-benefit analyses yet to be conducted, and evaluating the findings of the pilot studies and cost-benefit analyses with a view to establishing breakdown keys for final energies by sector and main energy uses and gradually integrating the resulting elements into the statistics from 2012 (reference year) onwards.
2. The set of renewable energy statistics may be modified in accordance with the regulatory procedure with scrutiny referred to in Article 11(2).
3. The set of final energy consumption statistics shall be established and may be modified in accordance with the regulatory procedure with scrutiny referred to in Article 11(2).

Article 10
Implementing measures
1. The following measures necessary for implementation of this Regulation, designed to amend non-essential elements of this Regulation, inter alia, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 11(2):
(a) modifications to the list of data sources (Article 3(3));
(b) modifications to the national statistics and to the applicable clarifications or definitions (Article 4(3));
(c) modifications to the transmission arrangements (Article 5(3));
(d) establishment of and modifications to the annual nuclear statistics (Article 8(2));
(e) modifications to the renewable energy statistics (Article 9(2));
(f) establishment of and modifications to the final energy consumption statistics (Article 9(3)).
2. Additional exemptions or derogations (Article 5(4)) shall be granted in accordance with the regulatory procedure referred to in Article 11(3).
3. Consideration is to be given to the principle that additional costs and the reporting burden remain within reasonable limits.

Article 11
Committee
1. The Commission shall be assisted by the Statistical Programme Committee.
2. 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.
3. Where reference is made to this paragraph Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.
The period provided for in Article 5(6) of Decision 1999/468/EC shall be three months.

Article 12
Entry into force and Addressees
This Decision [2012/02/MC-EnC] enters into force upon its adoption and is addressed to the Contracting Parties.

Article 1 of Decision 2012/02/MC-EnC

Article 3 of Decision 2012/02/MC-EnC
The Secretariat shall monitor and review the preparation of the implementation of Regulation (EC) 1099/2008 ... in the Contracting Parties and shall submit an annual progress report to the Ministerial Council, the first of which shall be submitted in 2013.

Footnote: The text displayed here corresponds to Article 4 of Decision 2012/02/MC-EnC.
PART III

MEASURES BY ENERGY COMMUNITY INSTITUTIONS

(Selected Acts)

The Ministerial Council of the Energy Community,

Having regard to the Treaty Establishing the Energy Community, and in particular Articles 90 to 94 as well as Articles 86, 87 and 82 thereof,

Having regard to the proposal by the Secretariat,

Whereas it is of crucial importance that the provisions of the Treaty, including the Decisions adopted thereunder, are properly implemented in the national legal orders of the Parties and correctly applied by their authorities,

Whereas each Party to the Treaty is responsible for the timely implementation and correct application of Energy Community law within its own legal system,

Whereas the Treaty establishes a system of dispute settlement within the Energy Community by decision of the Ministerial Council,

Whereas the procedure leading up to such a decision may be initiated by a Party, the Secretariat or the Regulatory Board,

Whereas the Treaty gives private bodies the right to approach the Secretariat with complaints,

Whereas a Party concerned has the right to make observations in response to the request or complaint,

Whereas the Ministerial Council may decide on the existence of a breach by a Party of its obligations,

Whereas the Ministerial Council may further decide on the existence of a serious and persistent breach and on possible sanctions resulting therefrom,

Whereas the Treaty provisions establish a framework which requires more detailed procedural rules for practical implementation,

Whereas the Ministerial Council on 29 June 2007 concluded that a formal process at a level below the Ministerial will have to be considered for the issue of non-implementation of Treaty commitments by Parties to the Treaty,

Whereas the Permanent High Level Group, at its meetings on 11 March and 26 June 2008, endorsed the present Procedural Act,
HAS ADOPTED THIS PROCEDURAL ACT:

**TITLE I**  
**GENERAL PROVISIONS**

**Article 1**  
Purpose

These rules specify the procedure to be followed in cases of failure by a Party (hereinafter “the Party concerned”) to comply with a Treaty obligation or to implement a Decision addressed to it within the required period (hereinafter “Energy Community law”) as established by Articles 90 to 93 of the Treaty (hereinafter “dispute settlement procedure”).

