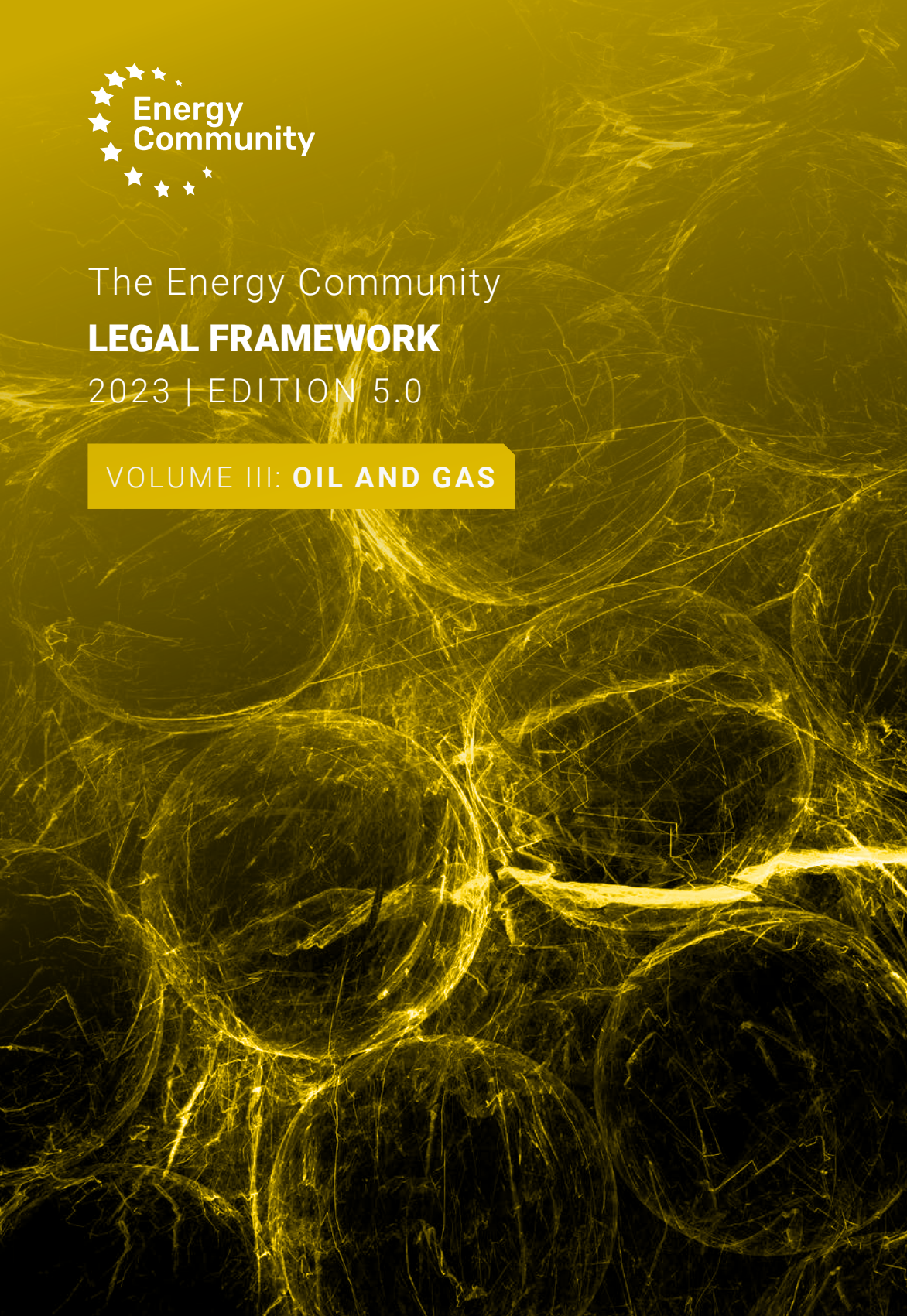
Energy Community

The Energy Community

LEGAL FRAMEWORK

2023 | EDITION 5.0

VOLUME III: **OIL AND GAS**



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VOLUME I: FUNDAMENTS

VOLUME II: ELECTRICITY

VOLUME III: OIL AND GAS

VOLUME IV: RENEWABLE ENERGY AND CLIMATE

VOLUME V: ENERGY EFFICIENCY

VOLUME VI: ENVIRONMENT

VOLUME VII: REMIT, INFRASTRUCTURE AND STATISTICS

VOLUME III: **OIL AND GAS**

Table of Contents

I. PART: OIL ACQUIS 5

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 7

II. PART: GAS ACQUIS. 21

DIRECTIVE 2009/73/EC of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC. 23

REGULATION (EC) 715/2009 of 13 July 2009 on conditions for access to the natural gas transmission networks 71

REGULATION (EU) 2017/1938 of 25 October 2017 concerning measures to safeguard the security of gas supply as amended by Regulation with regard to gas storage 97

III. PART: GAS NETWORK CODES AND GUIDELINES 147

COMMISSION REGULATION (EU) 2015/703 of 30 April 2015 establishing a network code on interoperability and data exchange rules 149

COMMISSION REGULATION (EU) 2017/459 of 16 March 2017 establishing a network code on capacity allocation mechanisms in gas transmission systems 167

COMMISSION REGULATION (EU) 2017/460 of 16 March 2017 establishing a network code on harmonised transmission tariff structures for gas 199

REGULATION (EU) 312/2014 of 26 March 2014 establishing a network code on gas balancing of transmission networks 229

I. PART

OIL ACQUIS

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

Incorporated and adapted by Ministerial Council Decision 2012/03/MC-EnC of 18 October 2012 on the implementation of Council Directive 2009/119/EC in the Energy Community.

The adaptations made by Ministerial Council Decisions 2021/14/MC-EnC and 2012/03/MC-EnC are highlighted in **bold and blue.**

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[1], 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;

1 Decision 2012/03/MC-EnC incorporating this Directive is addressed to the Contracting Parties.

(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.

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 II.

3. 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.

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.

2. 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 15 March each year, each Contracting Party shall send the Secretariat 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.[2]

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 bear 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. he 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.

CSEs shall accept such delegations under objective, transparent and non-discriminatory conditions. Pay-

2 The text displayed here corresponds to Article 6 of Ministerial Council Decision 2021/14/MC-EnC

ments by the operators for the services of the CSE shall not exceed the full costs of the services rendered and may not be required until the stocks are constituted. The CSE may make its acceptance of a delegation conditional upon the operator's provision of a guarantee or some other form of security.

Article 8

Economic operators

1. Each Member State shall ensure that any economic operator on which it imposes stockholding obligations in order to fulfil its obligations under Article 3 is given the right to delegate those obligations at least in part and at the choice of the economic operator, but only to:

(a) the CSE of the Member State on whose account such stocks are held;

(b) one or more other CSEs which have in advance declared themselves willing to hold such stocks, provided that such delegations have been authorised in advance both by the Member State on whose account such stocks are held and by all Member States within whose territories the stocks will be held;

(c) other economic operators which have surplus stocks or available stockholding capacity outside of the territory of the Member State on whose account the stocks are held within the Community, provided that such delegation has been authorised in advance both by the Member State on whose account such stocks are held and by all Member States within whose territories the stocks will be held; and/or

(d) other economic operators which have surplus stocks or available stockholding capacity within the territory of the Member State on whose account the stocks are held, provided that such delegation has been communicated in advance to the Member State. Member States may impose limits or conditions on such delegations.

Obligations delegated in accordance with points (c) and (d) may not be subdelegated. Any change to or extension of a delegation referred to in points (b) and (c) shall only take effect if authorised in advance by all Member States which authorised the delegation. Any change to or extension of a delegation referred to in point (d) shall be treated as a new delegation.

2. Each Member State may restrict the delegation rights of the economic operators on which it imposes or has imposed stockholding obligations.

However, where such restrictions limit the delegation rights of an economic operator to amounts corresponding to less than 10% of the stockholding obligation imposed on it, the Member State shall ensure that it has set up a CSE that is required to accept delegations in respect of the amount needed to safeguard the right of an economic operator to delegate at least 10% of the stockholding obligation imposed on it.

The minimum percentage referred to in this paragraph shall be increased from 10% to 30% by 31 December 2017.

3. Notwithstanding the provisions of paragraphs 1 and 2, a Member State may impose an obligation on an economic operator to delegate at least part of its stockholding obligation to the CSE of the Member State.

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 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[3].

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

3 Pursuant to the Ministerial Council General Policy Guideline on a Roadmap on Implementation of the Certain Deadlines of the Directive 2009/119/EC, all Contracting Parties are invited to: a) *"Begin regular monthly participation in the submissions of the JODI Oil Questionnaire before 1 January 2018. b) Communicate to the Secretariat by 31 March 2018 the proposed legal basis and Action Plan for collecting all oil data necessary to submit the Monthly Oil Statistics (MOS) Questionnaire".*

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 those 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.[4]

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.

4 The text displayed here corresponds to Article 3 of Ministerial Council Decision 2012/03/MC.

Article 24

Repeal

<...>[5]

Article 25

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 January 2023[6].

By derogation from the first subparagraph, Member States that are not members of the IEA by 31 December 2012 and cover their inland consumption of petroleum products fully by imports shall bring into force the laws, regulations and administrative provisions necessary to comply with Article 3(1) of this Directive by 31 December 2014. Until those Member States have brought into force such measures, they shall maintain oil stocks corresponding to 81 days of average daily net imports.

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

Entry into force

This Decision entered into force on 18 October 2012.[7]

Article 27

Addressees

This Directive is addressed to the Member States.

5 Not applicable according to Ministerial Council Decision 2012/03/MC.

6 The date displayed here corresponds to Article 3 of Ministerial Council Decision 2012/03/MC. Pursuant to the Ministerial Council General Policy Guideline on a Roadmap on Implementation of the Certain Deadlines of the Directive 2009/119/ EC, *'the Contracting Parties are invited to communicate to the Secretariat by 31 March 2017 the text of the main provisions of the draft national law which they intend to adopt to transpose Directive 2009/119/EC and the Action Plan on the Establishment of Oil Stocks. All Contracting Parties are invited bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 2017'.*

7 The text displayed here corresponds to Article 4 of Ministerial Council Decision 2012/03/MC.

II. PART

GAS ACQUIS

DIRECTIVE 2009/73/EC of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC

Incorporated and adapted by Ministerial Council Decision 2011/02/MC-EnC of 6 October 2011 on the implementation of Directive 2009/72/EC, Directive 2009/73/EC, Regulation (EC) 714/2009 and Regulation (EC) 715/2009 and amending Articles 11 and 59 of the Energy Community Treaty.

The adaptations made by Ministerial Council Decisions 2021/14/MC-EnC and 2011/02/MC-EnC are highlighted in **bold and blue.**

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 trans-

mission 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 under-

takings 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;

(35) "gas derivative" means a financial instrument specified in points 5, 6 or 7 of Section C of Annex I to Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments, where that instrument relates to natural gas;

(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**.

11. **Contracting Parties** shall, upon implementation of this Directive, inform the **Energy Community Secretariat** of all measures adopted to fulfill 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.[1] **1. 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** <...>.

1 The text displayed here corresponds to Article 6 of Decision 2011/02/MC-EnC.

2. 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.

Article 5

Monitoring of security of supply

<...>[2]

Article 6

Regional solidarity

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

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

2 Not applicable according to Article 6 of Ministerial Council Decision 2021/14/MC-EnC

(a) coordination of national emergency measures referred to in Article 8 of Council Directive 2004/67/ EC of 26 April 2004 concerning measures to safeguard security of natural gas supply, **as adapted under Article 24 of the Energy Community Treaty**;

(b) identification and, where necessary, development or upgrading of electricity and natural gas interconnections; and

(c) conditions and practical modalities for mutual assistance.

3. The **Energy Community Secretariat** and the other **Contracting Parties** shall be kept informed of such cooperation.

4. <...>

Article 7

Promotion of regional cooperation[3]

1. **Contracting Parties** as well as the regulatory authorities shall cooperate with each other for the purpose of integrating their national markets at regional level, as a first step towards the creation of a fully liberalised 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 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.

3 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.'*

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. <...>

CHAPTER III
TRANSMISSION, STORAGE AND LNG

Article 9

Unbundling of transmission systems and transmission system operators

1. **Contracting Parties** shall ensure that from **1 June 2016**[4]:

(a) each undertaking which owns a transmission system acts as a transmission system operator;

(b) the same person or persons are entitled neither:

(i) directly or indirectly to exercise control over an undertaking performing any of the functions of production or supply, and directly or indirectly to exercise control or exercise any right over a transmission system operator or over a transmission system; nor

(ii) directly or indirectly to exercise control over a transmission system operator or over a transmission system, and directly or indirectly to exercise control or exercise any right over an undertaking performing any of the functions of production or supply;

(c) the same person or persons are not entitled to appoint members of the supervisory board, the administrative board or bodies legally representing the undertaking, of a transmission system operator or a transmission system, and directly or indirectly to exercise control or exercise any right over an undertaking performing any of the functions of production or supply; and

(d) the same person is not entitled to be a member of the supervisory board, the administrative board or bodies legally representing the undertaking, of both an undertaking performing any of the functions of production or supply and a transmission system operator or a transmission system.

2. The rights referred to in points (b) and (c) of paragraph 1 shall include, in particular:

(a) the power to exercise voting rights;

(b) the power to appoint members of the supervisory board, the administrative board or bodies legally representing the undertaking; or

(c) the holding of a majority share.

3. For the purpose of paragraph 1(b), the notion "undertaking performing any of the functions of pro-

4 According to Ministerial Council Decision 2012/05/MC-EnC of 5 December 2012, this date is replaced by 1 January 2020 for the Republic of Moldova.

duction 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 unti1 **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** 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 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 production or supply any 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.[5]

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.

I**n preparing its opinion, the Secretariat shall request the views of the Energy Community**

5 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'.*

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.[6]

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 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'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 Part**y 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.

6 According to Article 10(2) of Decision 2011/02/MC-EnC, Article 10(1) of the same Decision applies - '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'.

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 and shall not require the transmission system operator to seek permission from the vertically integrated undertaking in fulfilling those obligations.

10. An undertaking which has been certified by the regulatory authority as being in compliance with the requirements of this Chapter shall be approved and designated as a transmission system operator by the **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 other professional position or responsibility, interest or business relationship, directly or indirectly, with any other part of the vertically integrated undertaking or with its controlling shareholders.

5. The persons responsible for the management and/or members of the administrative bodies, and employees of the transmission system operator shall hold no interest in or receive any financial benefit, directly or indirectly, from any part of the vertically integrated undertaking other than the transmission system operator. Their remuneration shall not depend on activities or results of the vertically integrated undertaking other than those of the transmission system operator

6. Effective rights of appeal to the regulatory authority shall be guaranteed for any complaints by the persons responsible for the management and/or members of the administrative bodies of the transmission system operator against premature terminations of their term of office.

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

8. Paragraph 3 shall apply to the majority of the persons responsible for the management and/or members of the administrative bodies of the transmission system operator.

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

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

Article 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.

Article 25

Tasks of distribution system operators

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

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.

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 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 100 000 connected customers.

Article 27

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

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 a 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 mark et 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 of 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 **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 Secretariat's opinion, the regulatory authority concerned shall provide and publish, together with that decision, the reasoning underlying its 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 **Secretariat** shall preserve the confidentiality of commercially sensitive information.

The **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 **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[7]:

(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) <...>.

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.

7 According to Article 17(2) of Decision 2011/02/MC-EnC, the following deadlines 'shall apply without prejudice to special deadlines agreed in the Protocols of Accession to the Energy Community'.

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 Part**y 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, 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 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 Regulatory Board** <...>;

(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 binding 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 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 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 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 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 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 Treaty, and in particular Article 82 thereof.[8]

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. <...>

8 In the Energy Community Treaty, Article 82 of the EC Treaty is incorporated through Article 18 and Annex III.

Article 43

Compliances with the Guidelines[9]

The Energy Community shall endeavour to apply the Guidelines adopted by the European Commission under <...> **Directive 2009/73/EC**, <...> [and] **Regulation (EC) No 715/2009**.

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 application of this article.[10]

Article 44

Record keeping

1. **Contracting Parties** shall require supply undertakings to keep at the disposal of the national authorities, including the regulatory authority, the national competition authorities and the **Energy Community Secretariat**, for the fulfillment of their tasks, for at least five years, the relevant data relating to all transactions in gas supply contracts and gas derivatives with wholesale customers and transmission system operators as well as storage and LNG operators.

2. The data shall include details on the characteristics of the relevant transactions such as duration, delivery and settlement rules, the quantity, the dates and times of execution and the transaction prices and means of identifying the wholesale customer concerned, as well as specified details of all unsettled gas supply contracts and gas derivatives.

3. The regulatory authority may decide to make available to market participants elements of this information provided that commercially sensitive information on individual market players or individual transactions is not released. This paragraph shall not apply to information about financial instruments which fall within the scope of Directive 2004/39/EC.

4. <...>

5. With respect to transactions in gas derivatives of supply undertakings with wholesale customers and transmission system operators as well as storage and LNG operators, this Article shall apply only once the **Permanent High Level Group** has endorsed the Guidelines referred to in paragraph 4.

6. <...>

7. <...>

9 Not applicable according to Article 21 of Decision 2011/02/MC-EnC. The following text corresponds to Article 27 of Decision 2011/02/MC-EnC.

10 Procedural Act 01/2012/PHLG-EnC of Permanent High Level Group 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.

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 customers and if necessary other market parties are defined with respect to contractual arrangements, commitment to customers, data exchange and settlement rules, data ownership and metering responsibility.

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

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 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 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,[11] 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 notification to the Secretariat, which shall issue an opinion**.

11 Procedural Act 01/2012/PHLG-EnC of Permanent High Level Group 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.

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 **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-orpay 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. T**he 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

The Secretariat shall monitor and review the application of this Directive and submit an annual Implementation Report to the Ministerial Council.[12]

Article 53

Repeal

<...>

Article 54[13]

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.**[14] **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 2009/73/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.

Articles 55 and 56[15]

Entry into force and Addressees

This Decision [2011/02/MC-EnC] enters into force upon its adoption and is addressed to the Contracting Parties.

12 The text displayed here corresponds to Article 6 of Ministerial Council Decision 2021/14/MC-EnC
13 The text displayed here corresponds to Article 3 of Decision 2011/02/MC-EnC.
14 In accordance with the Accession Protocol, the corresponding date for Georgia is 31 December 2020.
15 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 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 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

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.

REGULATION (EC) 715/2009 of 13 July 2009 on conditions for access to the natural gas transmission networks

Incorporated and adapted by Permanent High Level Group Decision 2018/01/PHLG-EnC of 12 January 2018 and by Ministerial Council Decision 2011/02/MC-EnC of 6 October 2011 on the implementation of Directive 2009/72/EC, Directive 2009/73/EC, Regulation (EC) 714/2009 and Regulation (EC) 715/2009 and amending Articles 11 and 59 of the Energy Community Treaty.

The adaptations made by by Permanent High Level Group Decision 2018/01/PHLG-EnC of 12 January 2018 and Ministerial Council Decisions 2022/01/MC-EnC, 2021/14/MC-EnC and 2011/02/MC-EnC are highlighted in **bold and blue**.

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 security 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" mean 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;

(23) "physical congestion" means a situation where the level of demand for actual deliveries exceeds the technical capacity at some point in time;

(24) "LNG facility capacity" means capacity at an LNG terminal for the liquefaction of natural gas or the importation, offloading, ancillary services, temporary storage and re-gasification of LNG;

(25) "space" means the volume of gas which a user of a storage facility is entitled to use for the storage of gas;

(26) "deliverability" means the rate at which the storage facility user is entitled to withdraw gas from the storage facility;

(27) "injectability" means the rate at which the storage facility user is entitled to inject gas into the storage facility;

(28) "storage capacity" means any combination of space, injectability and deliverability.

2. Without prejudice to the definitions in paragraph 1 of this Article, the definitions contained in Article 2 of Directive 2009/73/EC which are relevant for the application of this Regulation, also apply, with the exception of the definition of transmission in point 3 of that Article.

The definitions in points 3 to 23 of paragraph 1 of this Article in relation to transmission apply by analogy in relation to storage and LNG facilities.

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 2009/73/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 in regard to its compatibility with Article 10(2) or Article 11, and Article 9 of Directive 2009/73/EC.

When preparing the opinion referred to in the first subparagraph, the Energy Community

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 against 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 production or supply any information relevant to the fulfillment 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 2009/73/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 its 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 3a[1]

Certification of storage system operators

1. Contracting Parties shall ensure that each storage system operator, including any storage system operator controlled by a transmission system operator, is certified in accordance with the procedure laid down in this Article, either by the national regulatory authority or by another competent authority designated by the Contracting Party concerned pursuant to Article 3(2) of Regulation (EU) 2017/1938 of the European Parliament and of the Council, as adapted and adopted by Ministerial Council Decision 2021/15/MC-EnC (in either case, "certifying authority").

This Article also applies to storage system operators controlled by transmission system operators which have already been certified under the unbundling rules laid down in Articles 9, 10 and 11 of Directive 2009/73/EC, as adapted and adopted by Ministerial Council Decision 2011/02/MC-EnC.

2. The certifying authority shall issue a draft certification decision in respect of storage system operators that operate underground gas storage facilities with a capacity of over 3,5 TWh

1 The text displayed here corresponds to Article 4 of Ministerial Council Decision 2022/01/MC-EnC

where, regardless of the number of storage system operators, total storage facilities were filled on 31 March 2021 and on 31 March 2022 at a level which, on average, was less than 30 % of their maximum capacity by ... [150 working days after the date of entry into force of this Decision] or within 150 working days of the date of receipt of a notification pursuant to paragraph 9.

In respect of storage system operators as referred to in the first subparagraph, the certifying authority shall make its best efforts to issue a draft certification decision by 1 January 2023.

In respect of all other storage system operators, the certifying authority shall issue a draft certification decision by ... [18 months after the date of entry into force of this Decision] or within 18 months of the date of receipt of a notification pursuant to paragraph 8 or 9.

3. In considering the risk to the security of energy supply, the certifying authority shall take into account any security of gas supply risk at national or Energy Community level as well as any mitigation of such risk, resulting, inter alia, from:

(a) ownership, supply or other commercial relationships that could negatively affect the incentives and the ability of the storage system operator to fill the underground gas storage facility;

(b) the rights and obligations of the Energy Community with respect to a third country arising under international law;

(c) the rights and obligations of the Contracting Parties concerned with respect to a third country arising under agreements concluded by the Contracting Parties concerned with one or more third countries, in so far as those agreements comply with Energy Community law; or

(d) any other specific facts and circumstances of the case.

4. If the certifying authority concludes that a person who directly or indirectly controls, or exercises any right over, the storage system operator within the meaning of Article 9 of Directive 2009/73/EC as adapted and adopted by Ministerial Council Decision 2011/02/MC-EnC could endanger the security of energy supply or the essential security interests of the Energy Community or of any Contracting Party, the certifying authority shall refuse the certification. Alternatively, the certifying authority may issue a certification decision subject to conditions to ensure the sufficient mitigation of the risks which could negatively influence the filling of the underground gas storage facilities, provided that the practicability of the conditions can be fully ensured by effective implementation and monitoring. Such conditions may include, in particular, a requirement that the storage system owner or storage system operator transfer management of the storage system.

5. Where the certifying authority concludes that the gas supply risks cannot be mitigated by conditions pursuant to paragraph 4, including by requiring the storage system owner or storage system operator to transfer management of the storage system, and therefore refuses the certification, it shall:

(a) require the storage system owner or storage system operator or any person that it considers could endanger the security of energy supply or the essential security interests of the Energy Community or of any Contracting Party to dispose of the shareholding or rights they have over the storage system ownership or storage system operator ownership, and set a time limit for such disposal;

(b) order, where appropriate, interim measures, to ensure that such a person is not able to exercise any control or right over that storage system owner or storage system operator until the disposal of the shareholding or rights; and

(c) provide for appropriate compensatory measures in accordance with national law.

6. The certifying authority shall notify its draft certification decision to the Energy Community Secretariat without delay, together with all relevant information.

The Energy Community Secretariat shall deliver a binding opinion on the draft certification decision to the certifying authority within 25 working days of such notification. The certifying authority shall comply with the Energy Community Secretariat's opinion.

7. The certifying authority shall issue the certification decision within 25 working days of receipt of the Energy Community Secretariat's opinion.

8. Before a newly built underground gas storage facility is put into operation, the storage system operator shall be certified in accordance with paragraphs 1 to 7. The storage system operator shall notify the certifying authority of its intention to put the storage facility into operation.

9. Storage system operators shall notify the relevant certifying authority of any planned transaction which would require a reassessment of their compliance with the certification requirements set out in paragraphs 1 to 4.

10. Certifying authorities shall continuously monitor storage system operators as regards compliance with the certification requirements set out in paragraphs 1 to 4. They shall open a certification procedure to reassess compliance in any of the following circumstances:

(a) upon receipt of a notification by the storage system operator pursuant to paragraph 8 or 9;

(b) on their own initiative where they have knowledge that a planned change in rights or in influence over a storage system operator could lead to non-compliance with the requirements of paragraphs 1, 2 and 3;

(c) upon a reasoned request from the Energy Community Secretariat.

11. The Contracting Parties shall take all necessary measures to ensure the continuous operation of the underground gas storage facilities on their respective territories. Those underground gas storage facilities may cease operations only where technical and safety requirements are not met or where the certifying authority concludes, after having conducted an assessment and having taken into account the opinion of the Energy Community Secretariat, that such a cessation would not weaken the security of gas supply at Energy Community or national level.

Appropriate compensatory measures shall be taken, where appropriate, if cessation of operations is not allowed.

12. The Energy Community Secretariat may issue guidance on the application of this Article.

13. This Article shall not apply to parts of LNG facilities that are used for storage.'

Article 4

European network of transmission system operators for gas

<...>

Article 5

Establishment of the ENTSO for Gas

<...>

Article 6

Establishment of network codes[2]

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.[3]

Article 7

Amendments of network codes

<...>

Article 8

Tasks of the ENTSO for Gas

<...>

Article 9

Monitoring by the Agency

<...>

Article 10

Consultations

<...>

2 The following text corresponds to Article 28 of Decision 2011/02/MC-EnC.
3 Procedural Act 01/2012/PHLG-EnC of Permanent High Level Group 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 2021.

Article 11

Costs

<...>

Article 12[4]

Regional cooperation of transmission system operators

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 13

Tariffs for access to networks

1. Tariffs, or the methodologies used to calculate them, applied by the transmission system operators and approved by the regulatory authorities pursuant to Article 41(6) of Directive 2009/73/EC, as well as tariffs published pursuant to Article 32(1) of that Directive, shall be transparent, take into account the need for system integrity and its improvement 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 an appropriate return on investments, and, where appropriate, taking account of the benchmarking of tariffs by the regulatory authorities. Tariffs, or the methodologies used to calculate them, shall be applied in a non-discriminatory manner.

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

4 In accordance with Article 7(3) of Decision 2011/02/MC-EnC, Article 25 of that Decision is displayed here.

of tariff structures and charging principles, including in relation to balancing.

3. The national regulatory authority may apply a discount of up to 100 % to capacity-based transmission and distribution tariffs at entry points from, and exit points to, underground gas storage facilities and LNG facilities, unless and to the extent that such a facility which is connected to more than one transmission or distribution network is used to compete with an interconnection point.

This paragraph shall apply until 31 December 2025.[5]

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.

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

5 The text displayed here corresponds to Article 4 of Ministerial Council Decision 2022/01/MC-EnC

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

(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 manner and on a non-discriminatory basis.

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.

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

Record keeping by system operators

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

Balancing rules and imbalance charges

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.

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-subsidi-sation 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.

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

Guidelines[6]

1. The Energy Community shall endeavour to apply the Guidelines adopted by the European Commission under <...> **Regulation (EC) No 715/2009.**

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.[7]

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.[8]

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.

Article 25

Provision of information

Contracting Parties and the regulatory authorities shall, on request, provide to the **Energy Community Secretariat** all information necessary for the purposes of Article 23.[9]

6 The text displayed here corresponds to Article 27 of Decision 2011/02/MC-EnC.
7 Procedural Act 01/2012/PHLG-EnC of Permanent High Level Group 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.
8 As adopted by the Permanent High Level Group under Procedural Act 01/2012/PHLG-EnC.
9 As adopted by the Permanent High Level Group under Procedural Act 01/2012/PHLG-EnC.

The **Energy Community Secretariat** shall set 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 26

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 23.[10]

Article 27

Penalties[11]

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

Article 28

Committee procedure

<...>

Article 29

Secretariat report

<...>[12]

Article 30

Derogations and exemptions

This Regulation shall not apply to:

(a) <...>[13]

10 As adopted by the Permanent High Level Group under Procedural Act 01/2012/PHLG-EnC.
11 As adapted by Article 19 of Decision 2011/02/MC-EnC.
12 Not applicable according to Article 6 of Decision 2021/14/MC-EnC.
13 Not applicable in accordance with Article 24(4) of Decision 2011/02/MC-EnC.

(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 development 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 Directive 2009/73/EC.

<...>[14]

Article 31

Repeal

<...>

Article 32[15]

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 provisions necessary to comply with <...> **Regulation (EC) 715/2009, as adapted by this Decision, by 1 January 2015.**[16] **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.

14 Not applicable in accordance with Article 24(4) of Decision 2011/02/MC-EnC.
15 The text displayed here corresponds to Article 32 of Decision 2011/02/MC-EnC.
16 In accordance with the Accession Protocol, the corresponding date for Georgia, is 31 December 2020.

ANNEX I TO REGULATION (EC) NO 715/2009 ON CONDITIONS FOR ACCESS TO THE NATURAL GAS TRANSMISSION NETWORKS AS AMENDED BY COMMISSION DECISION (EU) 2012/490 OF 24 AUGUST 2012 AND COMMISSION DECISION (EU) 2015/715 OF 30 APRIL 2015

Incorporated and adapted by Ministerial Council Decision 2011/02/MC-EnC of 6 October 2011 and Permanent High Level Group Decision 2018/01/PHLG-EnC of 12 January 2018

The adaptations made to Annex I to Regulation (EC) 715/2009 are highlighted in **bold and blue.**[17]

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 procedures. They shall develop information systems and electronic communication means to provide adequate data to network users and to simplify transactions, such as nominations, capacity contracting 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 coordinating the maintenance of their respective networks in order to minimise any disruption of transmission 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.

17 According to Article 1(1) of Decision 2018/01/PHLG-EnC each Contracting Party shall transpose the amendments into national legislation no later than 1 October 2018.

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 notification 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. Information 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

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

2.2.1. General Provisions

1. The provisions of point 2.2 shall apply to interconnection points between adjacent entry-exit systems, irrespective of whether they are physical or virtual, between two or more **Contracting Parties** or within the same **Contracting Party** in so far as the points are **subject to booking procedures by users**

and subject to the decision of the relevant Contracting Party's national regulatory authority. They may also apply to entry points from and exit points to third countries, subject to the decision of the relevant national regulatory authority. Exit points to end-consumers and distribution networks, entry points from LNG terminals and production facilities, and entry-exit points from and to storage facilities are not subject to the provisions of point 2.2.

2. On the basis of the information published by the transmission system operators pursuant to Section 3 of this Annex and, where appropriate, validated by national regulatory authorities, the **Energy Community Regulatory Board** shall publish by 1 June of every year, commencing with the year **2020**, a monitoring report on congestion at interconnection points with respect to firm capacity products sold in the preceding year, taking into consideration to the extent possible capacity trading on the secondary market and the use of interruptible capacity.

3. Any additional capacity made available through the application of one of the congestion-management procedures as provided for in points 2.2.2, 2.2.3, 2.2.4 and 2.2.5 shall be offered by the respective transmission system operator(s) in the regular allocation process.

4. The measures provided for in points 2.2.2, 2.2.4 and 2.2.5 shall be implemented as of 1 October **2018.** Points 2.2.3(1) to 2.2.3(5) shall apply as of 1 July **2020**.

2.2.2. Capacity increase through oversubscription and buy-back scheme

1. Transmission system operators shall propose and, after approval by the national regulatory authority, implement an incentive-based oversubscription and buy-back scheme in order to offer additional capacity on a firm basis. Before implementation, the national regulatory authority shall consult with the national regulatory authorities of adjacent **Contracting Parties and the Member States of the European Union** and take account of the adjacent national regulatory authorities' opinions. Additional capacity is defined as the firm capacity offered in addition to the technical capacity of an interconnection point calculated on the basis of Article 16(1) of this Regulation.

2. The oversubscription and buy-back scheme shall provide transmission system operators with an incentive to make available additional capacity, taking account of the technical conditions, such as the calorific value, temperature and expected consumption, of the relevant entry-exit system and the capacities in adjacent networks. Transmission system operators shall apply a dynamic approach with regard to the recalculation of the technical or additional capacity of the entry-exit system.

3. The oversubscription and buy-back scheme shall be based on an incentive regime reflecting the risks of transmission system operators in offering additional capacity. The scheme shall be structured in such a way that revenues from selling additional capacity and costs arising from the buy-back scheme or measures pursuant to paragraph 6 are shared between the transmission system operators and the network users. National regulatory authorities shall decide on the distribution of revenues and costs between the transmission system operator and the network user.

4. For the purpose of determining transmission system operators' revenues, technical capacity, in particular surrendered capacity as well as, where relevant, capacity arising from the application of firm day-ahead use-it-or-lose-it and long term use-it-or-lose-it mechanisms, shall be considered to be allocated prior to any additional capacity.

5. In determining the additional capacity, the transmission system operator shall take into account statistical

scenarios for the likely amount of physically unused capacity at any given time at interconnection points. It shall also take into account a risk profile for offering additional capacity which does not lead to excessive buy-back obligation. The oversubscription and buy-back scheme shall also estimate the likelihood and the costs of buying back capacity on the market and reflect this in the amount of additional capacity to be made available.

6. Where necessary to maintain system integrity, transmission system operators shall apply a market-based buy-back procedure in which network users can offer capacity Network users shall be informed about the applicable buy-back procedure. The application of a buy-back procedure is without prejudice to the applicable emergency measures.

7. Transmission system operators shall, before applying a buy-back procedure, verify whether alternative technical and commercial measures can maintain system integrity in a more cost-efficient manner.

8. When proposing the oversubscription and buy-back scheme the transmission system operator shall provide all relevant data, estimates, and models to the national regulatory authority in order for the latter to assess the scheme. The transmission system operator shall regularly report to the national regulatory authority on the functioning of the scheme and, upon request of the national regulatory authority, provide all relevant data The national regulatory authority may request the transmission system operator to revise the scheme.

2.2.3. Firm day-ahead use-it-or-lose-it mechanism

1. National regulatory authorities shall require transmission system operators to apply at least the rules laid down in paragraph 3 per network user at interconnection points with respect to altering the initial nomination if, on the basis of the yearly monitoring report of the **Energy Community Regulatory Board** in accordance with point 2.2.1(2), it is shown that at interconnection points demand exceeded offer, at the reserve price when auctions are used, in the course of capacity allocation procedures in the year covered by the monitoring report for products for use in either that year or in one of the subsequent two years,

(a) for at least three firm capacity products with a duration of one month or

(b) for at least two firm capacity products with a duration of one quarter or

(c) for at least one firm capacity product with a duration of one year or more or

(d) where no firm capacity product with a duration of one month or more has been offered.

2. If, on the basis of the yearly monitoring report, it is shown that a situation as defined in paragraph 1 is unlikely to reoccur in the following three years, for example as a result of capacity becoming available from physical expansion of the network or termination of long-term contracts, the relevant national regulatory authorities may decide to terminate the firm day-ahead use-it-or-lose-it mechanism.

3. Firm renomination is permitted up to 90% and down to 10% of the contracted capacity by the network user at the interconnection point. However, if the nomination exceeds 80% of the contracted capacity, half of the non-nominated volume may be renominated upwards. If the nomination does not exceed 20% of the contracted capacity, half of the nominated volume may be renominated downwards. The application of this paragraph is without prejudice to the applicable emergency measures.

4. The original holder of the contracted capacity may renominate the restricted part of its contracted firm capacity on an interruptible basis.

5. Paragraph 3 shall not apply to network users persons or undertakings and the undertakings they control pursuant to Article 3 of Regulation (EC) No 139/2004 holding less than 10% of the average technical capacity in the preceding year at the interconnection point.

6. On interconnection points where a firm day-ahead use-it-or-lose-it mechanism in accordance with paragraph 3 is applied, an evaluation of the relationship with the oversubscription and buy-back scheme pursuant to point 2.2.2. shall be carried out by the national regulatory authority, which may result in a decision by the national regulatory authority not to apply the provisions of point 2.2.2. at those interconnection points. Such a decision shall be notified, without delay, to the **Energy Community Regulatory Board**.

7. A national regulatory authority may decide to implement a firm day-ahead use-it-orlose-it mechanism pursuant to paragraph 3 on an interconnection point. Before adopting its decision, the national regulatory authority shall consult with the national regulatory authorities of adjacent **Contracting Parties and the Member States of the European Union** In adopting its decision the national regulatory authority shall take account of the adjacent national regulatory authorities' opinions.

2.2.4. Surrender of contracted capacity

Transmission system operators shall accept any surrender of firm capacity which is contracted by the network user at an interconnection point, with the exception of capacity products with a duration of a day and shorter. The network user shall retain its rights and obligations under the capacity contract until the capacity is reallocated by the transmission system operator and to the extent the capacity is not reallocated by the transmission system operator Surrendered capacity shall be considered to be reallocated only after all the available capacity has been allocated. The transmission system operator shall notify the network user without delay of any reallocation of its surrendered capacity. Specific terms and conditions for surrendering capacity, in particular for cases where several network users surrender their capacity, shall be approved by the national regulatory authority.

2.2.5. Long-term use-it-or-lose-it mechanism

1. National regulatory authorities shall require transmission system operators to partially or fully withdraw systematically underutilised contracted capacity on an interconnection point by a network user where that user has not sold or offered under reasonable conditions its unused capacity and where other network users request firm capacity. Contracted capacity is considered to be systematically underutilised in particular if:

(a) the network user uses less than on average 80% of its contracted capacity both from 1 April until 30 September and from 1 October until 31 March with an effective contract duration of more than one year for which no proper justification could be provided; or

(b) the network user systematically nominates close to 100% of its contracted capacity and renominates downwards with a view to circumventing the rules laid down in point 2.2.3(3).

2. The application of a firm day-ahead use-it-or-lose-it mechanism shall not be regarded as justification to prevent the application of paragraph 1.

3. Withdrawal shall result in the network user losing its contracted capacity partially or completely for a given period or for the remaining effective contractual term. The network user shall retain its rights and obligations under the capacity contract until the capacity is reallocated by the transmission system operator

and to the extent the capacity is not reallocated by the transmission system operator.

4. Transmission system operators shall regularly provide national regulatory authorities with all the data necessary to monitor the extent to which contracted capacities with effective contract duration of more than one year or recurring quarters covering at least two years are used.

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

3.1.1. Form of publication

(1) Transmission system operators (TSOs) shall provide all information referred to under paragraph

3.1.2 and paragraph 3.3(1) to 3.3(5) in the following manner:

(a) on a website accessible to the public, free of charge and without any need to register or otherwise sign on with the transmission system operator;

(b) on a regular/rolling basis; the frequency shall be according to the changes that take place and the duration of the service;

(c) in a user-friendly manner;

(d) in a clear, quantifiable, easily accessible way and on a non-discriminatory basis;

(e) in a downloadable format that has been agreed between transmission system operators and the national regulatory authorities on the basis of an opinion on a harmonised format that shall be provided by the **Energy Community Regulatory Board** and that allows for quantitative analyses;

(f) in consistent units, in particular kWh (with a combustion reference temperature of 298,15 K) shall be the unit for energy content and m 3 (at 273,15 K and 1,01325 bar) shall be the unit for volume. The constant conversion factor to energy content shall be provided. In addition to the format above, publication in other units is also possible;

(g) in the official language(s) of the Energy Community Contracting Party and in English.

(h) all data shall be made available as of 1 October **2018** on **the** <...> central platform, established by ENTSOG on a cost-efficient basis.

(2) Transmission system operators shall provide details on actual changes to all information referred to under paragraph 3.1.2 and paragraph 3.3(1) to 3.3(5) in a timely manner as soon as available to them.

3.1.2. Content of publication

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 transportation contracts available for these services;

(c) the network code and/or the standard conditions outlining the rights and responsibilities of all network users including:

1. harmonised transportation contracts and other relevant documents;

2. if relevant for access to the system, for all relevant points as defined in paragraph 3.2 of this Annex, a specification of relevant gas quality parameters, including at least the gross calorific value and the Wobbe index, and the liability or costs of conversion for network users in case gas is outside these specifications;

3. if relevant for access to the system, for all relevant points information on pressure requirements;

4. the procedure in the event of an interruption of interruptible capacity, including, where applicable, the timing, extent, and ranking of individual interruptions (for example pro-rata or first-come-last-interrupted);

(d) the harmonised procedures applied when using the transmission system, including the definition of key terms;

(e) provisions on capacity allocation, congestion management and anti-hoarding and reutilisation procedures;

(f) the rules applicable for capacity trade on the secondary market vis-à-vis the transmission system operator;

(g) rules on balancing and methodology for the calculation of imbalance charges;

(h) if applicable, the flexibility and tolerance levels included in transportation and other services without separate charge, as well as any flexibility offered in addition to this and the corresponding charges;

(i) a detailed description of the gas system of the transmission system operator and its relevant points of interconnection as defined in paragraph 3.2 of this Annex as well as the names of the operators of the interconnected systems or facilities;

(j) the rules applicable for connection to the system operated by the transmission system operator;

(k) information on emergency mechanisms, as far as it is the responsibility of the transmission system operator, such as measures that can lead to the disconnection of customers groups and other general liability rules that apply to the transmission system operator;

(l) procedures agreed upon by transmission system operators at interconnection points, of relevance for access of network users to the transmission systems concerned, relating to interoperability of the network, agreed procedures on nomination and matching procedures and other agreed procedures that set out provisions in relation to gas flow allocations and balancing, including the methods used;

(m) transmission system operators shall publish a detailed and comprehensive description of the methodology and process, including information on the parameters employed and the key assumptions, used to calculate the technical capacity.

3.2. Definition of all relevant points for transparency requirements

(1) Relevant points shall include at least:

(a) all entry and exit points to and from a transmission network operated by a transmission system operator with the exception of exit points connected to a single final customer, and with the exception of entry points linked directly to a production facility of a single producer that is located within the Energy Community;

(b) all entry and exit points connecting balancing zones of transmission system operators;

(c) all points connecting the network of a transmission system operator with an LNG terminal, physical gas

hubs, storage and production facilities, unless these production facilities are exempted under (a);

(d) all points connecting the network of a given transmission system operator to infrastructure necessary for providing ancillary services as defined by Article 2(14) of Directive 2009/73/EC.

(2) Information for single final customers and for production facilities, that is excluded from the definition of relevant points as described under 3.2(1)(a), shall be published in aggregate format, at least per balancing zone. The aggregation of single final customers and of production facilities, excluded from the definition of relevant points as described under 3.2(1)(a), shall for the application of this Annex be considered as one relevant point.

(3) Where points between two or more transmission operators are managed solely by the transmission operators concerned, with no contractual or operational involvement of system users whatsoever, or where points connect a transmission system to a distribution system and there is no contractual congestion at these points, transmission system operators shall be exempted for these points from the obligation to publish the requirements under paragraph 3.3 of this Annex. The national regulatory authority may require the transmission system operators to publish the requirements under paragraph 3.3 of this Annex for groups or all of the exempted points. In such case, the information, if available to the TSO, shall be published in an aggregated form at a meaningful level, at least per balancing zone. This aggregation of these points shall for the application of this annex be considered as one relevant point.

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 information as listed in paragraphs (a) to (g), for all services and ancillary services provided (in particular information on blending, ballasting and conversion). This information shall be published on a numerical basis, in hourly or daily periods, equal to the smallest reference period for capacity booking and (re-)nomination and the smallest settlement period for which imbalance charges are calculated. If the smallest reference period is different from a daily period, information as listed in paragraphs (a) to (g) shall be made available also for the daily period. This information and updates shall be published as soon as available to the system operator ("near real time").