**Article 2**  
Failure to comply

(1) A Party fails to comply with its obligations under the Treaty if any of its measures (actions or omissions) are incompatible with a provision or a principle of Energy Community Law.

(2) Failure by a Party to comply with Energy Community law may consist of any measure by the public authorities of the Party (central, regional or local as well as legislative, administrative or judicative), including undertakings within the meaning of Article 19 of the Treaty, to which the measure is attributable.

**Article 3**  
Burden of proof

The burden of proving the allegation of non-compliance by a Party with Energy Community law and to place before the Ministerial Council the information needed to enable it to determine whether the obligation has not been fulfilled shall rest on the initiator of the proceedings within the meaning of Article 10(1). Where, however, the Party invokes an exemption to a rule or general principle of Energy Community law, it is incumbent upon the Party concerned to prove that the requirements for such exemption are fulfilled.

**Article 4**  
Dispute settlement procedures and private disputes

Dispute settlement procedures must relate to a violation by a Party of Energy Community law and may not concern disputes between private parties.

**Article 5**  
Case register

(1) The Secretariat keeps a case register at its premises under the control of the Legal Counsel.

(2) Each dispute settlement procedure case shall be assigned an official case number. Incoming and outgoing documents shall be registered under this number in the case file. If several pending cases concern the same subject matter, they may be consolidated and processed under the same case number.

(3) The representatives of the Energy Community institutions and their staff shall not disclose information acquired or exchanged by them pursuant to this Procedural Act and of the kind covered by Energy Community Staff Regulation 3.5. a), unless the present Rules permit such disclosure.

**Article 6**  
Access to the case file

(1) At their request, Parties, Participants and Observers to the Treaty, the complainant as well as private or public bodies with a legitimate interest (hereinafter “interested parties”) shall have access to the case file, subject to an eventual request by complainants to confidential treatment.

(2) In cases of doubt, the Director of the Secretariat shall take a decision on the existence of a legitimate interest of private or public bodies requesting access to the case file.

(3) The Secretariat shall adopt a Procedural Act laying down specific rules on access to the case file.

**Article 7**  
Procedural documents

(1) The language of the procedure is English. Any procedural documents expressed in another language shall be accompanied by a translation into English.

(2) All procedural documents shall bear a date, the case number and the name and the address of the sender.

(3) The original of every procedural document shall be signed by a person authorised to represent the sender by law, by its constitution or by authorization.

(4) If a procedural document does not comply with the requirements set out in paragraphs 1 to 3, the Secretariat shall prescribe a reasonable period within which the sender is to comply with them.

**Article 8**  
Costs

Costs incurred by all parties to the procedure are not recoverable.
PART III MEASURES BY ENERGY COMMUNITY INSTITUTIONS / Procedural Act No 2008/01/MC-EnC

Article 9
Time-limits

(1) Unless otherwise indicated, time-limits established by these Rules and time-limits prescribed by the competent institutions shall be binding.

(2) Time-limits shall be prescribed so as to specify the precise date on which the required action is to take place rather than expressing periods in days, weeks, months etc. Where that day is a Saturday, Sunday or an official holiday, the deadline shall be extended until the end of the first following working day.

(3) Time-limits may be extended by the institution that prescribed it upon a reasoned application.

(4) Communication by telefax and email shall be deemed sufficient for the purposes of compliance with the time-limits.

TITLE II
THE COURSE OF THE PROCEEDINGS

CHAPTER I
PRELIMINARY PROCEDURE

Article 10
Scope and purpose

(1) When initiating a dispute settlement procedure within the meaning of Article 11, the Secretariat shall carry out the preliminary procedure set out in this Title. A Party or the Regulatory Board shall initiate dispute settlement procedures either by notification to the Secretariat or directly by submitting a reasoned request to the Ministerial Council in accordance with Article 28 below.