(a) the maximum technical capacity for flows in both directions;

(b) the total contracted firm and interruptible capacity in both directions;

(c) the nominations and re-nominations in both directions;

(d) the available firm and interruptible capacity in both directions;

(e) actual physical flows;

(f) planned and actual interruption of interruptible capacity;

(g) planned and unplanned interruptions to firm services as well as the information on restoration of the firm services (in particular, maintenance of the system and the likely duration of any interruption due to maintenance). Planned interruptions shall be published at least 42 days in advance.

(h) occurrence of unsuccessful, legally valid requests for firm capacity products with a duration of one month or longer including the number and volume of the unsuccessful requests; and

(i) in the case of auctions, where and when firm capacity products with a duration of one month or longer have cleared at prices higher than the reserve price;

(j) where and when no firm capacity product with a duration of one month or longer has been offered in the regular allocation process;

(k) total capacity made available through the application of the congestion-management procedures laid down in points 2.2.2, 2.2.3, 2.2.4 and 2.2.5 per applied congestion-management procedure;

(l) points (h) to (k) shall apply from 1 October **2018**.[18]

(2) At all relevant points, the information under paragraph 3.3(1)(a), (b) and (d) shall be published for a period of at least 24 months ahead.

(3) At all relevant points, transmission system operators shall publish historical information on the requirements of paragraph 3.3(1)(a) to (g) for the past 5 years on a rolling basis.

(4) Transmission system operators shall publish measured values of the gross calorific value or the Wobbe index at all relevant points, on a daily basis. Preliminary figures shall be published at the latest 3 days following the respective gas day. Final figures shall be published within 3 months after the end of the respective month.

(5) For all relevant points, transmission system operators shall publish available capacities, booked and technical capacities, on an annual basis over all years where capacity is contracted plus 1 year, and at least for the next 10 years. This information shall be updated at least every month or more frequently, if new information becomes available. The publication shall reflect the period for which capacity is offered to the market.

3.4. Information to be published regarding the transmission system and the time schedule according to which this information should be published

(1) Transmission system operators shall ensure the publication on a daily basis and updated every day the aggregated amounts of capacities offered, and contracted on the secondary market (i.e. sold from one network user to another network user), where the information is available to the TSO. This information shall include the following specifications:

(a) interconnection point where the capacity is sold;

(b) type of capacity, i.e. entry, exit, firm, interruptible;

(c) quantity and duration of the capacity usage rights;

(d) type of sale, e.g. transfer or assignment;

(e)the total number of trades/transfers;

(f) any other conditions known to the transmission system operator as mentioned in 3.3.

In so far such information is provided by a third party, transmission system operators shall be exempted from this provision.

(2) Transmission system operators shall publish harmonised conditions under which capacity transactions (e.g. transfers and assignments) will be accepted by them. These conditions must at least include:

(a) a description of standardised products which can be sold on the secondary market;

(b) lead time for the implementation/acceptation/registration of secondary trades. In case of delays the reasons have to be published;

(c) the notification to the transmission system operator by the seller or the third party as referred to under

18 As adapted by Article 3(9) of Decision 2018/01/PHLG-EnC.

3.4(1) about name of seller and buyer and capacity specifications as outlined in 3.4(1).

In so far such information is provided by a third party, transmission system operators shall be exempted from this provision.

(3) Regarding the balancing service of its system, each transmission system operator shall provide to each network user, for each balancing period, its specific preliminary imbalance volumes and cost data per individual network user, at the latest 1 month after the end of the balancing period. Final data of customers supplied according to standardised load profiles may be provided up to 14 months later. In so far such information is provided by a third party, transmission system operators shall be exempted from this provision. The provision of this information shall respect confidentiality of commercially sensitive information.

(4) Where flexibility services, other than tolerances, are offered for third party access, transmission system operators shall publish daily forecasts on a day-ahead basis of the maximum amount of flexibility, the booked level of flexibility and the availability of flexibility for the market for the next gas day. The transmission system operator shall also publish ex-post information on the aggregate utilisation of every flexibility service at the end of each gas day. If the national regulatory authority is satisfied that such information could give room to potential abuse by network users, it may decide to exempt the transmission system operator from this obligation.

(5) Transmission system operators shall publish, per balancing zone, the amount of gas in the transmission system at the start of each gas day and the forecast of the amount of gas in the transmission system at the end of each gas day. The forecast amount of gas for the end of the gas day shall be updated on an hourly basis throughout the gas day. If imbalance charges are calculated on an hourly basis, the transmission system operator shall publish the amount of gas in the transmission system on an hourly basis. Alternatively, transmission system operators shall publish, per balancing zone, the aggregate imbalance position of all users at the start of each balancing period and the forecast of the aggregated imbalance position of all users at the end of each gas day. If the national regulatory authority is satisfied that such information could give room to potential abuse by network users, it may decide to exempt the transmission system operator from this obligation.

(6) Transmission system operators shall provide user-friendly instruments for calculating tariffs.

(7) Transmission system operators shall keep at the disposal of the relevant national authorities, for at least 5 years, effective records of all capacity contracts and all other relevant information in relation to calculating and providing access to available capacities, in particular individual nominations and interruptions. Transmission system operators must keep documentation of all relevant information under point 3.3(4) and (5) for at least 5 years and make them available to the regulatory authority upon request. Both parties shall respect commercial confidentiality.

REGULATION (EU) 2017/1938 of 25 October 2017 concerning measures to safeguard the security of gas supply as amended by Regulation with regard to gas storage

Incorporated and adapted by Ministerial Council Decision 2021/15/MC-EnC of 30 November 2021 on Annex I to the Treaty establishing the Energy Community and adapting and implementing Regulation (EU) 2017/1938 concerning measures to safeguard the security of gas supply and by Ministerial Council Decision 2022/01/MC-EnC adapting and implementing Regulation (EU) 2022/1032 with regards to gas storage as amended by Ministerial Council Decision 18 December 2025 2025/09/MC-EnC.

The adaptations made by Ministerial Council Decision 2021/15/MC-EnC, 2022/01/MC-EnC and 2025/09/MC-EnC, the latter incorporating amendments included in Regulation (EU) 2022/1032 with regards to gas storage, are highlighted in ***bold and blue****.*

Article 1

Subject matter

This Regulation lays down rules for cooperation between Contracting Parties with a view to preventing, mitigating and managing gas crises in full regard for the requirements of a competitive single market for gas.[1]

Article 2

Definitions

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

(1) 'security' means security as defined in point 32 of Article 2 of Directive 2009/73/EC, **as adapted and adopted by Ministerial Council Decision 2011/02/MC-EnC**;

(2) 'customer' means customer as defined in point 24 of Article 2 of Directive 2009/73/EC, **as adapted and adopted by Ministerial Council Decision 2011/02/MC-EnC**;

(3) 'household customer' means household customer as defined in point 25 of Article 2 of Directive 2009/73/EC, **as adapted and adopted by Ministerial Council Decision 2011/02/MC-EnC**;

(4) 'essential social service' means a service related to healthcare, essential social care, emergency, security, education or public administration;

(5) 'protected customer' means a household customer who is connected to a gas distribution network and, in addition, where the **Contracting Party** concerned so decides, may also mean one or more of the following, provided that enterprises or services as referred to in points (a) and (b) do not, jointly, represent more than 20 % of the total annual final gas consumption in that **Contracting Party**:

a) a small or medium-sized enterprise, provided that it is connected to a gas distribution network;

b) an essential social service, provided that it is connected to a gas distribution or transmission network;

1 The text displayed here corresponds to Article 4(1) of Ministerial Council Decision 2021/15/MC-EnC

c) a district heating installation to the extent that it delivers heating to household customers, small or medium-sized enterprises, or essential social services, provided that such installation is not able to switch to other fuels than gas;

(6) **<...>**[2]

(7) 'competent authority' means a national governmental authority or a national regulatory authority designated by a **Contracting Party** to ensure the implementation of the measures provided for in this Regulation;

(8) 'national regulatory authority' means a national regulatory authority designated in accordance with Article 39(1) of Directive 2009/73/EC, **as adapted and adopted by Ministerial Council Decision 2011/02/MC-EnC**;

(9) 'natural gas undertaking' means natural gas undertaking as defined in point 1 of Article 2 of Directive 2009/73/EC, **as adapted and adopted by Ministerial Council Decision 2011/02/MC-EnC**;

(10) 'gas supply contract' means gas supply contract as defined in point 34 of Article 2 of Directive 2009/73/EC, **as adapted and adopted by Ministerial Council Decision 2011/02/MC-EnC**;

(11) 'transmission' means transmission as defined in point 3 of Article 2 of Directive 2009/73/EC, **as adapted and adopted by Ministerial Council Decision 2011/02/MC-EnC**;

(12) 'transmission system operator' means transmission system operator as defined in point 4 of Article 2 of Directive 2009/73/EC, **as adapted and adopted by Ministerial Council Decision 2011/02/MC-EnC**;

(13) 'distribution' means distribution as defined in point 5 of Article 2 of Directive 2009/73/EC, **as adapted and adopted by Ministerial Council Decision 2011/02/MC-EnC**;

(14) 'distribution system operator' means distribution system operator as defined in point 6 of Article 2 of Directive 2009/73/EC, **as adapted and adopted by Ministerial Council Decision 2011/02/MC-EnC**;

(15) 'interconnector' means interconnector as defined in point 17 of Article 2 of Directive 2009/73/EC, **as adapted and adopted by Ministerial Council Decision 2011/02/MC-EnC**;

(16) **<...>**[3]

(17) 'storage capacity' means storage capacity as defined in point 28 of Article 2 of Regulation (EC) No 715/2009, **as adapted and adopted by Ministerial Council Decision 2011/02/MC-EnC**;

(18) 'technical capacity' means technical capacity as defined in point 18 of Article 2 of Regulation (EC) No 715/2009, **as adapted and adopted by Ministerial Council Decision 2011/02/MC-EnC**;

(19) 'firm capacity' means firm capacity as defined in point 16 of Article 2 of Regulation (EC) No 715/2009, **as adapted and adopted by Ministerial Council Decision 2011/02/MC-EnC**;

(20) 'interruptible capacity' means interruptible capacity as defined in point 13 of Article 2 of Regulation (EC) No 715/2009, **as adapted and adopted by Ministerial Council Decision 2011/02/MC-EnC**;

(21) 'LNG facility capacity' means LNG facility capacity as defined in point 24 of Article 2 of Regulation (EC) No 715/2009, **as adapted and adopted by Ministerial Council Decision 2011/02/MC-EnC**;

(22) 'LNG facility' means LNG facility as defined in point 11 of Article 2 of Directive 2009/73/EC, **as adapted and adopted by Ministerial Council Decision 2011/02/MC-EnC**;

(23) 'storage facility' means storage facility as defined in point 9 of Article 2 of Directive 2009/73/EC, **as**

2 Not applicable according to Article 4(2)a of Ministerial Council Decision 2021/15/MC-EnC
3 Not applicable according to Article 4(2)a of Ministerial Council Decision 2021/15/MC-EnC

adapted and adopted by Ministerial Council Decision 2011/02/MC-EnC;

(24) 'system' means system as defined in point 13 of Article 2 of Directive 2009/73/EC **as adapted and adopted by Ministerial Council Decision 2011/02/MC-EnC**;

(25) 'system user' means system user as defined in point 23 of Article 2 of Directive 2009/73/EC **as adapted and adopted by Ministerial Council Decision 2011/02/MC-EnC**;

(26) 'ancillary services' means ancillary services as defined in point 14 of Article 2 of Directive 2009/73/EC **as adapted and adopted by Ministerial Council Decision 2011/02/MC-EnC**;

(27) **'Security of Supply Coordination Group' is the group established by Procedural Act 2008/02/MC-EnC of 11 December 2008 as amended by Procedural Act 2021/03/MC-EnC;**[4]

(28) 'filling trajectory' means a series of **indicative** intermediate targets for the underground gas storage facilities of each **Contracting Party, representing the filling plan of that Contracting Party,** set in accordance with Article 6a**(7)**;

(29) 'filling target' means a binding target for the filling level of the aggregated capacity of the underground gas storage facilities;

(30) 'strategic storage' means underground storage or part of underground storage of non-liquefied natural gas which is purchased, managed and stored by transmission systems operators, an entity designated by the **Contracting Parties** or an undertaking, and which may be released only after prior notification or public authority authorisation for release, and is generally released in case of:

a) major supply scarcity;

b) a supply disruption; or

c) the deceleration of an emergency as referred to in Article 11(1), point (c).

(31) 'balancing stock' means non-liquefied natural gas which is:

a) purchased, managed and stored underground by transmission system operators or by an entity designated by the **Contracting Party**, for the sole purposes of carrying out the functions of transmission system operators and of the security gas supply; and

b) dispatched only where required to keep the system in operation under secure and reliable conditions in accordance with Article 13 of Directive 2009/73/EC of the European Parliament and of the Council **as adapted and adopted by Ministerial Council Decision 2011/02/MC-EnC** and with Articles 8 and 9 of Commission Regulation (EU) 312/2014 **as adapted and adopted by Permanent High-Level Group Decision 2019/01/PHLG-EnC**;

(32) 'underground gas storage facility' means a storage facility as defined in Article 2, point (9), of Directive 2009/73/EC **as adapted and adopted by Ministerial Council Decision 2011/02/MC-EnC**, that is used for the stocking of natural gas, including balancing stock, and that is connected to a transmission or distribution system, excluding above ground spherical or linepack storage.

4 The text displayed here corresponds to Article 4(2)b of Ministerial Council Decision 2021/15/MC-EnC

Article 3

Responsibility for the security of gas supply[5]

1. The security of gas supply shall be the shared responsibility of natural gas undertakings, **Contracting Parties**, in particular through their competent authorities, and the **Energy Community Secretariat**, within their respective areas of activity and competence.

2. Each **Contracting Party** shall designate a competent authority. The competent authorities shall co-operate with each other in the implementation of this Regulation. **Contracting Parties** may allow the competent authority to delegate specific tasks set out in this Regulation to other bodies. Where competent authorities delegate the task of declaring any of the crisis levels referred to in Article 11(1), they shall do so only to a public authority, a transmission system operator or a distribution system operator. Delegated tasks shall be performed under the supervision of the competent authority and shall be specified in the preventive action plan and in the emergency plan.

3. Each **Contracting Party** shall, without delay, notify the **Energy Community Secretariat**, and make public, the name of its competent authority and any changes thereto.

4. When implementing the measures provided for in this Regulation, the competent authority shall establish the roles and responsibilities of the different actors concerned in such a way as to ensure a **two**-level approach which involves, first, the relevant natural gas undertakings, electricity undertakings where appropriate, and industry, and **second, Contracting Parties** at national level **<…>.**

5. The **Energy Community Secretariat** shall coordinate the action of the competent authorities, pursuant to this Regulation, inter alia, through the **Security of Supply Coordination Group**.

6. **<…>**

7. **<…>**

8. **<…>**[6]

Article 4

Security of Supply Coordination Group[7]

1. **<…>**[8]

2. The **Security of Supply Coordination Group** shall be consulted and shall assist the **Energy Community Secretariat** in particular on the following issues:

(a) the security of gas supply, at any time and more specifically in the event of an emergency;

(b) all information relevant to the security of gas supply at national **<…>**

level;

(c) best practices and possible guidelines to all the parties concerned;

5 The text displayed here corresponds to Article 4(3) of Ministerial Council Decision 2021/15/MC-EnC
6 Not applicable according to Article 4(3)c of Ministerial Council Decision 2021/15/MC-EnC
7 The text displayed here corresponds to Article 4(4) of Ministerial Council Decision 2021/15/MC-EnC
8 Not applicable according to Article 4(4)a of Ministerial Council Decision 2021/15/MC-EnC

(d) the level of the security of gas supply, benchmarks and assessment methodologies;

(e) national **<…>** scenarios and testing the levels of preparedness;

(f) the assessment of the preventive action plans and the emergency plans, the coherence across the various plans, and the implementation of the measures provided for therein;

(g) the coordination of measures to deal with the Energy Community Contracting Parties **<…>**;

(h) assistance needed by the most affected **Contracting Parties**.

3. The **Energy Community Secretariat** shall convene the **Security of Supply Coordination Group** on a regular basis and shall share the information received from the competent authorities whilst preserving the confidentiality of commercially sensitive information.

4. The **Energy Community Secretariat** may convene the **Security of Supply Coordination Group** in a setting which is restricted to the representatives of the **Contracting Parties** and in particular of their competent authorities. The **Energy Community Secretariat** shall convene the **Security of Supply Coordination Group** in this restricted setting if so requested by one or more of the representatives of the **Contracting Parties** and in particular of their competent authorities. **<…>**

Article 5

Infrastructure standard[9]

1. Each **Contracting Party** or, where a **Contracting Party** so provides, its competent authority shall ensure that the necessary measures are taken so that in the event of a disruption of the single largest gas infrastructure, the technical capacity of the remaining infrastructure, determined in accordance with the N – 1 formula as set out in point 2 of Annex II, is able, without prejudice to paragraph 2 of this Article, to satisfy total gas demand of the calculated area during a day of exceptionally high gas demand occurring with a statistical probability of once in 20 years. This shall be done taking into account gas consumption trends, the long-term impact of energy efficiency measures and the utilisation rates of existing infrastructure.

The obligation set out in the first subparagraph of this paragraph shall be without prejudice to the responsibility of the transmission system operators to make the corresponding investments and to the obligations of transmission system operators as laid down in Regulation (EC) No 715/2009 and Directive 2009/73/EC **as adapted and adopted by Ministerial Council Decision 2011/02/MC-EnC**.

2. The obligation to ensure that the remaining infrastructure has the technical capacity to satisfy total gas demand, as referred to in paragraph 1 of this Article, shall also be considered to be fulfilled where the competent authority demonstrates in the preventive action plan that a disruption of gas supply may be sufficiently compensated for, in a timely manner, by appropriate market-based demand-side measures. For that purpose, the N – 1 formula shall be calculated as set out in point 4 of Annex II.

3. **<…>**[10]

4. The transmission system operators shall enable permanent physical capacity to transport gas in both directions ('bi-directional capacity') on all interconnections between **Contracting Parties**, **except for existing interconnectors included in Annex III.**

9 The text displayed here corresponds to Article 4(5) of Ministerial Council Decision 2021/15/MC-EnC

10 Not applicable according to Article 4(5)a of Ministerial Council Decision 2021/15/MC-EnC

<...>

5. **<...>**[11]

6. National regulatory authorities shall take into account the efficiently incurred costs of fulfilling the obligation set out in paragraph 1 of this Article and the costs of enabling bi-directional capacity so as to grant appropriate incentives when fixing or approving, in a transparent and detailed manner, the tariffs or methodologies in accordance with Article 13 of Regulation (EC) No 715/2009 and Article 41(8) of Directive 2009/73/EC, **as adapted and adopted by Ministerial Council Decision 2011/02/MC-EnC**.

7. In so far as an investment for enabling or enhancing bi-directional capacity is not required by the market but is considered to be necessary for the security of gas supply purposes and where that investment incurs costs in more than one **Contracting Party** or in one **Contracting Party** for the benefit of another **Contracting Party**, the national regulatory authorities of all **Contracting Parties** concerned shall take a coordinated decision on cost allocation before any investment decision is taken. The cost allocation shall take into account the principles described and the elements contained in Article 12(4) of Regulation (EU) No 347/2013, **as adapted and adopted by Ministerial Council Decision 2015/09/MC-EnC** in particular the proportion of the benefits of the infrastructure investments for the increase of the security of gas supply of the **Contracting Parties** concerned as well as investments already made in the infrastructure in question. The cost allocation shall not unduly distort competition and the effective functioning of the **single market** and shall seek to avoid any undue distortive effect on the market.

8. The competent authority shall ensure that any new transmission infrastructure contributes to the security of gas supply through the development of a well-connected network, including, where appropriate, by means of a sufficient number of cross-border entry and exit points relative to market demand and the risks identified.

The competent authority shall assess in the risk assessment whether, with an integrated perspective on gas and electricity systems, internal bottlenecks exist and national entry capacity and infrastructure, in particular transmission networks, are capable of adapting the national and cross-border gas flows to the scenario of disruption of the single largest gas infrastructure **at national level <...>** identified in the risk assessment.

9. By way of exception from paragraph 1 of this Article, and subject to the conditions laid down in this paragraph, **Bosnia and Herzegovina and Georgia** shall not be bound by, but shall endeavour to meet, the obligation set out in that paragraph, while ensuring the gas supplies to protected customers in accordance with Article 6.

<...>

The exception for Georgia shall cease to apply once it has:

(a) at least one interconnector with other Parties and

(b) gas storage facilities or an LNG facility on its territory.

The exception shall cease to apply to Bosnia and Herzegovina, once it has:
(a) **gas transit to other Parties and**

(b) **more than 5 % of total primary energy consumption from gas.**

Bosnia and Herzegovina and Georgia shall inform the **Energy Community Secretariat** of any change affecting the conditions laid down in this paragraph. The exception laid down in this paragraph shall cease

11 Not applicable according to Article 4(5)c of Ministerial Council Decision 2021/15/MC-EnC

to apply where at least one of those conditions is no longer fulfilled.

As part of the national risk assessment carried out in accordance with Article 7(3) **Bosnia and Herzegovina and Georgia** shall describe the situation with respect to the respective conditions laid down in this paragraph and the prospects for compliance with the obligation in paragraph 1 of this Article, taking into account the economic impact of meeting the infrastructure standard and the gas market development. On the basis of the information provided in the national risk assessment and if the respective conditions laid down in this paragraph are still met, the **Ministerial Council, upon a proposal by the Energy Community Secretariat and acting in accordance with Article 83 of the Treaty** may decide that the exception can continue to apply for four more years. In the event of a positive decision, the procedure set out in this subparagraph shall be repeated after four years.

Article 6

Gas supply standard[12]

1. The competent authority shall require the natural gas undertakings that it identifies, to take measures to ensure the gas supply to the protected customers of the **Contracting Party** in each of the following cases:

(a) extreme temperatures during a 7-day peak period occurring with a statistical probability of once in 20 years;

(b) any period of 30 days of exceptionally high gas demand, occurring with a statistical probability of once in 20 years;

(c) for a period of 30 days in the case of disruption of the single largest gas infrastructure under average winter conditions.

By **26 February 2022**, each **Contracting Party** shall notify to the **Energy Community Secretariat** its definition of protected customers, the annual gas consumption volumes of the protected customers and the percentage that those consumption volumes represent of the total annual final gas consumption in that **Contracting Party**. Where a **Contracting Party** includes in its definition of protected customers the categories referred to in point (5)(a) or (b) of Article 2, it shall specify the gas consumption volumes corresponding to customers belonging to those categories and the percentage that each of those groups of customers represents in total annual final gas consumption.

The competent authority shall identify the natural gas undertakings referred to in the first subparagraph of this paragraph and shall specify them in the preventive action plan.

Any new non-market-based measures envisaged to ensure the gas supply standard shall comply with the procedure established in Article 9(4) to (9).

Contracting Parties may comply with the obligation laid down in the first subparagraph through the implementation of energy efficiency measures or by replacing the gas with a different source of energy, inter alia, renewable energy sources, to the extent that the same level of protection is achieved.

2. Any increased gas supply standard beyond the 30-day period referred to in points (b) and (c) of paragraph 1 or any additional obligation imposed for reasons of security of gas supply shall be based on the risk assessment, shall be reflected in the preventive action plan and shall:

12 The text displayed here corresponds to Article 4(6) of Ministerial Council Decision 2021/15/MC-EnC

(a) comply with Article 8(1);

(b) not impact negatively on the ability of any other **Contracting Party** to supply gas to its protected customers in accordance with this Article in the event of a national **<…>** emergency;

(c) **<…>**[13]

The **Energy Community Secretariat** may require a justification showing compliance of any measure referred to in the first subparagraph with the conditions laid down therein. Such a justification shall be made public by the competent authority of the **Contracting Party** that introduces the measure.

Any new non-market-based measure pursuant to the first subparagraph of this paragraph, adopted on or after **the entry into force of this Regulation** shall comply with the procedure established in Article 9(4) to (9).

3. After the expiry of the periods laid down by the competent authority in accordance with paragraphs 1 and 2, or under more severe conditions than those laid down in paragraph 1, the competent authority and natural gas undertakings shall endeavour to maintain, as far as possible, the gas supply, in particular to protected customers.

4. The obligations imposed on natural gas undertakings for the fulfilment of the gas supply standards laid down in this Article shall be non-discriminatory and shall not impose an undue burden on those undertakings.

5. **<…>**[14]. The competent authorities shall not require the gas supply standards laid down in this Article to be met based on infrastructure located only within their territory.

6. The competent authorities shall ensure that conditions for supplies to protected customers are established without prejudice to the proper functioning of the **single** energy market and at a price respecting the market value of the supplies.

Article 6a

Filling targets and filling trajectories

(1) Subject to paragraphs 2 to 5**f**, the **Contracting Parties** shall meet the following filling targets for the aggregated capacity of all underground gas storage facilities that are located on their territory and directly interconnected to a market area in their territory **<…> at any point in time between 1 October and 1 December each year:**

(a) for 2022: 80%;

(b) from 2023: 90%.

For the purpose of complying with this paragraph, **Contracting Parties** shall take into account the objective of safeguarding the security of gas supply in accordance with Article 1.

(2) Notwithstanding paragraph 1 and without prejudice to the obligations of other **Contracting Parties** to fill the underground gas storage facilities concerned, the filling target for each **Contracting Party** in which the underground gas storage facilities are located shall be reduced to a volume corresponding to 35% of the average annual gas consumption over the preceding five years for that **Contracting Party**.

13 Not applicable according to Article 4(6)c of Ministerial Council Decision 2021/15/MC-EnC
14 Not applicable according to Article 4(6)d of Ministerial Council Decision 2021/15/MC-EnC

(3) Notwithstanding paragraph 1 and without prejudice to the obligations of other **Contracting Parties** to fill the underground gas storage facilities concerned, the filling target for each **Contracting Party** in which the underground gas storage facilities are located shall be reduced by the volume which was supplied to **the EU Member States and** third countries during the reference period 2016 to 2021 if the average volume supplied was more than 15 TWh per year during the gas storage withdrawal period (October – April).

(4) **<…>**

(5) A **Contracting Party** may partially meet the filling target by counting the LNG physically stored and available in its LNG facilities if both of the following conditions are met:

(a) the gas system includes significant capacity of LNG storage, accounting annually for more than 4% of the average national consumption over the preceding five years;

(b) The **Contracting Party** has imposed an obligation on gas suppliers to store minimum volumes of gas in underground gas storage facilities and/or LNG facilities in accordance with Article 6b(1), point (a).

(5a) Notwithstanding paragraph 1 and without prejudice to the obligation of other Contracting Parties to fill the underground gas storage facilities concerned, in the case of difficult conditions that limit the ability to ensure that the underground gas storages are filled in accordance with this Regulation, each Contracting Party may decide to deviate from the filling target set out in paragraph 1, point (b) by up to 10 percentage points.

(5b) Notwithstanding paragraph 1, in addition to a possible deviation in accordance with the paragraph 5a and without prejudice to the obligation of other Contracting Party to fill the underground gas storage facilities concerned, each Contracting Party may decide to deviate from the filling target set out in paragraph 1, point (b) by up to five percentage points, if:

a) its national gas production exceeds its average annual gas consumption over the preceding two years; or

b) specific technical characteristics of an individual underground storage facility with technical capacity above 40 TWh located on its territory require a slow injection rate causing an exceptionally long injection period of more than 115 days.

A Contracting Party may only use the flexibilities provided under the first subparagraph, as long as this does not negatively impact the ability of directly connected Contracting Parties to supply gas to their protected customers or this does not negatively impact the functioning of the internal market in gas. The Energy Community Secretariat, in cooperation with the Contracting Parties using the flexibilities referred to in this subparagraph, shall assess the potential consequences of implementing those flexibilities, and inform the Security of Supply Coordination Group immediately.

(5c) In the case of persistent unfavourable market conditions and provided that the security of supply of the Energy Community and of the Contracting Parties is not undermined, the Permanent High Level Group is empowered to adopt, on a proposal of the European Commission and after consulting the Security of Supply Coordination Group, a Decision to increase, for one filling season, the level of deviation allowed pursuant to paragraph 5a of this Article. Such an increase shall not exceed an additional five percentage points. When assessing a potential increase, the Permanent High Level Group, with the support of the Energy Community Secretariat shall take into account, in particular, the level of storage-filling, global gas supply,

ENTSOG's seasonal supply outlook, and indications of market manipulation. When increasing, in accordance with this paragraph, the level of deviation allowed pursuant to paragraph 5a of this Article, the Permanent High Level Group shall adapt the volumes set out in paragraph 2 of this Article and in Article 6c(1) and (5) to the same extent, in order to ensure full consistency in the filling targets applicable to Contracting Parties.

(5d) Contracting Parties may, under the same conditions as those set out in paragraph 5a, decide to deviate by up to three percentage points and eighty-eight hundredth from the volume set out in paragraph 2.

(5e) Contracting Parties may, under the same conditions as those set out in paragraph 5a of this Article, decide to deviate by up to one percentage point and sixty-six hundredth from the average annual gas consumption volume set out in Article 6c(1) and (5).

(5f) A Contracting Party using any of the flexibilities provided for in paragraphs 5a to 5e shall consult the Energy Community Secretariat and provide justification immediately. The Energy Community Secretariat shall update the Security of Supply Coordination Group and any directly affected Contracting Parties on the cumulative effects of all used flexibilities without delay.

(6) In order to meet the filling target, Contracting Parties shall strive to follow the filling trajectory set in accordance with paragraph 7.

(7) For 2023 and the following years, each Contracting Party with underground gas storage facilities shall submit to the Energy Community Secretariat, by 15 September of the previous year, a filling trajectory with intermediary targets for February, May, July and September, including technical information, for the underground gas storage facilities on its territory and directly interconnected to its market area in an aggregated form. The filling trajectory and the intermediate targets shall be based on the average filling rate during the preceding five years.

2. For Contracting Parties for which the filling target is reduced to 35 % of their average annual gas consumption pursuant to paragraph 2, the intermediate targets of the filling trajectory shall be reduced accordingly.

3. The Energy Community Secretariat shall inform the Security of Supply Coordination Group of the aggregated filling trajectories submitted by Contracting Parties without undue delay.

(8) Each Contracting Party shall take all necessary measures in accordance with Article 6b to meet the filling target. Where, in any given year, a Contracting Party does not meet its filling target, it shall take effective measures to ensure the security of supply while taking into consideration the price impact on the gas market. Where a Contracting Party fails to meet the filling target, that Contracting Party shall inform the Energy Community Secretariat and the Security of Supply Coordination Group without delay, providing reasons for the failure to meet the filling target and the measures taken.

(9) The filling target shall not apply where and for as long as one or more **Contracting Parties with underground gas storage facilities** have declared a national emergency **pursuant to Article 11.**

(10) The competent authority of each Contracting Party may take all necessary measures in accordance with Article 6b to meet the filling trajectory, including the introduction of binding intermediate targets at national level. It shall continuously monitor alignment with the filling trajectory and shall inform the Security of Supply Coordination Group regularly of the align-

ment with the filling trajectory. The Energy Community Secretariat shall regularly inform the Security of Supply Coordination Group of the extent to which each Contracting Party meets the indicative trajectory.

(11) In the event of a substantial and sustained deviation by a Contracting Party from the filling trajectory, compromising the meeting of the filling target, or in the event of a deviation from the filling target which is not allowed pursuant to paragraphs 5a to 5e, the Permanent High Level Group shall, where appropriate and on a proposal of the European Commission, after consulting the Security of Supply Coordination Group and the Contracting Parties concerned, issue a recommendation to that Contracting Party or to the other Contracting Parties concerned, regarding measures to be taken to remedy that deviation or to minimise the impact on security of supply, while taking into consideration, inter alia, possible difficult conditions or unfavourable market conditions as well as specificities of Contracting Parties, such as the technical characteristics and sizes of underground gas storage facilities in relation to domestic gas consumption, the declining importance of the underground low calorific gas storage facilities for the security of gas supply, and existing LNG storage capacity.

Article 6b

Implementation of filling target

(1) The **Contracting Parties** shall take all necessary measures, including providing for financial incentives or compensation to market participants, to meet the filling targets set pursuant to Article 6(a). When ensuring that the filling targets are met, the **Contracting Parties** shall prioritise, when possible, market-based measures.

To the extent that any of the measures provided for in this Article are duties and powers of the national regulatory authority pursuant to Article 41 of Directive 2009/73/EC, **as adapted and adopted by Ministerial Council Decision 2011/02/MC-EnC**, the national regulatory authorities shall be responsible for taking those measures.

Measures taken pursuant to this paragraph may, in particular, include:

(a) requiring gas suppliers to store minimum volumes of gas in storage facilities, including in underground gas storage facilities and/or LNG storage facilities, those volumes to be determined on the basis of the amount of gas supplied by gas suppliers to protected customers;

(b) requiring storage system operator to tender their capacities to market participants;

(c) requiring transmission system operators or entities designed by the **Contracting Party** to purchase and manage balancing stock exclusively for carrying out their functions as transmission system operators and, where necessary, imposing an obligation on other designated entities for the purpose of safeguarding the security of gas supply in the case of an emergency as referred to in Article 11(1), point (c);

(d) using coordinated instruments, such as platforms for the purchase of LNG, with other **Contracting Parties** to maximise the utilisation of LNG and to reduce infrastructure and regulatory barriers to the shared use of LNG to fill underground gas storage facilities;

(e) using voluntary mechanisms for the joint procurement of natural gas;

(f) providing financial incentives for market participants, including for storage system operators, such as contracts for difference, or providing compensation to market participants for the shortfall in revenues, or for costs incurred by them as a result of obligations on market participants, including storage system operators which cannot be covered by revenue;

(g) requiring storage capacity holders to use or release unused booked capacities, while still obliging the storage capacity holder not using the storage capacity to pay the agreed price for the whole term of the storage contract;

(h) adopting effective instruments for the purchase and management of strategic storage by public or private entities, provided that such instruments do not distort competition or the proper functioning of the internal market;

(i) appointing a dedicated entity tasked with meeting the filling target in the event that the filling target would not otherwise be met;

(j) providing discounts on the storage tariffs;

(k) collecting the revenues needed to recover the capital and operational expenditures related to regulated storage facilities as storage tariffs and as a dedicated charge incorporated into transmission tariffs collected only from exit points to final customers located within the same **Contracting Parties**, provided that revenues collected through tariffs cannot be larger than the allowed revenues.

(2) The measures taken by the **Contracting Parties** pursuant to paragraph 1 shall be limited to what is necessary to meet the filling trajectories, **where relevant,** and filling targets. **All measures taken pursuant to Article 6a(8) and (10)** shall be clearly defined, transparent, proportionate, non-discriminatory and verifiable. They shall not unduly distort competition or the proper functioning of the internal market in gas or endanger the security of gas supply of other **Contracting Parties** or of the **Energy Community**. **Contracting Parties shall inform the Energy Community Secretariat and the Security of Supply Coordination Group of those measures without delay.**

(3) The **Contracting Parties** shall take all necessary measures to ensure the use of the existing infrastructure at national and regional level for the benefit of security of gas supply in an efficient way. Those measures shall under no circumstances block or restrict the cross-border use of storage facilities or LNG facilities, and shall not limit cross-border transmission capacities allocated in accordance with Commission Regulation (EU) 2017/459, **as adapted and adopted by Permanent High Level Group Decision 2018/06/PHLG-EnC**.

(4) When taking measures pursuant to this Article, the **Contracting Parties** shall apply the energy efficiency first principle, while still achieving the objectives of their respective measures, in accordance with Regulation EU 2018/1999 of the European Parliament and of the Council, **as adapted and adopted by Ministerial Council Decisions 2021/14/MC-EnC**.

Article 6c

Storage arrangements and burden-sharing mechanism

(1) A **Contracting Party** without underground storage facilities shall ensure that market participants within that **Contracting Party** have in place arrangements with underground storage system operators or other market participants in **Contracting Parties and/or** Member States with underground gas storage

facilities. Those arrangements shall provide for the use, by 1 **December**, of storage volumes corresponding to at least 15% of the average annual gas consumption over the preceding five years of the **Contracting Party** without underground gas storage facilities. However, where cross-border transmission capacity or other technical limitations prevent a **Contracting Party** without underground gas storage facilities from fully using 15% of those storage volumes, that **Contracting Party** shall store only those volumes that are technically possible.

In the event, that technical limitations do not allow a **Contracting Party** to comply with the obligation laid down in the first subparagraph, and that **Contracting Party** has in place an obligation to store other fuels to replace gas, the obligation laid down in the first subparagraph may exceptionally be met by an equivalent obligation to store other fuels than gas. The technical limitations and the equivalence of the measure shall be demonstrated by the **Contracting Party** concerned.

(2) By way of derogation from paragraph 1, a **Contracting Party** without underground gas storage facilities may develop a burden-sharing mechanism with one or more **Contracting Parties and/or** Member States with underground storage facilities (burden sharing mechanism).

The burden-sharing mechanism shall be based on the relevant data from the latest risk assessment pursuant to Article 7 and shall take into account all of the following parameters:

(a) the cost of financial support for meeting the filling target, exclusive of the costs of meeting any strategic storage obligations;

(b) the gas volumes needed to meet the demand of protected customers in accordance with Article 6(1);

(c) the technical limitations, including the available underground storage capacity, technical cross-border transmission capacity, and withdrawal rates.

Contracting Parties without underground gas storage facilities shall demonstrate that they comply with paragraph 1 and shall notify the Energy Community Secretariat accordingly.

(3) **<…>**

(4) **Contracting Parties** without underground storage facilities may provide incentives or financial compensation to market participants or transmission system operators, as relevant, for the shortfall in revenues, or for costs incurred by them, as a result of their compliance with their storage obligations pursuant to this Article, where such a shortfall or such costs cannot be covered by revenue, in order to ensure compliance with their obligation to store gas in other **Contracting Parties and/or** Member States pursuant to paragraph 1 or the implementation of the burden sharing mechanism. If the incentive or financial compensation is financed through a levy, that levy shall not be applied to cross-border interconnection points.

(5) Notwithstanding paragraph 1, where a **Contracting Party** has underground gas storage facilities located on its territory and the aggregated capacity of those facilities is larger than the annual gas consumption of that **Contracting Party**, the **Contracting Parties** without underground gas storage facilities that have access to those facilities shall either:

(a) ensure that, at any point in time between 1 October and 1 December, storage volumes correspond at least to the average usage of the storage capacity over preceding five years, determined, inter alia, by taking into account the flows during withdrawal season over preceding five years from the **Contracting Parties** where the storage facilities are located; or

b) demonstrate that storage capacity equivalent to the volume covered by the obligation under point (a) has been booked.

If the **Contracting Party** without underground gas storage facilities can demonstrate that storage capacity equivalent to the volume covered by the obligation under point (a) of the first subparagraph has been booked, paragraph 1 shall apply.

The obligation under this paragraph shall be limited to 15% of the average annual gas consumption over preceding five years in the **Contracting Party** concerned.

6) **<…>**

Article 6d

Monitoring and enforcement

(1) Storage system operators shall report the filling level, as set pursuant to Article 6a, to the competent authority in each Contracting Party where the underground gas storage facilities concerned are located and, if applicable, to an entity designated by that Contracting Party (the 'designated entity').

(2) The competent authority and, if applicable, the designated entity of each Contracting Party shall monitor the filling levels of the underground gas storage facilities on their territory at the end of each month and report the results to the Energy Community Secretariat without undue delay. The competent authority shall include information on the share of gas originating in Russia that is being stored in that Contracting Party as part of the working capacity of storage facilities, where such information is available.

The Energy Community Secretariat may, where appropriate, invite the Energy Community Regulatory Board to assist with such monitoring.

(3) Based on the information provided by the competent authority and, if applicable, the designated entity of each **Contracting Party**, the **Energy Community Secretariat** shall report regularly to the **Security of Supply Coordination Group**.

(4) The Security of Supply Coordination Group shall assist the Energy Community Secretariat in the monitoring of the filling trajectories and the filling targets, and shall develop guidance for the Permanent High Level Group and the Energy Community Secretariat on adequate measures to ensure better alignment in the event that Contracting Parties deviate from the filling trajectories compromising the meeting of the filling target, or to ensure that the filling target is met.

(5) Contracting Parties shall take the necessary measures to meet the filling target and to enforce upon market participants the storage obligations which are required to meet the filling target, including by imposing sufficiently deterrent sanctions and fines on those market participants. This is without prejudice to the role of the Energy Community Secretariat to monitor and ensure proper application of this Regulation, including in providing assistance or guidance to the Contracting Parties in their efforts to implement this paragraph.

(6) Where commercially sensitive information is to be exchanged, the **Energy Community Secretariat** may convene meetings of the **Security of Supply Coordination Group** that are restricted to **Contracting Parties**, and the **Energy Community Secretariat**.

(7) Any information exchanged shall be limited to that which is necessary for the purpose of monitoring compliance with this Regulation.

The **Energy Community Secretariat**, the national regulatory authorities and the **Contracting Parties** shall preserve the confidentiality of commercially sensitive information received for the purposes of carrying out their obligations.

Article 7

Risk assessment[15]

1. **<…>**

2. **<…>**[16]

3. The competent authority of each **Contracting Party** shall make a national risk assessment ('national risk assessment') of all relevant risks affecting the security of gas supply. **<…>**

4. The risk assessments referred to in paragraphs 2 and 3 of this Article shall be carried out, as relevant, by:

(a) using the standards specified in Articles 5 and 6. The risk assessment shall describe the calculation of the N – 1 formula at national level **<…>**. The risk assessment shall also include assumptions used, including where applicable those for the calculation of N-1 formula at regional level, and the data necessary for such calculation. The calculation of the N – 1 formula at national level shall be accompanied by a simulation of disruption of the single largest gas infrastructure using hydraulic modelling for the national territory as well as by a calculation of the N – 1 formula considering the level of gas in storages at 30 % and 100 % of the maximum working volume;

(b) taking into account all relevant national and transnational circumstances, in particular market size, network configuration, actual flows, including outflows from the **Contracting Parties** concerned, the possibility of physical gas flows in both directions including the potential need for consequent reinforcement of the transmission system, the presence of production and storage **or LNG terminal** and the role of gas in the energy mixes, in particular with respect to district heating and electricity generation and for the operation of industries, and safety and gas quality considerations;

(c) running various scenarios of exceptionally high demand for gas and disruption of gas supply, taking into account the history, probability, season, frequency and duration of their occurrence and assessing their likely consequences, such as:

(i) disruption of the infrastructure relevant to the security of gas supply, in particular transmission infrastructure, storages or LNG terminals, including the largest gas infrastructure identified for the calculation of N – 1 formula; and

(ii) disruption of supplies from third-country suppliers, as well as, where appropriate, geopolitical risks;

(d) identifying the interaction and correlation of risks with other **Contracting Parties**, as appropriate, including, as regards interconnections, cross-border supplies, cross-border access to storage **or LNG** facilities and bi-directional capacity;

(e) taking into account risks relating to the control of infrastructure relevant to the security of gas supply to

15 The text displayed here corresponds to Article 4(7) of Ministerial Council Decision 2021/15/MC-EnC

16 Not applicable according to Article 4(7)a of Ministerial Council Decision 2021/15/MC-EnC

the extent that they may involve, inter alia, risks of underinvestment, undermining diversification, misuse of existing infrastructure or an infringement of **Energy Community** law;

(f) taking into account the maximal interconnection capacity of each border entry and exit point and various filling levels for storage;

(g) taking into account scenarios of a prolonged disruption of a single supply source.