(2) The purpose of the preliminary procedure is to establish the factual and legal background of cases of alleged non-compliance, and to give the Party concerned ample opportunity to be heard. In this respect, the preliminary procedure shall enable the Party concerned to comply of its own accord with the requirements of the Treaty or, if appropriate, to justify its position.

Article 11
Initiation of a dispute settlement procedure

(1) A dispute settlement procedure may be initiated by the Secretariat by way of an opening letter in accordance with Article 12 below.

(2) The Secretariat initiates procedures in response to alleged non-compliance arising from either a complaint by a private body, a notification by a Party or by the Regulatory Board or by its own initiative. Within the Secretariat, the Legal Counsel shall coordinate the procedure.

(3) The decision to initiate a dispute settlement procedure shall be made publicly available on the Energy Community website, stating the date of sending out the opening letter, the Party concerned and a brief summary of the subject-matter.

Article 12
Opening letter

(1) If the Secretariat considers that a possible non-compliance of which it has become aware or issues raised in a complaint warrant the opening of a dispute settlement procedure, it addresses an opening letter to the Party concerned, requesting it to submit its observations within a specified time period. This period shall normally be two months.

(2) The Party concerned is requested to adopt a position on the points of fact and of law raised in the opening letter.

Article 13
Reasoned opinion

(1) In the light of the reply or absence of a reply from the Party concerned, the Secretariat may address a reasoned opinion to that Party. The reasoned opinion must contain a coherent and detailed statement of the reasons which led the Secretariat to conclude that the Party concerned failed to fulfil its obligations under the Treaty.

(2) The reasoned opinion shall call on the Party concerned to comply with the Energy Community law within a specified time period. This period shall normally be two months.

Article 14
Submission to the Ministerial Council

In the light of the reply or absence of a reply from the Party concerned, the Secretariat may bring the matter to the attention of the Ministerial Council by way of a reasoned request in accordance with Article 28 below.

Article 15
Request for information

(1) The Secretariat may, by simple request, require any authority of the Party concerned to provide all necessary information at any stage of the preliminary procedure.

(2) The Secretariat may also request information from other natural or legal persons.
Article 16
Interested parties

(1) Interested parties may submit written observations to the Secretariat within one month of the publication provided for in Article 11(3).

(2) Private and public bodies other than Parties, Participants and Observers shall substantiate the required legitimate interest in writing.

(3) Any written observations received shall be immediately forwarded to the Party concerned and shall be attached to the reasoned request referred to the Ministerial Council.

Article 17
Urgency

(1) In cases of urgency due to the risk of serious and irreparable damage to an objective of the Treaty, the Secretariat may, on the basis of a prima facie finding of non-compliance, refer a reasoned request to the Ministerial Council directly.

(2) The Ministerial Council shall review the existence of urgency.

Article 18
Suspension and discontinuance of the procedure

(1) The Secretariat may, at any point of the preliminary procedure, decide to suspend or discontinue the procedure, in particular where the Party brings the state of non-compliance with Energy Community law to an end or where it makes credible commitments as to its intention to amend its legislation, administrative or judicial practice. Such decision may also be taken where the Party concerned successfully refutes factual assumptions or convincingly counters the legal arguments made by the initiator.

(2) To achieve the results described in paragraph 1, the Secretariat may enter into informal bilateral discussions with the Party concerned. A short report on the results achieved shall be submitted by the initiator to the Ministerial Council upon closure of the file and be included to the case file.

(3) The Secretariat may reopen the procedure where there has been a material change in any of the facts on which the decision was based, where the Party concerned acts contrary to its commitments or where the decision was based on incomplete, incorrect or misleading information provided by that Party.

(4) Where the procedure was initiated by a Party or the Regulatory Board, pursuant to the second sentence of Article 10(1), the Secretariat shall discontinue the preliminary procedure at the request of the initiator. This does not preclude the Secretariat to initiate a procedure on its own motion.

CHAPTER II
THE ROLE OF PRIVATE BODIES

Article 19
Right to approach the Secretariat

(1) Private bodies may lodge a complaint with the Secretariat against a Party arising from any measure the complainant considers incompatible with Energy Community law.

(2) The notion of private body encompasses all natural and legal persons as well as companies, firms or associations having no legal personality.

Article 20
Subject-matter

(1) A complaint has to relate to a failure to comply with Energy Community law by a Party as defined above in Article 2.

(2) A complaint against an EU Member State will be passed on to the European Commission. The Secretariat will inform the complainant and the Ministerial Council of the transfer to the European Commission. Such transfer shall be without prejudice to the obligations arising from Title III and IV of the Treaty.

Article 21
Form of the complaint

(1) A complaint shall be made to the Secretariat in writing, by letter, fax or e-mail.

(2) Complainants should send supporting documentary evidence, if available, and copies of relevant correspondence with the national authorities of the Party.

Article 22
Acknowledgment of receipt

(1) Following registration by the Secretariat and assignment of a case number, an acknowledgement will immediately be sent to the complainant.

(2) The complainant shall be asked to indicate whether he/she wishes their complaint to be treated in a confidential or non-confidential manner. The Secretariat will abide by the choice a complainant has made regarding confidentiality, i.e. disclosure of his/her identity, in its communication with the authorities of the Party concerned, other interested parties or the general public. Where a complai-
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nent has not indicated his/her choice, the Secretariat shall presume that the complainant has opted for non-confidential treatment.

(3) The Secretariat will keep the complainant informed of the course of the procedure.

**Article 23**
Information of the Party concerned

In its opening letter, the Secretariat shall inform the Party concerned that it acts upon complaint.

**Article 24**
Request for information

The Secretariat may, by simple request, require the complainant to provide all necessary information at any stage of the preliminary procedure.

**Article 25**
Reaction by the Secretariat

The Secretariat shall endeavour to decide whether to submit a reasoned request to the Ministerial Council or to discontinue the case within six months of registration of the complaint. The complainant shall be notified by the Secretariat in advance of this decision.

**Article 26**
Withdrawal of the complaint

Withdrawal of the complaint shall not affect the right of the Secretariat to pursue the procedure further.

**Article 27**
Notification by a Party or by the Regulatory Board

Articles 21 to 25 shall apply by analogy to cases where the Secretariat initiates a preliminary procedure upon notification by a Party or the Regulatory Board.

TITLE III
PROCEDURE BEFORE THE MINISTERIAL COUNCIL

CHAPTER I
BREACHES BY A PARTY OF ITS OBLIGATIONS (ARTICLE 91 OF THE TREATY)

**Article 28**
Reasoned request

(1) A reasoned request for a decision of the Ministerial Council pursuant to Article 90 of the Treaty may be submitted by the Secretariat either upon complaint, upon notification by a Party or the Regulatory Board, or by its own initiative. In these cases, the reasoned request shall be preceded by a preliminary procedure in accordance with the provisions laid down in Title II.

(2) A reasoned request may also be submitted by a Party or the Regulatory Board directly. In that case, the Party or the Regulatory Board may ask the Secretariat for factual information and legal advice before submitting the reasoned request.

(3) The reasoned request shall be based on concrete factual findings and backed up by sufficient legal analysis. The reasoned request shall contain a proposal for the decision to be taken by the Ministerial Council pursuant to Article 91 of the Treaty.

(4) The reasoned request with the relevant excerpts from the case file annexed shall be submitted to the Presidency, and the Vice-Presidency at least five months before the relevant meeting of the Ministerial Council. A copy of the reasoned request shall be sent to the Secretariat in case the latter is not the initiator.

(5) The reasoned request shall be published on the Energy Community's website providing for confidentiality of the complainant, where applicable.

**Article 29**
Scope of the decision

(1) The Ministerial Council decides on the proposal made in the submitted reasoned request. It applies Energy Community law including these Rules.

(2) In its decision, the Ministerial Council shall either establish the existence of a breach by a Party of its obligations arising from Energy Community law according to the proposal or dismiss the request entirely or partially.
Article 30
Notification of the Party concerned

(1) The Presidency shall, within seven days after receiving it, forward the reasoned request and the annexes to the Party concerned.