5. The national risk assessments shall be prepared in accordance with the relevant template set out in Annex V. If necessary, **Contracting Parties** may include additional information **such as ENTSOG Union-wide simulation of gas supply and infrastructure disruption scenarios as carried out in accordance with paragraph 1**[17]**. <…>**

6. Natural gas undertakings, industrial gas customers, the relevant organisations representing the interests of household and industrial gas customers as well as **Contracting Parties** and, where they are not the competent authorities, the national regulatory authorities, shall cooperate with the competent authorities and provide them upon request with all necessary information for the common and national risk assessments.

7. By **1 January 2024 Contracting Parties** shall notify to the **Energy Community Secretariat** the national risk assessments. The risk assessments shall be updated every four years thereafter unless circumstances warrant more frequent updates. The risk assessments shall take account of progress made in investments needed to cope with the infrastructure standard defined in Article 5 and of country- specific difficulties encountered in the implementation of new alternative solutions. They shall also build on the experience acquired through the simulation of the emergency plans contained in Article 10(3).

Article 8

Establishment of preventive action plans and emergency plans[18]

1. The measures to ensure the security of gas supply contained in a preventive action plan and an emergency plan shall be clearly defined, transparent, proportionate, non-discriminatory and verifiable, shall not unduly distort competition or the effective functioning of the **single** market in gas and shall not endanger the security of gas supply of **other Contracting Parties <…>**.

2. The competent authority of each **Contracting Party** shall, after consulting the natural gas undertakings, the relevant organisations representing the interests of household and industrial gas customers, including electricity producers, electricity transmission system operators, and, where it is not the competent authority, the national regulatory authority, establish:

(a) a preventive action plan containing the measures needed to remove or mitigate the risks identified, including the effects of energy efficiency and demand-side measures in the **<…>** national risk assessments and in accordance with Article 9;

(b) an emergency plan containing the measures to be taken to remove or mitigate the impact of a disruption of gas supply in accordance with Article 10.

3. **<…>**[19]

4. The competent authorities shall report regularly to **the Security of Supply Coordination Group** on the

17 The text displayed here corresponds to Article 3(3)(b) of Ministerial Council Decision 2022/01/MC-EnC
18 The text displayed here corresponds to Article 4(8) of Ministerial Council Decision 2021/15/MC-EnC
19 Not applicable according to Article 4(8)b of Ministerial Council Decision 2021/15/MC-EnC

progress achieved on the preparation and adoption of the preventive action plans and the emergency plans.

The competent authorities shall ensure the regular monitoring of the implementation of the preventive action plan and the emergency plan.

The preventive action plan and the emergency plan shall be developed in accordance with the templates contained in Annexes VI and VII. **<…>**

5. **<…>**

6. **<…>**[20]

7. The preventive action plans and the emergency plans shall be made public and notified to the **Energy Community Secretariat** by **1 May 2024**. The **Energy Community Secretariat** shall inform **the Security of Supply Coordination Group** about the notification of the plans and publish them on **the Energy Community's** website.

Within four months of the notification by the competent authorities, the **Energy Community Secretariat** shall assess the plans taking into account the views expressed in **the Security of Supply Coordination Group**.

8. The **Energy Community Secretariat** shall issue an opinion to the competent authority with the recommendation to review a preventive action plan or an emergency plan if one or more of the following applies:

(a) it is not effective to mitigate the risks as identified in the risk assessment;

(b) it is inconsistent with the risk scenarios assessed or with the plans of another **Contracting Party**;

(c) it does not comply with the requirement laid down in paragraph 1 not unduly to distort competition or the effective functioning of the **single** market;

(d) it does not comply with the provisions of this Regulation or other provisions of **Energy Community** law.

9. Within three months of notification of the **Energy Community Secretariat**'s opinion referred to in paragraph 8, the competent authority concerned shall notify the amended preventive action plan or the emergency plan to the **Energy Community Secretariat**, or shall inform the **Energy Community Secretariat** of the reasons for which it disagrees with the recommendations.

In the event of disagreement related to elements referred to in paragraph 8, the **Energy Community Secretariat** may, within four months of the reply of the competent authority, withdraw its request or convene the competent authority and, where the **Energy Community Secretariat** considers it to be necessary, the **Security of Supply Coordination Group,** in order to consider the issue. The **Energy Community Secretariat** shall set out its detailed reasons for requesting any amendments to the preventive action plan or the emergency plan. The competent authority concerned shall take full account of the detailed reasons of the **Energy Community Secretariat**.

Where applicable, the competent authority concerned shall without delay amend and make the amended preventive action plan or emergency plan public.

Where the final position of the competent authority concerned diverges from the **Energy Community Secretariat**'s detailed reasons that competent authority shall provide and make public, together with its position and the **Energy Community Secretariat**'s detailed reasons, the justification underlying its position within two months of receipt of the detailed reasons of the **Energy Community Secretariat**.

10. For non-market-based measures adopted on or after **entry into force of the Regulation**, the pro-

20 Not applicable according to Article 4(8)d of Ministerial Council Decision 2021/15/MC-EnC

cedure set out in Article 9(4), (6), (8) and (9) shall apply.

11. The confidentiality of commercially sensitive information shall be preserved.

12. Preventive action plans and emergency plans developed **before entry in the force of this Regulation**, shall remain in force until the preventive action plans and the emergency plans referred to in paragraph 1 of this Article are established for the first time.

Article 9

Content of preventive action plans[21]

1. The preventive action plan shall contain:

(a) the results of the risk assessment and a summary of the scenarios considered, as referred to in point (c) of Article 7(4);

(b) the definition of protected customers and the information described in the second subparagraph of Article 6(1);

(c) the measures, volumes and capacities needed to fulfil the infrastructure and gas supply standards laid down in Articles 5 and 6, including, where applicable, the extent to which demand-side measures can sufficiently compensate, in a timely manner, for a disruption of gas supply as referred to in Article 5(2), **<…>** the necessary gas volumes per category of protected customers and per scenario as referred to in Article 6(1), and any increased gas supply standard including any justification showing compliance with the conditions laid down in Article 6(2) **<…>**;

(d) obligations imposed on natural gas undertakings, electricity undertakings where appropriate, and other relevant bodies likely to have an impact on the security of gas supply, such as obligations for the safe operation of the gas system;

(e) other preventive measures designed to address the risks identified in the risk assessment, such as those relating to the need to enhance interconnections between neighbouring **Contracting Parties**, to further improve energy efficiency, to reduce gas demand and the possibility to diversify gas routes and sources of gas supply and the regional utilisation of existing storage and LNG capacities, if appropriate, in order to maintain gas supply to all customers as far as possible;

(f) information on the economic impact, effectiveness and efficiency of the measures contained in the plan, including the obligations referred to in point (k);

(g) a description of the effects of the measures contained in the plan on the functioning of the **single** energy market as well as national markets, including the obligations referred to in point (k);

(h) a description of the impact of the measures on the environment and on customers;

(i) the mechanisms to be used for cooperation with other **Contracting Parties**, including the mechanisms for preparing and implementing preventive action plans and emergency plans;

(j) information on existing and future interconnections and infrastructure, including those providing access to the **single** market, cross-border flows, cross-border access to storage and LNG facilities and the bi-directional capacity, in particular in the event of an emergency;

21 The text displayed here corresponds to Article 4(9) of Ministerial Council Decision 2021/15/MC-EnC

(k) information on all public service obligations that relate to the security of gas supply.

Critical information relating to points (a), (c) and (d) of the first subparagraph which, if revealed, could endanger the security of gas supply, may be excluded.

2. **<…>**[22]

3. The preventive action plan shall be based primarily on market-based measures and shall not put an undue burden on natural gas undertakings, or negatively impact on the functioning of the **single** market in gas.

4. **Contracting Parties**, and in particular their competent authorities, shall ensure that all preventive non-market-based measures, such as those referred to in Annex VIII, adopted on or after **entry into force of the Regulation**, irrespective of whether they are part of the preventive action plan or adopted subsequently, comply with the criteria laid down in the first subparagraph of Article 6(2).

5. The competent authority shall make public any measure referred to in paragraph 4 which has not yet been included in the preventive action plan, and shall notify to the **Energy Community Secretariat** the description of any such measure and of its impact on the national gas market and, to the extent possible, on the gas markets of other **Contracting Parties**.

6. If the **Energy Community Secretariat** doubts whether a measure referred to in paragraph 4 of this Article complies with the criteria laid down in the first subparagraph of Article 6(2) it shall request from the **Contracting Party** concerned the notification of an impact assessment.

7. An impact assessment pursuant to paragraph 6 shall cover at least the following:

(a) the potential impact on the development of the national gas market and competition at national level;

(b) the potential impact on the **single** gas market;

(c) the potential impact on the security of gas supply of neighbouring **Contracting Parties**, in particular for those measures that could reduce the liquidity in regional markets or restrict flows to neighbouring **Contracting Parties**;

(d) the costs and benefits, assessed against alternative market-based-measures;

(e) an assessment of necessity and proportionality in comparison with possible market-based measures;

(f) an appreciation whether the measure ensures equal possibilities for all market participants;

(g) a phase-out strategy, the expected duration of the envisaged measure and an appropriate review calendar.

The analysis referred to in points (a) and (b) shall be carried out by the national regulatory authority. The impact assessment shall be made public by the competent authority and shall be notified to the **Energy Community Secretariat**.

8. Where the **Energy Community Secretariat** considers, based on the impact assessment that the measure is likely to endanger the security of gas supply of other **Contracting Parties <…>** it shall **issue an opinion** within four months of notification of the impact assessment requiring, to the extent necessary, the amendment or withdrawal of the measure.

The adopted measure shall enter into force only when it **<…>** has been amended in accordance with the **Energy Community Secretariat's opinion**.

The four-month period shall begin on the day following receipt of a complete notification. The four-

22 Not applicable according to Article 4(9)b of Ministerial Council Decision 2021/15/MC-EnC

month period may be extended with the consent of both the **Energy Community Secretariat** and the competent authority.

9. Where the **Energy Community Secretariat** considers, based on the impact assessment, that the measure does not comply with the criteria laid down in the first paragraph of Article 6(2), **<…>** the procedure set out in Article 8 **<…>** (9) shall apply.

<…>

10. Article 8(9) shall apply to any measure subject to paragraphs 6 to 9 of this Article.

11. The preventive action plan shall be updated every four years after **1 May 2024** or more frequently if the circumstances so warrant or at the **Energy Community Secretariat**'s request. The updated plan shall reflect the updated risk assessment and the results of the tests carried out in accordance with Article 10(3). Article 8 shall apply to the updated plan.

Article 10

Content of emergency plans[23]

1. The emergency plan shall:

(a) build upon the crisis levels referred to in Article 11(1);

(b) define the role and responsibilities of natural gas undertakings, transmission system operators for electricity if relevant and of industrial gas customers including relevant electricity producers, taking account of the different extent to which they are affected in the event of a disruption of gas supply, and their interaction with the competent authorities and where appropriate with the national regulatory authorities at each of the crisis levels referred to in Article 11(1);

(c) define the role and responsibilities of the competent authorities and of the other bodies to which tasks have been delegated as referred to in Article 3(2) at each of the crisis levels referred to in Article 11(1);

(d) ensure that natural gas undertakings and industrial gas customers including relevant electricity producers are given sufficient opportunity to respond to the crisis levels referred to in Article 11(1);

(e) identify, if appropriate, the measures and actions to be taken to mitigate the potential impact of a disruption of gas supply on district heating and the supply of electricity generated from gas, including through an integrated view of energy systems operations across electricity and gas if relevant;

(f) establish detailed procedures and measures to be followed for the crisis levels referred to in Article 11(1), including the corresponding schemes on information flows;

(g) designate a crisis manager and define its role;

(h) identify the contribution of market-based measures for coping with the situation at alert level and mitigating the situation at emergency level;

(i) identify the contribution of non-market-based measures planned or to be implemented for the emergency level, and assess the degree to which the use of such non-market-based measures is necessary to cope with a crisis. The effects of the non-market-based measures shall be assessed and procedures for their implementation defined. Non-market- based measures are to be used only when market-based mechanisms

23 The text displayed here corresponds to Article 4(10) of Ministerial Council Decision 2021/15/MC-EnC

alone can no longer ensure supplies, in particular to protected customers **<…>**;

(j) describe the mechanisms used to cooperate with other **Contracting Parties** for the crisis levels referred to in Article 11(1) and information exchange arrangements between the competent authorities;

(k) detail the reporting obligations imposed on natural gas undertakings and, where appropriate, electricity undertakings at alert and emergency levels;

(l) describe the technical or legal arrangements in place to prevent undue gas consumption of customers who are connected to a gas distribution or transmission network but not protected customers;

(m) **<…>**

(n) **<…>**[24]

(o) establish a list of predefined actions to make gas available in the event of an emergency, including commercial agreements between the parties involved in such actions and the compensation mechanisms for natural gas undertakings where appropriate, taking due account of the confidentiality of sensitive data. **<…>.**

In order to prevent undue gas consumption during an emergency, as referred to in point (l) of the first subparagraph, or during the application of the measures referred to in Article 11(3) **<…>**, the competent authority of the **Contracting Party** concerned shall inform customers who are not protected customers that they are required to cease or reduce their gas consumption without creating technically unsafe situations.

2. The emergency plan shall be updated every four years after **1 May 2024** or more frequently if circumstances so warrant or at the **Energy Community Secretariat**'s request. The updated plan shall reflect the updated risk assessment and the results of the tests carried out in accordance with paragraph 3 of this Article. Article 8(4) to (11) shall apply to the updated plan.

3. The measures, actions and procedures contained in the emergency plan shall be tested at least once between its four-year updates referred to in paragraph 2. In order to test the emergency plan, the competent authority shall simulate high and medium impact scenarios and responses in real time in accordance with that emergency plan. The results of the tests shall be presented at the **Security of Supply Coordination Group** by the competent authority.

4. The emergency plan shall ensure that cross-border access to infrastructure in accordance with Regulation (EC) No 715/2009 **as adapted and adopted by Ministerial Council Decision 2011/02/MC-EnC,** is maintained as far as technically and safely possible in the event of an emergency and shall not introduce any measure unduly restricting the flow of gas across borders.

Article 11

Declaration of a crisis

1. There shall be the following three crisis levels:

(a) early warning level ('early warning'): where there is concrete, serious and reliable information that an event which is likely to result in significant deterioration of the gas supply situation may occur and is likely to lead to the alert or the emergency level being triggered; the early warning level may be activated by an early warning mechanism;

24 Not applicable according to Article 4(10)a of Ministerial Council Decision 2021/15/MC-EnC

(b) alert level ('alert'): where a disruption of gas supply or exceptionally high gas demand which results in significant deterioration of the gas supply situation occurs but the market is still able to manage that disruption or demand without the need to resort to non-market-based measures;

(c) emergency level ('emergency'): where there is exceptionally high gas demand, significant disruption of gas supply or other significant deterioration of the gas supply situation and all relevant market-based measures have been implemented but the gas supply is insufficient to meet the remaining gas demand so that non-market-based measures have to be additionally introduced with a view, in particular, to safeguarding gas supplies to protected customers in accordance with Article 6.

2. When the competent authority declares one of the crisis levels referred to in paragraph 1, it shall immediately inform the **Energy Community Secretariat** as well as the competent authorities of the **Contracting Parties** with which the **Contracting Party** of that competent authority is directly connected and provide them with all the necessary information, in particular with information on the action it intends to take **<…>.**

3. **<…>**[25]

4. When the competent authority declares an emergency it shall follow the pre-defined action as set out in its emergency plan and shall immediately inform the **Energy Community Secretariat <…>** and the competent authorities of the **Contracting Parties** with which the **Contracting Party** of that competent authority is directly connected in particular of the action it intends to take. In duly justified exceptional circumstances, the competent authority may take action deviating from the emergency plan. The competent authority shall immediately inform the **Energy Community Secretariat** and **<…>** the competent authorities of the **Contracting Parties** with which the **Contracting Party** of that competent authority is directly connected, of any such action and shall provide a justification for the deviation.

5. The transmission system operator shall ensure that when an emergency is declared in a neighbouring **Contracting Party**, capacity at interconnection points to that **Contracting Party**, irrespective of whether firm or interruptible, and whether it has been booked before or during the emergency, has priority over competing capacity at exit points into storage facilities. The system user of the prioritised capacity shall promptly pay fair compensation to the system user of the firm capacity for the financial loss incurred as a result of prioritisation including a proportionate reimbursement for the cost of the firm capacity being interrupted. The process of determining and paying the compensation shall not affect the implementation of the priority rule.

6. The **Contracting Parties** and, in particular, the competent authorities shall ensure that:

(a) no measures are introduced which unduly restrict the flow of gas within the **single** market at any time;

(b) no measures are introduced that are likely seriously to endanger the gas supply situation in another **Contracting Party**; and

(c) cross-border access to infrastructure in accordance with Regulation (EC) No 715/2009 **as adapted and adopted by Ministerial Council Decision 2011/02/MC-EnC**[26], is maintained as far as technically and safely possible, in accordance with the emergency plan.

7. During an emergency and on reasonable grounds, upon a request of the relevant electricity or gas transmission system operator a **Contracting Party** may decide to prioritise the gas supply to certain critical gas-fired power plants over the gas supply to certain categories of protected customers, if the lack of gas

25 Not applicable according to Article 4(11)b of Ministerial Council Decision 2021/15/MC-EnC
26 The text displayed here corresponds to Article 4(11)d of Ministerial Council Decision 2021/15/MC-EnC

supply to such critical gas-fired power plants either:

(a) could result in severe damage in the functioning of the electricity system; or

(b) would hamper the production and/or transportation of gas. **Contracting Parties** shall base any such measure on the risk assessment.

Critical gas-fired power plants as referred to in the first subparagraph shall be clearly identified together with the possible gas volumes that would be subject to such a measure and included in the regional chapters of the preventive action plans and emergency plans. Their identification shall be carried out in close cooperation with transmission system operators of the electricity system and the gas system of the **Contracting Party** concerned.

8. The **Energy Community Secretariat** shall verify, as soon as possible, but in any case within five days of receiving the information referred to in paragraph 2 from the competent authority, whether the declaration of an emergency is justified in accordance with point (c) of paragraph 1 and whether the measures taken follow as closely as possible the actions listed in the emergency plan and are not imposing an undue burden on natural gas undertakings and are in accordance with paragraph 6. The **Energy Community Secretariat** may, at the request of another competent authority, natural gas undertakings or on its own initiative, request the competent authority to modify the measures where they are contrary to the conditions referred to in the first sentence of this paragraph. The **Energy Community Secretariat** may also request the competent authority to declare an end to the emergency where it concludes that the declaration of an emergency is not or is no longer justified in accordance with point (c) of paragraph 1.

Within three days of notification of the **Energy Community Secretariat** request, the competent authority shall modify the measures and shall notify the **Energy Community Secretariat** thereof, or shall inform the **Energy Community Secretariat** of the reasons for which it disagrees with the request. In the latter case, the **Energy Community Secretariat** may, within three days of being informed, amend or withdraw its request or, in order to consider the issue, convene the competent authority or, where appropriate, the competent authorities concerned, and, where the **Energy Community Secretariat** considers it to be necessary, the **Security of Supply Coordination Group**. The **Energy Community Secretariat** shall set out its detailed reasons for requesting any modification to the action. The competent authority shall take full account of the position of the **Energy Community Secretariat**. Where the final decision of the competent authority diverges from the **Energy Community Secretariat** position, the competent authority shall provide the reasons underlying such decision.

9. When the competent authority declares an end to one of the crisis levels referred to in paragraph 1, it shall inform **the Energy Community Secretariat** as well as the competent authorities of the **Contracting Parties** with which the **Contracting Party** of that competent authority is directly connected.

Article 12

<...>[27]

Article 13

<...>[28]

27 Not applicable according to Article 4(16) of Ministerial Council Decision 2021/15/MC-EnC

28 Not applicable according to Article 4(16) of Ministerial Council Decision 2021/15/MC-EnC

Article 14

Information exchange[29]

1. Where a **Contracting Party** has declared one of the crisis levels referred to in Article 11(1), the natural gas undertakings concerned shall make available, on a daily basis, in particular the following information to the competent authority of the **Contracting Party** concerned:

(a) the daily gas demand and gas supply forecasts for the following three days, in million cubic meters per day (mcm/d);

(b) the daily flow of gas at all cross-border entry and exit points as well as at all points connecting a production facility, a storage facility or an LNG terminal to the network, in million cubic meters per day (mcm/d);

(c) the period, expressed in days, for which it is expected that supply of gas to protected customers can be ensured.

2. **<….>**[30]

3. After an emergency, the competent authority referred to in paragraph 1 shall, as soon as possible and at the latest six weeks after the lifting of the emergency, provide the **Energy Community Secretariat** with a detailed assessment of the emergency and the effectiveness of the measures implemented, including an assessment of the economic impact of the emergency, the impact on the electricity sector and the assistance provided to or received from, **<…>** the **Contracting Parties**. Such assessment shall be made available to the **Security of Supply Coordination Group** and shall be reflected in the updates of the preventive action plans and the emergency plans.

The **Energy Community Secretariat** shall analyse the assessments of the competent authorities and shall inform the **Contracting Parties**, **the Ministerial Council** and the **Security of Supply Coordination Group**, of the results of its analysis in an aggregated form.

4. In duly justified circumstances irrespective of a declaration of an emergency, the competent authority of the most affected **Contracting Party** may require natural gas undertakings to provide the information referred to in paragraph 1 or additional information necessary to assess the overall situation of the gas supply in the **Contracting Party** or other Member States and **Contracting Parties**, including contractual information, other than price information. The **Energy Community Secretariat** may request from the **Contracting Party**'s competent authorities the information provided by natural gas undertakings under this paragraph, provided that the same information has not been transmitted already to the **Energy Community Secretariat**.

5. **<….>**[31]

6. In order for the competent authorities and the **Energy Community Secretariat** to assess the security of gas supply situation at national **<…>** level, each natural gas undertaking shall notify:

(a) to the competent authority concerned the following details of gas supply contracts with a cross-border dimension and a duration of more than one year which it has concluded to procure gas:

(i) contract duration;

(ii) yearly contracted volumes;

29 The text displayed here corresponds to Article 4(12) of Ministerial Council Decision 2021/15/MC-EnC
30 Not applicable according to Article 4(12)a of Ministerial Council Decision 2021/15/MC-EnC
31 Not applicable according to Article 4(12)a of Ministerial Council Decision 2021/15/MC-EnC

(iii) contracted maximum daily volumes in the event of an alert or emergency;

(iv) contracted delivery points;

(v) minimum daily and monthly gas volumes;

(vi) conditions for the suspension of gas deliveries;

(vii) an indication whether the contract individually or cumulatively with its contracts with the same supplier or its affiliates is equivalent to or exceeds the threshold of 28 % as referred to in point (b) of paragraph 6 in the most affected **Contracting Party**.