(2) Within two months following receipt of a copy of the reasoned request, the Party concerned may reply in writing.

Article 31
Draft agenda for the Ministerial Council

The Presidency and the Vice-Presidency, in accordance with item IV.4 of the Rules of Procedure of the Ministerial Council, shall put the reasoned request for decision on the draft agenda for the next meeting of the Ministerial Council.

Article 32
Advisory Committee and Regulatory Board

(1) Before taking the decision pursuant to Article 91 of the Treaty, the Presidency and the Vice-Presidency shall ask an Advisory Committee for its opinion on the reasoned request, taking into account the reply by the Party concerned. The Ministerial Council shall not be bound by the opinion of the Advisory Committee.

(2) The Advisory Committee shall be composed of three members appointed by the Ministerial Council by unamnity for a renewable term of two years, including one member nominated by the European Community. Members shall be chosen from persons whose independence is beyond doubt and who possess the qualifications required for appointment to the highest judicial offices in the respective Party.

(3) The Advisory Board shall adopt its opinion by a majority including the positive vote of the member nominated by the European Community. The opinion shall be provided within two months and shall be available in sufficient time for distribution to the members of the Ministerial Council in accordance with item IV.4 of the Rules of Procedure of the Ministerial Council. The opinion shall also be submitted to the Permanent High Level Group preparing the Ministerial Council meeting in question.

(4) The Advisory Committee shall adopt its internal rules of procedure with the assistance of the Secretariat.

(5) In cases concerning statutory, technical and regulatory rules within the meaning of Article 58(a) of the Treaty, the Presidency and the Vice-Presidency shall also ask the Regulatory Board to provide a written opinion within two months, unless the Regulatory Board initiated the procedure in question.

Article 33
Request for additional information

The Presidency and the Vice-Presidency may request additional information and documentation from the initiator and the Party concerned.

Article 34
Decision by the Ministerial Council

(1) At its meeting, or, as the case may be, by correspondence, the Ministerial Council takes its decision in accordance with Article 29(2).

(2) The decision by the Ministerial Council shall be taken in accordance with the rules laid down in Article 91(1) of the Treaty.

(3) The decision shall be signed by the Presidency. It shall be sent to the Party concerned, the submitter of the reasoned request and the Secretariat. The Advisory Committee’s or the Regulatory Board’s opinion shall be appended to the Ministerial Council’s decision.

Article 35
Decision in the absence of a reply

Where the Party concerned, after having been duly informed, fails to reply in its defence in due time, a decision shall be taken based on the facts available to the Ministerial Council at the time of its deliberations.

Article 36
Publication of the decision

The decision taken by the Ministerial Council shall be made publicly available on the website of the Secretariat.

Article 37
Binding nature of the decision

The decision by the Ministerial Council shall be binding on the Parties concerned from the date of its adoption.
**Article 38**
Consequences of a decision establishing failure to comply

(1) Where the Ministerial Council establishes the existence of a breach of a Party’s obligation pursuant to Article 91 of the Treaty, the Party concerned shall take all appropriate measures to rectify the breach and ensure compliance with Energy Community law.

(2) The Secretariat, in accordance with Article 67(b) of the Treaty, shall review the proper implementation by the Party concerned of the decision by the Ministerial Council, and may again bring the matter before the Ministerial Council on the grounds of a failure to take the necessary measures to comply with the decision.

**CHAPTER II**
**SERIOUS AND PERSISTENT BREACHES (ARTICLE 92 OF THE TREATY)**

**Article 39**
Serious and persistent breach

The Ministerial Council shall establish the existence of a serious and persistent breach by a Party of its obligations under the Treaty taking into account the particularities of each individual case.

**Article 40**
Request

(1) A Party, the Secretariat or the Regulatory Board may request the Ministerial Council to determine the existence of a serious and persistent breach without a preliminary procedure.

(2) The request may follow up on a prior decision taken by the Ministerial Council under Article 91 of the Treaty or raise a new issue.

(3) The request shall set out the allegations against the Party concerned in factual and legal terms. It shall also contain a proposal as to concrete sanctions to be taken in accordance with Article 92(1) of the Treaty.

(4) The request shall be submitted to the Presidency and the Vice-Presidency at least 60 days before the respective meeting. A copy shall be submitted to the Secretariat for registration. The request shall not be made public.

**Article 41**
Decision-making procedure

(1) The Presidency shall, within seven days after receiving it, forward the request to the Party concerned and ask it for a reply to the allegations made in the request.

(2) The Presidency and the Vice-Presidency may ask the Advisory Committee for its written opinion.

(3) The decision by the Ministerial Council on the existence of a serious and persistent breach shall be taken in accordance with Articles 92(1) and 93 of the Treaty.

(4) The decision taken by the Ministerial Council shall be made publicly available on the Secretariat’s website.

**Article 42**
Sanctions

(1) In the decision establishing the existence of a serious and persistent breach, the Ministerial Council shall determine sanctions in accordance with Article 92(1) of the Treaty and specify a time-limit.

(2) The obligations of the Party concerned under the Treaty shall in any case continue to be binding on that Party.

(3) The Ministerial Council shall at each subsequent meeting verify that the grounds continue to apply on which the decision establishing the existence of a serious and persistent breach was made and sanctions were imposed.

**CHAPTER III**
**REVOCAUTION OF DECISIONS**

**Article 43**
Procedural aspects

(1) The Ministerial Council, in accordance with Articles 91(2) and 92(2), may decide by simple majority to revoke decisions taken under Articles 91(1) and 92(1) respectively. Revocation of a decision may be proposed by any Party.

(2) The Ministerial Council shall give reasons for its decision to revoke a previous decision and shall make the revocation decision publicly available on the Energy Community website.

(3) A revocation shall not affect decisions taken within the domestic legal orders following up the initial decision by the Ministerial Council.
TITLE IV
FINAL PROVISIONS

Article 44
Amendments to Rules of Procedure of the Ministerial Council

(1) In Item VII.5. of Procedural Act No. 2006/01 on Internal Rules of Procedure of the Ministerial Council of the Energy Community, the text after the semicolon is deleted. The semicolon is replaced by a full stop.

(2) In Item VII.6. of Procedural Act No. 2006/01 on Internal Rules of Procedure of the Ministerial Council of the Energy Community, the last sentence is deleted.

Article 45
Addressees

This Procedural Act is addressed to and shall be binding on all Parties to the Treaty and institutions set up under the Treaty.

Article 46
Entry into force

This Procedural Act shall enter into force upon adoption.

Article 47
Review

The Rules of Procedure in this Procedural Act shall be reviewed in the light of experience within two years of their adoption upon proposal by the Secretariat.

Article 48
Publication

The Director of the Energy Community Secretariat shall make this Procedural Act available to all Parties and institutions under the Treaty within 7 days after its adoption and to the public on the website of the Energy Community.

Done in Brussels on 27 June 2008
For the Ministerial Council.
(Presidency)
PROCEDURAL ACT No 2008/02/MC-EnC of the Ministerial Council of the Energy Community of 11 December 2008 on the Establishment of a Security of Supply Coordination Group

The Ministerial Council of the Energy Community,

Having regard to the Treaty Establishing the Energy Community ("the Treaty"), and in particular Articles 46 and 87 thereof,


Having regard to the deliberations at the Permanent High Level Group and the input from the Contracting Parties,

Having regard to the proposal by the Secretariat,

Whereas securing energy supply through solidarity constitutes one of the main objectives of the Energy Community,

Whereas the implementation of Directives 2004/67/EC and 2005/89/EC requires the setting-up of a coordination mechanism in the Energy Community;

Whereas this objective requires a group of experts to advise Energy Community and national institutions as well as to coordinate crisis management measures;

Whereas such a group should be composed of all relevant stakeholders and should cover both electricity and gas so as to ensure utmost efficiency,

HAS ADOPTED THIS PROCEDURAL ACT:

Article 1
Security of Supply Coordination Group

A Security of Supply Coordination Group is hereby established.