(b) to the competent authority of the most affected **Contracting Party** immediately after their conclusion or modification its gas supply contracts with a duration of more than one year, concluded or modified on or after **entry into force of the Regulation** that individually or cumulatively with its contracts with the same supplier or its affiliates is equivalent to 28 % or more of yearly gas consumption in **Contracting Party** to be calculated on the basis of the most recent available data. In addition, by **1 January 2024** natural gas undertakings shall notify the competent authority of all existing contracts fulfilling the same conditions. The notification obligation shall not cover price information and shall not apply to the modifications related only to the gas price. The notification obligation shall also apply to all commercial agreements that are relevant for the execution of the gas supply contract excluding price information.

The competent authority, shall notify the data listed in point (a) of the first subparagraph to the **Energy Community Secretariat** in an anonymised form. In the event of new contracts being concluded or changes being made to existing contracts, the whole set of data shall be notified by the end of September of the relevant year. Where the competent authority has doubts whether a given contract obtained under point (b) of the first subparagraph puts the security of gas supply of a **Contracting Party**, it shall notify the contract to **Energy Community Secretariat**.

7. In circumstances duly justified by the need to guarantee transparency of key gas supply contracts relevant to the security of gas supply, and where the competent authority of the most affected **Contracting Party** or the **Energy Community Secretariat** considers that a gas supply contract may jeopardise the security of gas supply of a **Contracting Party <…>** the competent authority of the **Contracting Party** or the **Energy Community Secretariat** may request the natural gas undertaking to provide the contract, excluding price information, for the assessment of its impact on the security of gas supply. The request shall be reasoned and may cover also details of any other commercial agreements that are relevant for the execution of the gas supply contract excluding price information. The justification shall include the proportionality of the administrative burden involved.

8. The competent authorities that receive information on the basis of point (b) of paragraph 6 or paragraph 7 of this Article shall assess the received information for security of gas supply purposes within three months and submit the results of their assessment to the **Energy Community Secretariat**.

9. The competent authority shall take into account the information received under this Article in the preparation of the risk assessment, preventive action plan and emergency plan or their respective updates. The **Energy Community Secretariat** may adopt an opinion proposing to the competent authority to amend the risk assessments or plans on the basis of the information received under this Article. The competent authority concerned shall review the risk assessment and the plans concerned by the request in accordance with the procedure set out in Article 8(9).

10. By **1 July 2024** the **Contracting Parties** shall lay down the rules on penalties applicable to infringe-

ments by natural gas undertakings of paragraph 6 or 7 of this Article and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive.

11. For the purpose of this Article, 'the most affected **Contracting Party'** shall mean a **Contracting Party** where a contract party of a given contract has the most of its sales of gas or customers located.

12. All contracts or contractual information received on the basis of paragraphs 6 and 7 as well as the respective assessments by the competent authorities or the **Energy Community Secretariat** shall remain confidential. The competent authorities and the **Energy Community Secretariat** shall ensure full confidentiality.

Article 15

Professional secrecy

1. Any commercially sensitive information received, exchanged or transmitted pursuant to Article 14(4) to (8), and Article 18 excluding the results of the assessments referred to in Article 14(3) and (5) shall be confidential and subject to the conditions of professional secrecy laid down in this Article.

2. The obligation of professional secrecy shall apply to the following persons who receive confidential information in accordance with this Regulation:

(a) persons who work or who have worked for the **Energy Community Secretariat**;

(b) auditors and experts instructed by the **Energy Community Secretariat**;

(c) persons who work or who have worked for the competent authorities and the national regulatory authorities or for other relevant authorities;

(d) auditors and experts instructed by competent authorities and national regulatory authorities or by other relevant authorities.

3. Without prejudice to cases covered by criminal law, the other provisions of this Regulation or other relevant **Energy Community or national** law, confidential information received by the persons referred to in paragraph 2 in the course of their duties may not be divulged to any other person or authority, except in summary or aggregate form such that an individual market participant or market place cannot be identified.

4. Without prejudice to cases covered by criminal law, the **Energy Community Secretariat**, the competent authorities and the national regulatory authorities, bodies or persons which receive confidential information pursuant to this Regulation may use confidential information only in the performance of their duties and for the exercise of their functions. Other authorities, bodies or persons may use that information for the purpose for which it was provided to them or in the context of administrative or judicial proceedings specifically related to the exercise of their functions.

Article 16

<...>[32]

32 Not applicable according to Article 4(16) of Ministerial Council Decision 2021/15/MC-EnC

Article 17

Monitoring by the Energy Community Secretariat[33]

The **Energy Community Secretariat** shall carry out continuous monitoring of security of gas supply measures **in the Contracting Parties** and report regularly to the **Security of Supply Coordination Group, the Permanent High Level Group and the Ministerial Council.**

<…>

Article 17a

Reporting

1. By **1 June** 2023 and annually thereafter, the **Energy Community Secretariat** shall submit reports to the **Ministerial** Council, containing:

(a) an overview of the measures taken by the **Contracting Parties** to fulfil the storage obligations;

(b) an overview of the time needed for the certification procedure, set out in Article 3a of Regulation (EC) No 715/2009 **as adapted and adopted by the Ministerial Council Decision 2011/02/MC-EnC;**

(c) an overview of the measures requested by the **Energy Community Secretariat** in order to ensure compliance with the filling trajectories and the filling targets;

(d) an analysis of the potential effects of this Regulation on gas prices and potential gas savings in relation to Article 6b(4);

(e) the information about the share of gas originating in Russia that is being stored in Energy Community Contracting Parties storage facilities, provided by Contracting Parties where available pursuant to Article 6d(2).

Article 18

Notifications

The risk assessment, the preventive action plans, the emergency plans and all other documents shall be notified to the **Energy Community Secretariat** electronically.

All correspondence in connection with a notification shall be transmitted electronically.

Article 19

<…>[34]

33 The text displayed here corresponds to Article 4(14) of Ministerial Council Decision 2021/15/MC-EnC

34 Not applicable according to Article 4(16) of Ministerial Council Decision 2021/15/MC-EnC

Article 20

Derogation[35]

1. This Regulation shall not apply to **Kosovo*[36] and Montenegro** for as long as no gas is supplied on their respective territories. For **Kosovo* and Montenegro** the obligations laid down in, and the choices those **Contracting Parties** are entitled to make pursuant to, the following provisions shall be fulfilled and made within the specified time calculated from the date when gas is first supplied on their respective territories:

(a) for point 5 of Article 2, Article 3(2), Article 7(5) and point (a) of Article 14(6): 12 months;

(b) for Article 6(1): 18 months;

(c) for Article 8(7): 24 months;

(d) for Article 5(4): 36 months;

(e) for Article 5(1): 48 months.

In order to fulfil the obligation contained in Article 5(1), **Kosovo* and Montenegro** may apply the provisions contained in Article 5(2), including by using non-market-based demand-side measures.

2. **<…>**

3. **<…>**

4. Articles 6a to 6d shall not apply to **Montenegro, Kosovo*** or **Georgia**[37] for as long as they are not directly interconnected to the gas interconnected system of any other **Contracting Parties**.

Article 21

Repeal[38]

Decision No 2007/06/MC-EnC of 18 December 2007 on the implementation of Directive 2005/89/EC, Directive 2004/67/EC and Regulation (EC) No 1775/2005 is repealed.

Article 22

Entry into force[39]

This Regulation shall enter into force **on the day of its adoption.**

It is addressed to the Contracting Parties and the institutions of the Energy Community.

<…>

Article 2, points (27) to (31), Articles 6a to 6d, Article 17a, Article 20(4), <…> shall apply until 31 December 2027.

35 The text displayed here corresponds to Article 4(15) of Ministerial Council Decision 2021/15/MC-EnC

36 Through this Regulation, this designation is without prejudice to position on status, and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo

37 The text displayed here corresponds to Article 3(5) of Ministerial Council Decision 2022/01/MC-EnC

38 The text displayed here corresponds to Article 5 of Ministerial Council Decision 2021/15/MC-EnC

39 The text displayed here corresponds to Article 6 of Ministerial Council Decision 2021/15/MC-EnC

Article 23

Review[40]

The functioning of the rules and procedures established by this Regulation shall be reviewed by the Energy Community Secretariat by 2024. Taking into account the review, the European Commission may propose amendments including steps further integrating the Contracting Parties into the security of supply and solidarity mechanisms applicable within the European Union.

40 The text displayed here corresponds to Article 4(17) of Ministerial Council Decision 2021/15/MC-EnC

ANNEX I

<...>[41]

41 Not applicable according to Article 4(23) of Ministerial Council Decision 2021/15/MC-EnC

ANNEX II
Calculation of the N – 1 formula

1. *Definition of the N – 1 formula*

The N – 1 formula describes the ability of the technical capacity of the gas infrastructure to satisfy total gas demand in the calculated area in the event of disruption of the single largest gas infrastructure during a day of exceptionally high gas demand occurring with a statistical probability of once in 20 years.

Gas infrastructure shall cover the gas transmission network including interconnections, as well as production, LNG and storage facilities connected to the calculated area.

The technical capacity of all remaining available gas infrastructure in the event of disruption of the single largest gas infrastructure shall be at least equal to the sum of the total daily gas demand of the calculated area during a day of exceptionally high gas demand occurring with a statistical probability of once in 20 years.

The results of the N – 1 formula, as calculated below, shall be at least equal to 100 %.

2. *Calculation method of the N – 1 formula*

The parameters used for the calculation shall be clearly described and justified.

For the calculation of the EPm, a detailed list of the entry points and their individual capacity shall be provided.

3. *Definitions of the parameters of the N – 1 formula*

'Calculated area' means a geographical area for which the N – 1 formula is calculated, as determined by the competent authority.

Demand-side definition

'Dmax' means the total daily gas demand (in mcm/d) of the calculated area during a day of exceptionally high gas demand occurring with a statistical probability of once in 20 years.

Supply-side definitions

'EPm': technical capacity of entry points (in mcm/d), other than production, LNG and storage facilities covered by Pm, LNGm and Sm, means the sum of the technical capacity of all border entry points capable of supplying gas to the calculated area.

'Pm': maximal technical production capability (in mcm/d) means the sum of the maximal technical daily production capability of all gas production facilities which can be delivered to the entry points in the calculated area.

'Sm': maximal technical storage deliverability (in mcm/d) means the sum of the maximal technical daily withdrawal capacity of all storage facilities which can be delivered to the entry points of the calculated area, taking into account their respective physical characteristics.

'LNGm': maximal technical LNG facility capacity (in mcm/d) means the sum of the maximal technical daily send-out capacities at all LNG facilities in the calculated area, taking into account critical elements like offloading, ancillary services, temporary storage and re-gasification of LNG as well as technical send-out

capacity to the system.

'Im' means the technical capacity of the single largest gas infrastructure (in mcm/d) with the highest capacity to supply the calculated area. When several gas infrastructures are connected to a common upstream or downstream gas infrastructure and cannot be separately operated, they shall be considered as one single gas infrastructure.

4. *Calculation of the N – 1 formula using demand-side measures*

Demand-side definition

'Deff' means the part (in mcm/d) of Dmax that in the case of a disruption of gas supply can be sufficiently and timely covered with market-based demand-side measures in accordance with point (c) of Article 9(1) and Article 5(2).

5.

<...>[42]

42 Not applicable according to Article 4(18) of Ministerial Council Decision 2021/15/MC-EnC

ANNEX III
Permanent bi-directional capacity[43]

1. For the execution of the provisions set out in this Annex the national regulatory authority may act as the competent authority if so decided by the **Contracting Party**.

Interconnectors in operation on the date when this Regulation has entered into force between Serbia and Bosnia and Herzegovina are exempted from obligations to enable permanent physical capacity to transport gas in both directions for permanent bi-directional capacity concerning the reverse direction ('physical reverse flow capacity') according to this Regulation.

2. To enable or enhance bi-directional capacity on an interconnection or to obtain or prolong an exemption from that obligation, transmission system operators on both sides of the interconnection shall submit to their competent authorities ('competent authorities concerned') and to their regulatory authorities ('regulatory authorities concerned') after consulting with all transmission system operators potentially concerned:

(a) a proposal to enable permanent physical capacity to transport gas in both directions for permanent bi-directional capacity concerning the reverse direction ('physical reverse flow capacity'); or

(b) a request for an exemption from the obligation to enable bi-directional capacity.

The transmission system operators shall endeavour to submit a joint proposal or request for exemption. In the case of a proposal to enable bi-directional capacity, the transmission system operators may make a substantiated proposal for a cross-border cost allocation. Such submission shall take place no later than **1 February 2024** for all interconnections that existed on **25 November 2021,** and after completing the feasibility study phase but before the start of detailed technical design phase for new interconnections.

3. Upon receipt of the proposal or the exemption request the competent authorities concerned shall without delay consult the competent authorities and, where they are not the competent authorities, the national regulatory authorities, of the **Contracting Party** that could, in accordance with the risk assessment, benefit from the reverse flow capacity, the **Energy Community Regulatory Board and the Energy Community Secretariat** on the proposal or the exemption request. The authorities consulted may issue an opinion within four months of receipt of the consultation request.

4. The regulatory authorities concerned shall within six months upon receipt of the joint proposal, pursuant to Article 5(6) and (7), after consulting the project promoters concerned, take coordinated decisions on the cross- border allocation of investment costs to be borne by each transmission system operator of the project. Where the regulatory authorities concerned have not reached an agreement within that deadline, they shall inform the competent authorities concerned without delay.

5. The competent authorities concerned shall on the basis of the risk assessment, the information listed in Article 5(5) of this Regulation, the opinions received following the consultation in accordance with point 3 of this Annex and taking into account the security of gas supply and the contribution to the **single** gas market take a coordinated decision. That coordinated decision shall be taken within two months. The period of two months shall start to run after the four-month period allowed for the opinions referred to under point 3 of this Annex, unless all opinions have been received before, or after the six-month period referred to in point 4 of this Annex for regulatory authorities concerned to adopt a coordinated decision. The coordinated decision shall:

43 The text displayed here corresponds to Article 4(19) of Ministerial Council Decision 2021/15/MC-EnC

(a) accept the proposal for bi-directional capacity. Such decision shall contain a cost benefit analysis, a timeline for implementation and the arrangements for its subsequent use and be accompanied by the coordinated decision on the cross-border cost allocation referred to in point 4 and prepared by the regulatory authorities concerned;

(b) grant **an exemption** or prolong a temporary exemption for a maximum period of four years, if the cost-benefit analysis included in the decision shows that the reverse flow capacity would not enhance the security of gas supply of any relevant **Contracting Party** or if the investment costs would significantly outweigh the prospective benefits for the security of gas supply; or

(c) require the transmission system operators to amend and resubmit their proposal or exemption request within a maximum period of four months.

6. The competent authorities concerned shall submit the coordinated decision without delay to the competent authorities and national regulatory authorities who have submitted an opinion in accordance with point 3, the regulatory authorities concerned, the **Energy Community Regulatory Board and the Energy Community Secretariat** including the opinions received following the consultation in accordance with point 3.

7. Within two months of receipt of the coordinated decision, the competent authorities referred to in point 6 may present their objections to the coordinated decision and submit them to the competent authorities concerned that adopted it, the **Energy Community Regulatory Board and the Energy Community Secretariat** The objections shall be limited to facts and assessment, in particular cross-border cost allocation that was not subject of consultation in accordance with point 3.

8. Within three months of receipt of the coordinated decision in accordance with point 6, the **Energy Community Regulatory Board** shall issue an opinion on the elements of the coordinated decision taking into account any possible objection and submit the opinion to all competent authorities concerned and the competent authorities referred to in point 6 and to the **Energy Community Secretariat**.

9. Within four months of receipt of the opinion issued by the **Energy Community Regulatory Board** pursuant to point 8 the **Energy Community Secretariat** may adopt an **opinion** requesting modifications of the coordinated decision. Any such **opinion of the Energy Community Secretariat** shall be taken on the basis of: the criteria set out in point 5, the reasons for the decision of the authorities concerned and the opinion of the **Energy Community Regulatory Board**. The competent authorities concerned shall **take utmost account of the opinion of the Energy Community Secretariat** by amending their decision within a period of four weeks.

10. If the competent authorities concerned were not able to adopt a coordinated decision within the deadline set out in point 5 or if the regulatory authorities concerned could not reach an agreement on the cost allocation within the deadline set out in point 4, the competent authorities concerned shall inform the **Energy Community Regulatory Board and the Energy Community Secretariat** at the latest on the day of the expiry of the deadline. Within four months of receipt of that information, **the Energy Community Secretariat** after possible consultation with the **Energy Community Regulatory Board**, shall **issue an opinion** covering all elements of a coordinated decision listed in point 5 with the exception of a cross-border cost allocation and submit that **opinion t**o the competent authorities concerned **and** the **Energy Community Regulatory Board**.

11. If the **Energy Community Secretariat's opinion** pursuant to point 10 of this Annex, requires bi-directional capacity, the **Energy Community Regulatory Board** shall adopt a decision covering the

cross-border cost allocation in line with Article 5(7) of this Regulation within three months of receipt of the **Energy Community Secretariat's opinion**. Before taking such a decision, the **Energy Community Regulatory Board** shall consult the regulatory authorities concerned and the transmission system operators. The three-month period may be extended by an additional period of two months where the **Energy Community Regulatory Board** has to request additional information. The additional period shall begin on the day following receipt of the complete information.

12. The **Energy Community Regulatory Board and the Energy Community Secretariat shall consult each other before taking decisions or issuing opinions in accordance with the previous paragraphs. These authorities, as well as** the competent authorities, the national regulatory authorities and the transmission system operators shall preserve the confidentiality of commercially sensitive information.

13. **<...>**[44]

44 Not applicable according to Article 4(19)h of Ministerial Council Decision 2021/15/MC-EnC

ANNEX IV

<...>[45]

45 Not applicable according to Article 4(23) of Ministerial Council Decision 2021/15/MC-EnC

ANNEX V
Template for the national risk assessment

General information

Name of the competent authority responsible for the preparation of the present risk assessment[46].

1. Description of the system

1.1.

<…>[47]

1.2. Provide a brief description of the gas system of the **Contracting Party** covering:

(a) the main gas consumption figures: annual final gas consumption (bcm) and breakdown by type of customers, peak demand (mcm/d);

(b) a description of the functioning of the gas system at national level, including infrastructure (to the extent not covered by point 1.1(b)). If applicable, include L-gas system;

(c) the identification of the key infrastructure relevant for the security of gas supply;

(d) a breakdown, to the extent possible, at national level of gas import sources per country of origin;

(e) a description of the role of storage and include:

(i) the storage capacity (total and working) compared to heating season demand;

(ii) the maximal daily withdrawal capacity at different filling levels (ideally with full storages and end-of-season levels);

(f) a description of the role of domestic production and include:

(i) the volume of production with regard to the annual final gas consumption;

(ii) the maximal daily production capacity;

(g) a description of the role of gas in the electricity production (e.g. importance, role as a back-up for renewables), including gas-fired generating capacity (total (MWe) and as percentage of the total generating capacity) and cogeneration (total (MWe) and as percentage of the total generating capacity).

2. Infrastructure standard (Article 5)

Describe how the infrastructure standard is complied with, including the main values used for the N – 1 formula and alternative options for its compliance (with directly connected **Contracting Parties**, demand-side measures) and the existing bidirectional capacities, as follows:

(a) N – 1 formula

(i) the identification of the single largest gas infrastructure;

(ii) the calculation of the N – 1 formula at national level;

(iii) a description of the values used for all elements in the N – 1 formula, including intermediate values

46 Where this task has been delegated by the competent authority, indicate the name of the body/(ies) responsible for the presentation of the present risk assessment on its behalf

47 Not applicable according to Article 4(20)a of Ministerial Council Decision 2021/15/MC-EnC

used for their calculation (e.g. for EPm indicate the capacity of all entry points considered under this parameter);

(iv) an indication of the methodologies used, if any, for the calculation of parameters in the N – 1 formula (e.g. Dmax) (use annexes for detailed explanations);

(v) an explanation of the results of the calculation of the N – 1 formula considering the level of storages at 30 % and 100 % of the maximum working volume;

(vi) an explanation of the main results of the simulation of the N – 1 formula using a hydraulic model;

(vii) if so decided by the **Contracting Party**, a calculation of the N – 1 formula using demand-side measures:

— calculation of the N – 1 formula in accordance with point 2 of Annex II,

— description of the values used for all elements in the N – 1 formula, including intermediate figures used for the calculation (if different to the figures described under point 2(a)(iii)),

— indicate the methodologies used, if any, for the calculation of parameters in the N – 1 formula (e.g. Dmax) (use annexes for detailed explanations),

— explain the market-based demand-side measures adopted/to be adopted to compensate a disruption of gas supply and its expected impact (Deff);

(viii) **<…>**[48]

(b) bi-directional capacity

(i) indicate the interconnection points equipped with bidirectional capacity and the maximal capacity of bi-directional flows;

(ii) indicate the arrangements governing the use of the reverse flow capacity (e.g. interruptible capacity);

(iii) indicate interconnection points where an exemption has been granted in accordance with Article 5(4), the duration of the exemption and the grounds on which it was granted.

3. Identification of risks

Describe the risk factors which could have negative impact on the security of gas supply in the **Contracting Party**, their likelihood and consequences.