Article 2
Composition

(1) The Security of Supply Coordination Group shall be composed of representatives of the Parties and representative bodies of the industry concerned and of relevant consumers. The composition of the Group may differ for gas and electricity respectively.

(2) Participant and Observer countries may be represented in accordance with Articles 95 and 96 of the Treaty.
PART III MEASURES BY ENERGY COMMUNITY INSTITUTIONS / Procedural Act No 2008/02/MC-EnC

(3) The Security of Supply Coordination Group shall be chaired by the member representing the European Community.

(4) Each Party shall nominate its representatives and inform the Secretariat. The list of representative bodies of the industry concerned and of relevant consumers shall be established and updated by the Permanent High Level Group upon proposal by the Chair of the Security of Supply Coordination Group.

(5) The Security of Supply Coordination Group and its Chair shall be assisted by the Secretariat.

Article 3

Tasks

(1) The Security of Supply Coordination Group shall facilitate the coordination of security of supply measures and advise the Energy Community institutions on issues relating to gas and electricity security of supply.

(2) The Security of Supply Coordination Group shall regularly monitor the state of security of supply of network energy within the Energy Community and share experience on security of supply mechanisms and develop comprehensive risk analysis. The conclusions of the Group’s annual meetings shall be submitted to the Ministerial Council, the Permanent High Level Group and the Regulatory Board.

(3) The tasks of the Security of Supply Coordination Group are without prejudice to the obligations of the Parties to adopt and update security of supply statements in accordance with Article 29 of the Treaty. The Security of Supply Coordination Group shall support the Parties in the preparation and updating of national emergency measures.

(4) In the event of an existing or imminent threat to security of supply or in the event of a supply disruption affecting a Party and involving another Party or a third country, the Security of Supply Coordination Group shall, where appropriate, coordinate measures taken at national levels. In doing so, it shall follow the principles established by Article 9 of Directive 2004/67/EC in both the gas and electricity sectors.

(5) In the cases mentioned in paragraph 4, the Chair of the Security of Supply Coordination Group or any Party directly affected may request an ad-hoc meeting of the Ministerial Council to take measures in response to the existing or imminent threat to security of supply.

(6) The activities of the Security of Supply Coordination Group may relate to, but are not restricted to, all issues falling within the scope of Directives 2004/67/EC and 2005/89/EC as well as mutual assistance within the meaning of Chapter IV in Title IV of the Treaty and the handling of unilateral safeguard measures in accordance with Article 39 of the Treaty.

Article 4

Meetings

(1) The Security of Supply Coordination Group shall meet regularly once per year. Normally this meeting shall take place in connection with the second Permanent High Level Group meeting in the second half of the year. The meeting may be split in two parts for gas and electricity respectively.

(2) Ad hoc meetings of the Security of Supply Coordination Group shall be convened by the Chair in case of existing or imminent threat to security of supply on its own initiative or upon request of a Party to the Treaty.

(3) Upon initiative of the Chair, the Security of Supply Coordination Group may hold additional ad hoc joint sessions with the European Community Gas Coordination Group to discuss issues of common interest.

Article 5

Review

Within three years of the date of its entry into force, this Procedural Act shall be reviewed in order to assess the functioning of the cooperation mechanisms it establishes. This review may provide for the conferral of powers to take interim measures to the Permanent High Level Group, as foreseen in Article 46 of the Treaty.

Article 6

Addressees

This Procedural Act shall enter into force on the day of its adoption and is addressed to the Parties.

Done in Tirana on 11 December 2008
For the Ministerial Council
(Presidency)
PROCEDURAL ACT No 01/2012 PHLG-EnC of the Permanent High Level Group of the Energy Community of 21 June 2012 laying down the rules governing the adoption of Guidelines and Network Codes in the Energy Community

The Permanent High Level Group of the Energy Community,

Having regard to the Treaty establishing the Energy Community ("the Treaty"), and in particular Articles 87 and 82 thereof,


Following up on the task assigned to the Permanent High Level Group in Articles 27(3) and 28(3) of Decision D/2011/02/MC-EnC to prepare a Procedural Act laying down the procedure for the incorporation of Guidelines and Network Codes adopted within the European Union,

Recognizing the importance of a synchronous evolution of the Energy Community acquis communautaire for the creation of an interconnected internal market throughout the Energy Community,

Acknowledging the necessity to transpose Guidelines and Network Codes into domestic legal orders as timely and truly to the original as possible, and to implement and enforce them vigorously,

Having regard to the Secretariat’s proposal,

Taking into account the discussions at the meetings of 14 December 2011, 23 March 2012 and 21 June 2012,

HAS ADOPTED THIS PROCEDURAL ACT:

Article 1
Subject-Matter

These rules lay down the procedures for the adoption of Guidelines and Network Codes by Decision of the Permanent High Level Group of the Energy Community upon proposal of the European Commission, as required by Articles 27 and 28 of Decision D/2011/02/MC-EnC.
Article 2
Definitions

For the purpose of this Procedural Act
- The term “Network Code” means the codes adopted and/or amended under Regulation 714/2009 or Regulation 715/2009.

Article 3
Procedure

(1) The Presidency and the Vice-Presidencies shall include the European Commission’s proposal on the adoption of Guidelines or Network Codes in the agenda of the next possible meeting of the Permanent High Level Group. The text of the proposal shall be circulated by the Secretariat to all members at least 30 days before the relevant meeting.

(2) If the next possible meeting of the Permanent High Level Group is to take place later than two months following the receipt of the above-mentioned proposal of the European Commission by the Secretariat, or later than three months, where it concerns the adoption of Network Codes, the Presidency, after consultation and in agreement with the Vice-Presidencies, may opt for decision-making by correspondence in line with the Rules of Procedure of the Permanent High Level Group.

(3) Where the European Commission’s proposal concerns the adoption of Network Codes, the Secretariat shall forward it to the President of the Regulatory Board and request the opinion of this institution within an appropriate timeframe not exceeding 30 days. The President of the Regulatory Board shall transmit its opinion officially to the Secretariat, who shall notify it to the members of the Permanent High Level Group without delay. Where the Regulatory Board fails to submit an opinion within the specified timeframe, the Permanent High Level Group shall proceed without such opinion.

(4) The Permanent High Level Group shall take its Decisions under this Procedural Act in accordance with Articles 78 to 81 of the Treaty.

(5) Decisions of the Permanent High Level Group shall:

a. Specify the period within which the Contracting Parties shall transpose Guidelines and Network Codes, as adopted by the Permanent High Level Group’s Decision, into their domestic legislation and require that the Guidelines and Network Codes be transposed without changes to their text or their structure of the Decision, other than translation.

b. Require the Contracting Parties to ensure that the Guidelines and Network Codes, as adopted by the Permanent High Level Group’s Decision, are binding on market participants, and task the national regulatory authorities with monitoring and enforcing compliance.

c. Require the Contracting Parties to notify the Secretariat of the measures transposing the Permanent High Level Group’s Decision, and of any subsequent changes made to those measures, within two weeks of the adoption of such measures.

(6) The Secretariat shall make Decisions available to all Parties within seven days of their adoption.

Article 4
Adresssees and entry into force

This Procedural Act is addressed to the Parties and institutions of the Treaty. It shall enter into force upon adoption.

Article 5
Availability of these rules

The Secretariat shall make this Procedural Act available to all Parties within seven days of its adoption.

Done in Vienna on 21 June 2012
For the Permanent High Level Group:

[Signature]
This publication by the Energy Community Secretariat compiles the key legislation governing the Energy Community. In particular, this includes the Treaty establishing the Energy Community itself, the acquis communautaire pursuant to Title II of the Treaty, and a selection of secondary legislation adopted by the Energy Community Ministerial Council so far. The compilation reflects the situation as of 1 July 2013.