Non-exhaustive list of types of risk factors that have to be included in the assessment only if applicable according to the competent authority:

(a) political

— gas disruption from third countries because of different reasons,

— political unrest (either in country of origin or in transit country),

— war/civil war (either in country of origin or in transit country),

— terrorism;

(b) technological

— explosion/fires,

— fires (internal to a given facility),

48 Not applicable according to Article 4(20)b of Ministerial Council Decision 2021/15/MC-EnC

— leakages,

— lack of adequate maintenance,

— equipment malfunction (failure to start, failure during working time, etc.),

— lack of electricity (or other energy source),

— ICT failure (hardware or software failure, internet, SCADA problems, etc.),

— cyber-attack,

— impact due to excavation works (digging, piling), ground works, etc.;

(c) commercial /market / financial

— agreements with third-country suppliers,

— commercial dispute,

— control of infrastructure relevant for the security of gas supply by third-country entities, which may imply, among others, risks of underinvestment, undermining diversification or non-respect of **Energy Community** law,

— price volatility,

— underinvestment,

— sudden, unexpected peak demand,

— other risks which could lead to structural underperformance;

(d) social

— strikes (in different related sectors, such as the gas sector, ports, transport, etc.),

— sabotage,

— vandalism,

— theft;

(e) natural

— earthquakes,

— landslides,

— floods (heavy rain, river),

— storms (sea),

— avalanches,

— extreme weather conditions,

— fires (external to the facility, like nearby forests, grassland, etc.).

Analysis

(a) identify the relevant risk factors for the **Contracting Party**, including their likelihood and impact;

(b) describe the criteria used to determine whether a system is exposed to high/unacceptable risks;

(c) set a list of relevant risk scenarios in accordance with the risk factors and their likelihood and describe how the selection was made.

4. Risk analysis and assessment

Analyse the set of relevant risk scenarios identified under point 3. In the simulation of risk scenarios include the existing security of gas supply measures, such as the infrastructure standard calculated using the N – 1 formula as set out in point 2 of Annex II, and the gas supply standard. Per risk scenario:

(a) describe in detail the risk scenario, including all assumptions and, if applicable, the underlying methodologies for their calculation;

(b) describe in detail the results of the simulation carried out, including a quantification of the impact (e.g. volumes of unserved gas, the socioeconomic impact, the impact on district heating, the impact on electricity generation).

5. **<...>** [49]

49 Not applicable according to Article 4(20)c of Ministerial Council Decision 2021/15/MC-EnC

ANNEX VI
Template for preventive action plan[50]

General information

— **<…>**

— Name of the competent authority responsible for the preparation of the plan[51]

1. Description of the system

1.1. **<…>**

1.2. Provide a brief description of the gas system per **Contracting Party**, covering:

(a) the main gas consumption figures: annual final gas consumption (bcm) and breakdown by type of customers, peak demand (mcm/d);

(b) a description of the functioning of the gas system at national level, including infrastructure (to the extent not covered by point 1.1(b));

(c) the identification of the key infrastructure relevant for the security of supply;

(d) a breakdown, to the extent possible, at national level of gas import sources per country of origin;

(e) a description of the role of storage in the **Contracting Party** and include:

(i) the storage capacity (total and working) compared to heating season demand;

(ii) the maximal daily withdrawal capacity at different filling levels (ideally with full storages and end-of-season levels);

(f) a description of the role of domestic production and include:

(i) the volume of production with regard to the annual final gas consumption;

(ii) the maximal daily production capacity;

(g) a description of the role of gas in the electricity production (e.g. importance, role as a back-up for renewables), including gas-fired generating capacity (total (MWe) and as percentage of the total generating capacity) and cogeneration (total (MWe) and as percentage of the total generating capacity);

(h) a description of the role of energy efficiency measures and their effect on annual final gas consumption.

2. Summary of the risk assessment

Describe briefly the results of the **<…>** national risk assessment carried out in accordance with Article 7, including:

(a) a list of the scenarios assessed and a brief description of the assumptions applied for each one as well as the risks/shortcomings identified;

(b) the main conclusions of the risk assessment.

50 The text displayed here corresponds to Article 4(21) of Ministerial Council Decision 2021/15/MC-EnC

51 When this task has been delegated by any competent authority, indicate the name of the body/(ies) responsible for the preparation of this plan on its behalf

3. Infrastructure standard (Article 5)

Describe how the infrastructure standard is complied with, including the main values used for the N – 1 formula and alternative options for its compliance (with neighbouring **Contracting Parties**, demand-side measures) and the existing bidirectional capacities, as follows:

3.1. **<…>**

3.2. National level

(a) N – 1 formula

(i) the identification of the single largest gas infrastructure;

(ii) the calculation of the N – 1 formula at national level;

(iii) a description of the values used for all elements in the N – 1 formula, including intermediate values used for the calculation (e.g. for EPm indicate the capacity of all entry points considered under this parameter);

(iv) an indication of the methodologies used, if any, for the calculation of parameters in the N – 1 formula (e.g. Dmax) (use annexes for detailed explanations);

(v) if so decided by the **Contracting Party**, calculation of the N – 1 formula using demand-side measures:

— the calculation of the N – 1 formula in accordance with point 2 of Annex II,

— a description of the values used for all elements in the N – 1 formula, including intermediate figures used for the calculation (if different to the figures described under point 3(a)(iii) of this Annex),

— an indication of the methodologies used, if any, for the calculation of parameters in the N – 1 formula (e.g. Dmax) (use annexes for detailed explanations),

— an explanation of the market-based demand-side measures adopted/to be adopted to compensate a disruption of gas supply and its expected impact (Deff),

(vi) **<…>**

(b) bi-directional capacity

(i) indicate the interconnection points equipped with bidirectional capacity and the maximal capacity of bi-directional flows;

(ii) indicate the arrangements governing the use of the reverse flow capacity (e.g. interruptible capacity);

(iii) indicate interconnection points where an exemption has been granted in accordance with Article 5(4), the duration of the exemption and the grounds on which it was granted.

4. Compliance with the supply standard (Article 6)

Describe the measures adopted in order to comply with the supply standard as well as with any increased supply standard or additional obligation imposed for reasons of security of gas supply:

(a) definition of protected customers applied, including categories of customers covered and their annual gas consumption (per category, net value and percentage of the national annual final gas consumption);

(b) gas volumes needed to comply with the supply standard in accordance with the scenarios described in the first subparagraph of Article 6(1);

(c) capacity needed to comply with the supply standard in accordance with the scenarios described in the first sub paragraph of Article 6(1);

(d) measure(s) in place to comply with the supply standard:

(i) a description of the measure(s);

(ii) addressees;

(iii) where it exists, describe any *ex ante* monitoring system for the compliance with the supply standard;

(iv) sanctions regime, if applicable;

(v) describe, per measure:

— the economic impact, effectiveness and efficiency of the measure,

— the impact of the measure on the environment,

— impact of the measures on consumer,

(vi) where non-market-based measures are applied (per measure):

— justify why the measure is necessary (i.e. why security of supply cannot be achieved via market-based measures alone),

— justify why the measure is proportionate (i.e. why the non-market-based measure is the least restrictive means to achieve the intended effect),

— provide an analysis of the impact of such measure:

(1) on other **Contracting Parties** ' security of supply;

(2) on the national market;

(3) on the **single** market;

(vii) where measures introduced on or after **30th November 2021** please provide a short summary of the impact assessment or a link to the public impact assessment of the measure(s) carried out in accordance with Article 9(4);

(e) if applicable, describe any increased supply standard or additional obligation imposed for reasons of security of gas supply:

(i) a description of the measure(s);

(ii) the mechanism to reduce it to usual values in a spirit of solidarity **<...>**;

(iii) if applicable, describe any new increased supply standard or additional obligation imposed for reasons of security of gas supply adopted on or after **30th November 2021**;

(iv) addressees;

(v) affected gas volumes and capacities;

(vi) indicate how that measure complies with the conditions laid down in Article 6(2).

5. Preventive measures

Describe the preventive measures in place or to be adopted:

(a) describe each of the preventive measures adopted per identified risk in accordance with the risk assessment, including a description of:

(i) their national or regional dimension;

(ii) their economic impact, effectiveness and efficiency;

(iii) their impact on customers. Where appropriate, include:

— measures to enhance interconnections between neighbouring **Contracting Parties**,

— measures to diversify gas routes and sources of supply,

— measures to protect key infrastructure relevant for the security of supply in relation to control by third- country entities (including, where relevant, general or sector-specific investment screening laws, special rights for certain shareholders, etc.);

(b) **<…>**

(c) where non-market-based measures are applied (per measure):

(i) justify why the measure is necessary (i.e. why the security of supply cannot be achieved via market-based measures alone);

(ii) justify why the measure is proportionate (i.e. why the non-market-based measure is the least restrictive means to achieve the intended effect);

(iii) provide an analysis of the impact of such measure:

— justify why the measure is necessary (i.e. why the security of supply cannot be achieved via market- based measures alone),

— justify why the measure is proportionate (i.e. why the non-market-based measure is the least restrictive means to achieve the intended effect),

— provide an analysis of the impact of such measure:

(1) on other **Contracting Parties**' security of supply;

(2) on the national market;

(3) on the **single** market;

(4) explain the extent to which efficiency measures, including on the demand side, have been considered to increase the security of supply;

(5) explain the extent to which renewable energy sources have been considered to increase the security of supply.

6. Other measures and obligations (e.g. safety operation of the system)

Describe other measures and obligations that have been imposed on natural gas undertakings and other relevant bodies likely to have an impact on the security of gas supply, such as obligations for the safe operation of the system, including who would be affected by that obligation as well as the gas volumes covered. Explain precisely when and how those measures would apply.

7. Infrastructure projects

(a) describe future infrastructure projects, including Projects of **Energy Community Interests**, including an estimated timing for their deployment, capacities and estimated impact on the security of gas supply;

(b) **<…>**

8. Public service obligations related to the security of supply

Indicate the existing public service obligations related to the security of supply and briefly describe them (use annexes for more detailed information). Explain clearly who has to comply with such obligations and how. If applicable, describe how and when those public service obligations would be triggered.

9. Stakeholder consultations

In accordance with Article 8(2) of this Regulation, describe the mechanism used for and the results of the consultations carried out, for the development of the plan as well as the emergency plan, with:

(a) gas undertakings;

(b) relevant organisations representing the interests of households;

(c) relevant organisations representing the interests of industrial gas customers, including electricity producers;

(d) national regulatory authority.

10. **<…>**

10.1. **<…>**

10.2. Mechanisms developed for cooperation

Describe the mechanisms used for the cooperation among the **Contracting Parties <…>**, including for developing cross-border measures in the preventive action plan and the emergency plan.

<…>

10.3. **<…>**

ANNEX VII
Template for emergency plan

General information

Name of the competent authority responsible for the preparation of the present plan[52]

1. Definition of crisis levels

(a) indicate the body responsible for the declaration of each crisis level and the procedures to follow in each case for such declarations;

(b) where they exist, include here indicators or parameters used to consider whether an event may result in a significant deterioration of the supply situation and to decide upon the declaration of a certain crisis level.

2. Measures to be adopted per crisis level

1.1. Early Warning

Describe the measures to be applied at this stage, indicating, per measure:

(i) a brief description of the measure and main actors involved;

(ii) describe the procedure to follow, if applicable;

(iii) indicate the expected contribution of the measure to cope with the impact of any event or prepare ahead of its appearance;

(iv) describe the flows of information among the actors involved.

1.2. Alert Level

(a) describe the measures to be applied at this stage, indicating, per measure:

(i) a brief description of the measure and main actors involved;

(ii) describe the procedure to follow, if applicable;

(iii) indicate the expected contribution of the measure to cope with the situation at alert level;

(iv) describe the flows of information among the actors involved;

(b) describe the reporting obligations imposed on natural gas undertakings at alert level.

1.3. Emergency Level

(a) establish a list of predefined actions on the supply and demand side to make gas available in the event of an emergency, including commercial agreements between the parties involved in such actions and the compensation mechanisms for natural gas undertakings where appropriate;

(b) describe the market-based measures to be applied at this stage, indicating, per measure:

(i) a brief description of the measure and main actors involved;

(ii) describe the flows of information among the actors involved;

(c) describe the non-market-based measures planned or to be implemented for the emergency level,

52 Where this task has been delegated by any competent authority, please indicate the name of the body/(ies) responsible for the preparation of this plan on its behalf

indicating, per measure:

(i) a brief description of the measure and main actors involved;

(ii) provide an assessment of the necessity of such measure in order to cope with a crisis, including the degree of its use;

(iii) describe in detail the procedure to implement the measure (e.g. what would trigger the introduction of this measure, who would take the decision);

(iv) indicate the expected contribution of the measure to mitigate the situation at emergency level as a complement to market-based measures;

(v) assess other effects of the measure;

(vi) justify the compliance of the measure with the conditions laid down in Article 11(6);

(vii) describe the flows of information among the actors involved;

(d) describe reporting obligations imposed on natural gas undertakings.

3. Specific measures for the electricity and district heating

(a) district heating

(i) briefly indicate the likely impact of a disruption of gas supply in the district heating sector;

(ii) indicate measures and actions to be taken to mitigate the potential impact of a disruption of gas supply on district heating. Alternatively, indicate why the adoption of specific measures is not appropriate;

(b) supply of electricity generated from gas

(i) briefly indicate the likely impact of a disruption of gas supply in the electricity sector;

(ii) indicate measures and actions to be taken to mitigate the potential impact of a disruption of gas supply on the electricity sector. Alternatively, indicate why the adoption of specific measures is not appropriate;

(iii) indicate the mechanisms/existing provisions to ensure appropriate coordination, including exchange of information, between main actors in the gas and electricity sectors, in particular transmission system operators at different crisis levels.

4. Crisis manager or team

Indicate who the crisis manager is and define its role.

5. Roles and responsibilities of different actors

(a) per crisis level, define the roles and responsibilities, including interactions with the competent authorities and, where appropriate, with the national regulatory authority, of:

(i) natural gas undertakings;

(ii) industrial customers;

(iii) relevant electricity producers;

(b) per crisis level, define the role and responsibilities of the competent authorities and the bodies to which tasks have been delegated.

6. Measures regarding undue consumption by customers who are not protected customers

Describe measures in place to prevent to the extent possible and without endangering the safe and reliable operation of the gas system or creating unsafe situations, the consumption by customers who are not protected customers of gas supply intended for protected customers during an emergency. Indicate the nature of the measure (administrative, technical, etc.), main actors and the procedures to follow.

7. Emergency tests

(a) indicate the calendar for the real time response simulations of emergency situations;

(b) indicate actors involved, procedures and concrete high and medium impact scenarios simulated.

For the updates of the emergency plan: describe briefly the tests carried out since the last emergency plan was presented and the main results. Indicate which measures have been adopted as a result of those tests.

8. <...>[53]

53 Not applicable according to Article 4(22) of Ministerial Council Decision 2021/15/MC-EnC

ANNEX VIII

List of non-market-based security of gas supply measures

In developing the preventive action plan and the emergency plan the competent authority shall consider the contribution of the following indicative and non-exhaustive list of measures only in the event of an emergency:

(a) supply-side measures:

— use of strategic gas storage,

— enforced use of stocks of alternative fuels (e.g. in accordance with Council Directive 2009/119/EC[54]),

— enforced use of electricity generated from sources other than gas,

— enforced increase of gas production levels,

— enforced storage withdrawal;

(b) demand-side measures:

— various steps of compulsory demand reduction including:

— enforced fuel switching,

— enforced utilisation of interruptible contracts, where not fully utilised as part of market-based measures,

— enforced firm load shedding.

54 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 (OJ L 265, 9.10.2009, p. 9) **as adopted by Ministerial Council Decisions 2008/03/EnC-MC and 2012/03/EnC-MC, and in accordance with Recommendation 2018/02/EnC-MC**

III. PART

GAS NETWORK CODES AND GUIDELINES

COMMISSION REGULATION (EU) 2015/703 of 30 April 2015 establishing a network code on interoperability and data exchange rules

Incorporated and adapted by Permanent High Level Group Decision 2018/02/PHLG-EnC of 12 January 2018

The adaptations made by Permanent High Level Group Decision 2018/02/PHLG-EnC are highlighted in **bold and blue**.

CHAPTER I
GENERAL PROVISIONS

Article 1
Subject matter and scope

1. This Regulation establishes a network code which sets out rules regarding interoperability and data exchange as well as harmonised rules for the operation of gas transmission systems.

2. This Regulation shall apply at interconnection points **between the Contracting Parties to the Energy Community. The application at interconnection points within a Party is subject to the decision of the relevant national regulatory authority.** With regard to data publication, Article 13 shall apply to relevant points defined in paragraph 3.2 of Annex I to Regulation (EC) No 715/2009. In addition to interconnection points, Article 17 shall apply to other points on transmission network where the gas quality is measured. Article 18 shall apply to transmission systems. This Regulation may also apply at entry points from and exit points to third countries, subject to the decision of the national authorities.

3. **<...>**

Article 2
Definitions

For the purposes of this Regulation, the definitions in Article 2 of Regulation (EC) No 715/2009 ... as well as in Article 2 of Directive 2009/73/EC shall apply. In addition, the following definitions shall apply:

(a) 'exceptional event' means any unplanned event that is not reasonably controllable or preventable and that may cause, for a limited period, capacity reductions, affecting thereby the quantity or quality of gas at a given interconnection point, with possible consequences on interactions between transmission system operators as well as between transmission system operator and network users;

(b) 'initiating transmission system operator' means the transmission system operator initiating the matching process by sending the necessary data to the matching transmission system operator;

(c) 'lesser rule' means that, in case of different processed quantities at either side of an interconnection point, the confirmed quantity will be equal to the lower of the two processed quantities.

(d) 'matching process' is the process of comparing and aligning processed quantities of gas for network

users at both sides of a specific interconnection point, which results in confirmed quantities for the network users;

(e) 'matching transmission system operator' means the transmission system operator performing the matching process and sending the result of the matching process to the initiating transmission system operator;

(f) 'measured quantity' means the quantity of gas that, according to the measurement equipment from the transmission system operator, has physically flowed across an interconnection point per time period;

(g) 'operational balancing account' means an account between adjacent transmission system operators, to be used to manage steering differences at an interconnection point in order to simplify gas accounting for network users involved at the interconnection point;

(h) 'processed quantity' means the quantity of gas determined by the initiating transmission system operator and by the matching transmission system operator, which takes into account the network user's nomination or re-nomination and contractual provisions as defined under the relevant transport contract and which is used as the basis for the matching process;

(i) 'steering difference' means the difference between the quantity of gas that the transmission system operators had scheduled to flow and the measured quantity for an interconnection point.

(j) 'gas day' means the period from 5:00 to 5:00 UTC the following day for winter time and from 4:00 to 4:00 UTC the following day when daylight saving is applied;

(k) 'interconnection agreement' means an agreement entered into by adjacent transmission system operators, whose systems are connected at a particular interconnection point, which specifies terms and conditions, operating procedures and provisions, in respect of delivery and/or withdrawal of gas at the interconnection point with the purpose of facilitating efficient interoperability of the interconnected transmission networks;

(l) 'interconnection point' means a physical or virtual point connecting adjacent entry-exit systems or connecting an entry-exit system with an interconnector, in so far as these points are subject to booking procedures by network users;

(m) 'virtual interconnection point' means two or more interconnection points which connect the same two adjacent entry-exit systems, integrated together for the purposes of providing a single capacity service;

(n) 'confirmed quantity' means the quantity of gas confirmed by a transmission system operator to be scheduled or re-scheduled to flow on gas day D;

(o) 'allocation' means the quantity of gas attributed to a network user by a transmission system operator as an input or an off-take expressed in kWh for the purpose of determining the daily imbalance quantity;

(p) 're-nomination cycle' means the process carried out by the transmission system operator in order to provide a network user with the message regarding the confirmed quantities following the receipt of a re-nomination.

CHAPTER II
INTERCONNECTION AGREEMENTS

Article 3
General Provisions

Adjacent transmission system operators shall ensure that at least the following terms and conditions detailed in Articles 6 to 12 are covered by **any future and existing** interconnection agreement in respect of each interconnection point:

(a) rules for flow control;

(b) measurement principles for gas quantities and quality;

(c) rules for the matching process;

(d) rules for the allocation of gas quantities;

(e) communication procedures in case of exceptional events;

(f) settlement of disputes arising from interconnection agreements;

(g) amendment process for the interconnection agreement.

Article 4
Information obligation

1. The transmission system operators shall identify the information contained in interconnection agreements that directly affects network users and shall inform them thereof.

2. Before concluding or amending an interconnection agreement which contains the rules referred to in Article 3(c), (d) and (e), transmission system operators shall invite network users to comment on the proposed text of those rules at least two months before the agreement is concluded or amended. The transmission system operators shall take the network users' comments into account when concluding or amending their interconnection agreement.

3. The mandatory terms of interconnection agreements listed in Article 3 or any amendments thereof concluded after the entry into force of this Regulation shall be communicated by the transmission system operators to their national regulatory authority and to Entsog within 10 days after conclusion or amendment of the agreement. Transmission system operators shall also communicate interconnection agreements upon request of competent national authorities of the Contracting Party within 10 days.

Article 5
Interconnection agreement template

1. **<...>**

2. **<...>**

3. If adjacent transmission system operators fail to agree on one or more of the terms and conditions set out in Articles 6 to 10 in their interconnection agreement in accordance with Article 3, they shall conclude an interconnection agreement on the basis of the Entsog template in respect of any term they failed to agree upon.

Article 6

Rules for flow control

1. In respect of flow control, the adjacent transmission system operators shall:

(a) ensure that rules are established in order to facilitate a controllable, accurate, predictable and efficient gas flow across the interconnection point;

(b) ensure that rules are established for steering the gas flow across the interconnection point and for minimising the deviations from the flow pursuant to the matching process;

(c) designate the transmission system operator who is responsible for steering the gas flow across the interconnection point. If the adjacent transmission system operators fail to agree on this designation, the transmission system operator that operates the flow control equipment shall, in cooperation with the other transmission system operator(s), be responsible for steering the gas flow across the interconnection point.

2. In order to steer the gas flow, the adjacent transmission system operators shall decide on the quantity and direction of the gas flow for each interconnection point and for each hour of the gas day.

The transmission system operator designated pursuant to point (c) of paragraph 1 shall be responsible for steering the gas flow across the interconnection point provided that contractual obligations regarding pressure are complied with by all adjacent transmission system operators:

(a) at a level of accuracy sufficient to minimise the steering difference; and

(b) at a level of stability in line with the efficient use of the gas transmission networks.

3. The quantity and direction of the gas flow decided by the adjacent transmission system operators shall reflect:

(a) the result of the matching process;

(b) the operational balancing account correction;

(c) any efficient flow control arrangements between the adjacent transmission system operators for purposes such as ramp-up, ramp-down, minimum flow, split of the flow at the virtual interconnection point if any, and/or switch of flow direction or operational cost efficiency;

(d) any arrangement managing cross-border trade restrictions due to gas quality differences pursuant to Article 15 and/or odourisation practices pursuant to Article 19.

4. A transmission system operator may decide to alter the quantity of gas or the gas flow direction or both, if this is needed, in order to:

(a) comply with provisions laid down in national or Union safety legislation applicable to the interconnection point;

(b) comply with requirements laid down in Emergency Plans and Preventive Action Plans developed in accordance with **applicable Energy Community legislation on security of gas supply**;

(c) react in case the operator's system is affected by an exceptional event.

Article 7

Measurement principles for gas quantity and quality

1. In respect of the measurement principles for volume, energy and gas quality, the adjacent transmission system operators shall ensure that:

(a) the details of the measurement standards applicable at the interconnection point are established;

(b) the transmission system operator responsible for the installation, operation and maintenance of the measurement equipment is identified. This operator shall have the obligation to make all information and data in respect of the measurement of gas flows at the interconnection point available to the other adjacent transmission system operator(s) in a timely manner and at a frequency specified.

2. The installation, operation and maintenance of measurement equipment at an interconnection point shall take into account the technical requirements imposed by national regulations on the adjacent transmission system operators.

3. The adjacent transmission system operators shall agree on measurement principles which shall at least include:

(a) a description of the metering station including measurement and analysis equipment to be used and details of any secondary equipment that may be used in case of failure;

(b) the gas quality parameters and volume and energy that shall be measured, as well as the range and the maximum permissible error or uncertainty margin within which the measurement equipment shall operate, the frequency of measurements, in what units and according to what standards the measurement shall be made as well as any conversion factors used;

(c) the procedures and methods that shall be used to calculate those parameters which are not directly measured;

(d) a description of the method of calculation in respect of the maximum permissible error or uncertainty in the determination of energy transported;

(e) a description of the data validation process in use for the measured parameters;

(f) the measurement validation and quality assurance arrangements, including verification and adjustment procedures to be agreed between the adjacent transmission system operators;

(g) the way data, including frequency and content, is provided among the adjacent transmission system operators in respect of the measured parameters;

(h) the specific list of signals and alarms to be provided by the adjacent transmission system operator(s) who operate(s) the measurement equipment to the other adjacent transmission system operator(s);

(i) the method of determining a correction to a measurement and any subsequent procedures that may be necessary in a temporary situation where the measurement equipment is found to be or have been in error (either under-reading or over-reading outside of its defined uncertainty range).This transmission system operator shall take appropriate action to end this situation.

(j) rules that shall apply between adjacent transmission system operators in the event of failure of the measurement equipment;

(k) rules that shall apply between the adjacent transmission system operators for:

(i) access to the measurement facility;

(ii) additional verifications of measurement facility;

(iii) modification of the measurement facility; (iv) attendance during calibration and maintenance work at the measurement facility.

4. If the adjacent transmission system operators fail to comply with their obligations provided for in paragraphs 1 and 3:

(a) the transmission system operator in control of the measurement equipment shall be responsible for the installation, operation and maintenance of such equipment and for providing the other transmission system operator with the data regarding the measurement of gas flows at the interconnection point in a timely manner;

(b) the European standard EN1776 'Gas Supply Natural Gas Measuring Stations Functional Requirements' in the version applicable at the time shall apply.

Article 8

Rules for the matching process

1. In respect of the matching process, the adjacent transmission system operators shall establish:

(a) the rules detailing the matching process taking into account daily-hourly nomination arrangements where relevant;

(b) the rules governing the communication and processing of the relevant data among the adjacent transmission system operators in order to calculate the processed quantities and confirmed quantities of gas for network users and the quantity of gas that needs to be scheduled to flow at the interconnection point(s).

2. Nominations and re-nominations shall be managed in accordance with the following:

(a) the application of a matching rule shall lead to identical confirmed quantities for each pair of network users at both sides of the interconnection point when processed quantities are not aligned;

(b) the adjacent transmission system operators may agree to maintain or implement a matching rule other than the lesser rule, provided that this rule is published and network users are invited to comment on the proposed matching rule within a period of time of not less than two months after publication of the matching rule;

(c) the adjacent transmission system operators shall specify their respective roles in the matching process by indicating whether they are the initiating or the matching transmission system operator;

(d) the adjacent transmission system operators shall specify the applicable time schedule for the matching process within the nomination or re-nomination cycle, given that the whole matching process shall not take more than two hours from the starting of the nomination or re-nomination cycle, and shall take into account:

(i) the data that needs to be exchanged between the adjacent transmission system operators in order to enable them to inform network users of their confirmed quantities before the end of the nomination or re-nomination cycle, including as a minimum the data referred to in paragraph 4(b);

(ii) the data exchange process defined in point (i) above shall enable the adjacent transmission system operators to perform all calculation and communication steps in an accurate and timely manner.

3. When processing nominations for an interconnection point, the adjacent transmission system operators shall ensure that the gas flow at both sides of the interconnection point is calculated on a consistent basis taking into account any temporary reduction of capacity due to any of the conditions referred to in Article 6(4) on one or both sides of the interconnection point.

4. Each interconnection agreement shall specify in its provisions on data exchange for the matching process:

(a) the use of data exchange between the adjacent transmission system operators for the matching process;

(b) the harmonised information contained within the data exchange for the matching process which shall contain at least the following:

(i) interconnection point identification;

(ii) network user identification or if applicable its portfolio identification;

(iii) identification of the party delivering to or receiving gas from the network user or if applicable its portfolio identification;

(iv) start and end time of the gas flow for which the matching is made;

(v) gas day;

(vi) processed and confirmed quantities;

(vii) direction of gas flow.

5. Unless otherwise agreed by the adjacent transmission system operators in their interconnection agreement, the following shall apply:

(a) the transmission system operators shall use the lesser rule. The application of the lesser rule as the default rule may only be restricted in case the conditions of point 2.2.3.1 of Annex I of Regulation (EC) No 715/2009 are fulfilled and its application would prevent the offer of firm capacity from the congestion management procedures;

(b) the transmission system operator in control of the flow control equipment shall be the matching transmission system operator;

(c) the transmission system operators shall perform the matching process in the following sequential steps:

(i) calculating and sending of processed quantities of gas by the initiating transmission system operator within 45 minutes of the start of the nomination or re-nomination cycle;

(ii) calculating and sending of confirmed quantities of gas by the matching transmission system operator within 90 minutes from the start of the nomination or re-nomination cycle;

(iii) sending confirmed quantities of gas to network users and scheduling the gas flow across the interconnection point by the adjacent transmission system operators within two hours from the start of the nomination or re-nomination cycle. These sequential steps shall be without prejudice to the **<...>** minimum interruption lead times **<...> decided jointly by adjacent transmission system** operators and paragraph 2 (d) of this Article.

The default minimum interruption lead time for a given gas hour shall be forty five minutes after the start of the re-nomination cycle for that gas hour. Where two transmission system operators wish to shorten the lead time for interruptions, any related agreement entered into between the transmission system operators shall be subject to competent national regulatory authority approval.

Article 9

Rules for the allocation of gas quantities

1. In respect of the allocation of gas quantities, the adjacent transmission system operators shall establish rules ensuring consistency between the allocated quantities at both sides of the interconnection point.

2. Unless otherwise agreed in the interconnection agreement, the transmission system operators shall use an operational balancing account. The transmission system operator in control of the measurement equipment shall recalculate the operational balancing account with validated quantities and communicate it to the adjacent transmission system operator(s).

3. Where an operational balancing account applies:

(a) the steering difference shall be allocated to an operational balancing account of the adjacent transmission system operators and the allocations to be provided by each adjacent transmission system operator to their respective network users shall be equal to the confirmed quantities;

(b) the adjacent transmission system operators shall maintain an operational balancing account balance that is as close to zero as possible; (c) the operational balancing account limits shall take into account specific characteristics of each interconnection point and/or the interconnected transmission networks, in particular:

(i) physical characteristics of the interconnection point;

(ii) linepack capability of each transmission network;

(iii) the total technical capacities at the interconnection point;

(iv) gas flow dynamics at the interconnected transmission networks.

Where the defined limits of the operational balancing account are reached, the adjacent transmission system operators may agree to extend those limits in order to provide allocations to network users that are equal to their confirmed quantities or otherwise allocate quantities to network users proportionally based on the measured quantity.

4. The adjacent transmission system operators may agree to maintain or implement an allocation rule other than the operational balancing account, provided that this rule is published and network users are invited to comment on the proposed allocation rule within at least two months after publication of the allocation rule.

Article 10

Communication procedures in case of exceptional events

1. The adjacent transmission system operators shall ensure that communication procedures which facilitate fast and simultaneous communication in cases of exceptional events are established. Unless otherwise agreed, the communication between the involved transmission system operators shall be performed by oral communication in English for information, followed by an electronic written confirmation.

2. The transmission system operator affected by an exceptional event shall be required, as a minimum, to inform its network users with respect to point (b) and (c) of this paragraph if there is a potential impact on their confirmed quantities and the adjacent transmission system operator(s) with respect to point (a) and (c) of this paragraph of the occurrence of such exceptional event and to provide all necessary information

about:

(a) the possible impact on the quantities and quality of gas that can be transported through the interconnection point;

(b) the possible impact on the confirmed quantities for network users active at the concerned interconnection point(s);

(c) the expected and actual end of the exceptional event.

3. **<...>**

Article 11

Settlement of disputes arising from Interconnection Agreements

1. The adjacent transmission system operators shall endeavour to solve amicably any disputes arising out of or in connection with the interconnection agreement and specify therein a dispute settlement mechanism for disputes which could not be amicably settled. The dispute settlement mechanism shall at least specify:

(a) the applicable law; and

(b) the court of jurisdiction or the terms and conditions of the appointment of experts either within the framework of an institutional forum or on an ad hoc basis, which may include arbitration.

<...>

2. **<...>**

Article 12

Amendment process

1. The adjacent transmission system operators shall establish a transparent and detailed amendment process of their interconnection agreement to be triggered by a written notice of one of the transmission system operators.

2. If the adjacent transmission system operators fail to reach an agreement on the amendment process, they may use the dispute settlement mechanisms developed in accordance with Article 11.

CHAPTER III
UNITS

Article 13
Common set of units

1. Each transmission system operator shall use the common set of units defined in this Article for any data exchange and data publication related to Regulation (EC) No 715/2009.

2. For the parameters of pressure, temperature, volume, gross calorific value, energy, and Wobbe-index the transmission system operators shall use:

(a) pressure: bar

(b) temperature: °C (degree Celsius)

(c) volume: m^3

(d) gross calorific value (GCV): kWh/m^3

(e) energy: kWh (based on GCV)

(f) Wobbe-index: kWh/m^3 (based on GCV)

For pressure, the transmission system operators shall indicate whether it refers to absolute pressure (bar (a)) or gauge pressure (bar (g)).

The reference conditions for volume shall be 0 °C and 1,01325 bar(a). For GCV, energy and Wobbe-index the default combustion reference temperature shall be 25 °C.

Whenever transmission system operators communicate data on the volume, GCV, energy and Wobbe-index, they shall specify under which reference conditions these values were calculated.

3. In cases where one **Contracting Party** is connected to only one other **Contracting Party ore one Member State of the European Union**, the adjacent transmission system operators and the parties they communicate with may agree to continue to use other reference conditions for data exchange in connection with Regulation (EC) No 715/2009, subject to the approval of their national regulatory authorities.

Article 14
Additional units

The transmission system operators and the parties they communicate with in connection with Regulation (EC) No 715/2009 may agree to use, in addition to the common set of units, additional units or reference conditions for data exchange or data publication. In such a situation conversion between reference conditions shall be done on the basis of the actual gas composition. If the relevant gas composition data is not available, the conversion factors used shall be consistent with the Annex based on EN ISO 13443 'Natural gas - Standard reference conditions' in the version applicable at the time.

CHAPTER IV
GAS QUALITY AND ODOURISATION

Article 15

Managing cross-border trade restrictions due to gas quality differences

1. Transmission system operators shall cooperate to avoid restrictions to cross-border trade due to gas quality differences. These actions, initiated and carried out by the transmission system operators in their standard operations, may include, among others, swapping and co-mingling.

2.Where a restriction to cross-border trade due to gas quality differences cannot be avoided by the concerned transmission system operators and is recognised by the national regulatory authorities, those authorities may require the transmission system operators to perform, within 12 months, the actions referred to in points (a) to (e) in sequence:

(a) cooperate and develop technically feasible options, without changing the gas quality specifications, which may include flow commitments and gas treatment, in order to remove the recognised restriction;

(b) jointly carry out a cost benefit analysis on the technically feasible options to define economically efficient solutions which shall specify the breakdown of costs and benefits among the categories of affected parties;

(c) produce an estimate of the implementation time for each potential option;

(d) conduct a public consultation on identified feasible solutions and take into consideration the results of the consultation;

(e) submit a joint proposal for removing the recognised restriction, including the timeframe for implementation, based on the cost benefit analysis and results of the public consultation to their respective national regulatory authorities for approval and to the other competent national authorities of each involved Contracting Party for information.

Where the concerned transmission system operators do not reach an agreement on a solution, each transmission system operator shall promptly inform its national regulatory authority.

3. Before adopting a decision pursuant to point (e) of paragraph 2, each national regulatory authority shall consult the national regulatory authorities of the concerned Contracting Parties. In adopting its decision, each national regulatory authority shall take account of the adjacent national regulatory authorities' opinion with a view to have a coordinated decision based on mutual agreement.

Article 16

Short term monitoring on gas quality - data publication

Transmission system operators shall publish on their website for each interconnection point, with a frequency of at least once per hour during the gas day, the Wobbe-index and gross calorific value for gas directly entering their transmission networks at all physical interconnection points.

Exceptionally, for the interconnection points without adequate measurement equipment in place at the moment of adoption of this Regulation, a frequency of publishing the Wob-

be-index and gross calorific value shall be once per gas day. In such cases, the transmission system operator is obliged to submit a request for exemption without delay to the relevant regulatory authority. A request for exemption has to include a proposal on installing adequate measurement equipment with exact deadline of putting such equipment in operation, which cannot be longer than 2 years. An exemption has to be confirmed by the regulatory authorities having the jurisdiction over adjacent transmission system operators.

Entsog shall publish on its **<...>** central platform established pursuant to point 3.1.1(1)(h) of Annex I of Regulation (EC) No 715/2009 a link to the relevant information on the websites of the transmission system operators.

Article 17

Information provision on short-term gas quality variation

1. In addition to interconnection points, this Article shall apply to other points on transmission networks where the gas quality is measured.

2. A transmission system operator may select one or several of the following parties to receive information on gas quality variation:

(a) final customers directly connected to the transmission system operator's network, whose operational processes are adversely affected by gas quality changes or a network user acting on behalf of a final customer whose operational processes are adversely affected by gas quality changes, where a direct contractual arrangement between a transmission system operator and its directly connected final customers is not foreseen by the national rules;

(b) distribution system operators directly connected to the transmission system operator's network, with connected final customers whose operational processes are adversely affected by gas quality changes;

(c) storage system operators directly connected to the transmission system operator's network, whose operational processes are adversely affected by gas quality changes.

3. Each transmission system operator shall:

(a) define and maintain a list of parties entitled to receive indicative gas quality information;

(b) cooperate with the parties identified in the above list in order to assess:

(i) the relevant information on gas quality parameters to be provided;

(ii) the frequency for the information to be provided;

(iii) the lead time;

(iv) the method of communication.

4. Paragraph 3 shall not impose an obligation on transmission system operators to install additional measurement or forecasting equipment, unless otherwise required by the national regulatory authority. The information under paragraph 3(b)(i) of this Article shall be provided as the transmission system operator's best estimate at a point in time and for the internal use of the recipient of the information.

Article 18

Long-term monitoring on gas quality in transmission systems

1. Entsog shall publish every two years a long-term gas quality monitoring outlook for transmission systems in order to identify the potential trends of gas quality parameters and respective potential variability within the next 10 years. The first long-term gas quality monitoring outlook shall be published along with the Ten-Year Network Development Plan of 2017.

2. The outlook shall be based on the inputs gathered in the framework of the regional cooperation established within Entsog in accordance with Article 12(1) of Regulation (EC) No 715/2009.

3. The long-term gas quality monitoring outlook shall cover at least the Wobbe-index and gross calorific value. Additional gas quality parameters may be included after consultation with the stakeholders referred to in paragraph 8.

4. The long-term gas quality monitoring outlook shall identify potential new supply sources from a gas quality perspective.

5. In order to define the reference values of gas quality parameters for the respective supply sources to be used in the outlook, an analysis of the previous years shall be carried out. Such data may be replaced by stakeholders' inputs which result from the stakeholders' engagement process referred to in paragraph 8.

6. For every gas quality parameter considered and every region, the analysis shall result in a range within which the parameter is likely to evolve.

7. The long-term gas quality monitoring outlook shall be consistent and aligned with the Entsog Union-wide Ten-Year Network Development Plan under preparation at the same time.

8. The stakeholders' consultation process used for the Union-wide Ten-Year Network Development Plan shall be expanded to include gas quality as an item. Through this process, stakeholders shall be invited to provide Entsog with their views on the evolution of gas quality parameters of supplies.

Article 19

Managing cross-border trade restrictions due to differences in odourisation practices

1. Where a restriction to cross-border trade due to differences in odourisation practices cannot be avoided by the concerned transmission system operators and is recognised by national authorities, the authorities may require the concerned transmission system operators to reach an agreement within six months, which may include swapping and flow commitments, to solve any restriction recognised. The concerned adjacent transmission system operators shall provide their respective national authorities with the agreement for approval.

2. Where no agreement can be reached between the concerned transmission system operators after the six-month period referred to in paragraph 1 or where the national authorities agree that the proposed agreement by the concerned adjacent transmission system operators is not sufficiently effective to remove the restriction, the concerned transmission system operators, in cooperation with national authorities, shall, within the following 12 months, define a detailed plan setting out the most cost effective method to remove a recognised restriction at the specific cross-border interconnection point.

3. For the purpose of fulfilling the obligations under paragraph 2, the concerned transmission system operators shall in sequence:

(a) develop options to remove the restriction by identifying and assessing:

(i) a conversion towards cross-border physical flow of non-odourised gas;

(ii) the potential physical flow of odourised gas into the non-odourised transmission network or part thereof and interconnected downstream systems;

(iii) an acceptable level of odourant for cross-border physical gas flow.

(b) jointly carry out a cost-benefit analysis on the technically feasible options to define economically efficient solutions. That analysis shall:

(i) take into account the level of safety;

(ii) include information on projected volumes of gas to be transported and details of costs of necessary infrastructure investments;

(iii) specify the breakdown of costs and benefits between the categories of affected parties;

(c) produce an estimate of the implementation time for each potential option;

(d) conduct a public consultation and take into consideration the results of such consultation;

(e) submit the feasible solutions including the cost recovery mechanism and implementation timing to the national authorities for approval.

Once a solution is approved by the national authorities, that solution shall be implemented in accordance with the timeframe provided for in point (e).

4. If the national authorities do not approve any solution submitted under point (e) of paragraph 3 within six months from its submission or if the concerned transmission system operators fail to propose a solution within the 12 months' framework of paragraph 2, a shift towards the cross-border physical flow of non-odourised gas shall be implemented within a time-frame approved by the national authorities, but not exceeding four years. After a full technical shift towards non-odourised gas, transmission system operators shall accept technically unavoidable levels of successively reducing residual amounts of odourants in cross-border flows.

CHAPTER V
DATA EXCHANGE

Article 20
General provisions

1. For the purposes of this Chapter, 'counterparties' means network users active at:

(a) interconnection points; or

(b) both interconnection points and virtual trading points.

2. The data exchange requirements foreseen by point 2.2 of Annex I to Regulation (EC) No 715/2009 **<...>** and this Regulation between transmission system operators and from transmission system operators to their counterparties shall be fulfilled by common data exchange solutions set out in Article 21.

Article 21
Common data exchange solutions

1. Depending on the data exchange requirements under Article 20(2), one or more of the following types of data exchange may be implemented and used:

(a) document-based data exchange: the data is wrapped into a file and automatically exchanged between the respective IT systems;

(b) integrated data exchange: the data is exchanged between two applications directly on the respective IT systems;

(c) interactive data exchange: the data is exchanged interactively through a web application via a browser.

2. The common data exchange solutions shall comprise the protocol, the data format and the network. The following common data exchange solutions shall be used for each of the types of data exchange listed in paragraph 1:

(a) For the document-based data exchange:

(i) protocol: AS4;

(ii) data format: Edig@s-XML, or an equivalent data format ensuring identical degree of interoperability, **as published by** Entsog.

(b) For the integrated data exchange:

(i) protocol: HTTP/S-SOAP;

(ii) data format: Edig@s-XML, or an equivalent data format ensuring identical degree of interoperability, **as published by** Entsog.

(c) For the interactive data exchange, the protocol shall be HTTP/S.

For all data exchange types set out in points (a) to (c), the network shall be internet.

3. **<...>**

Article 22

Data exchange system security and availability

1. Each transmission system operator and each counterparty shall be responsible for ensuring that the appropriate security measures are undertaken. In particular, they shall:

(a) secure the communication chain in order to provide secured and reliable communications, including the protection of the confidentiality by encryption, integrity and the authenticity by signature of the sender and non-repudiation by a signed confirmation;

(b) implement appropriate security measures in order to prevent unauthorised access of their IT infrastructure;

(c) notify the other parties it communicates with, without delay, in regard to any unauthorised access which has or may have occurred on his own system.

2. Each transmission system operator shall be responsible for ensuring the availability of its own system and shall:

(a) take appropriate measures to prevent that a single point of failure causes an unavailability of the data exchange system, including up to the network connection(s) with the internet service provider(s);

(b) obtain the appropriate services and support from its internet service provider(s);

(c) keep the downtime, as a consequence of planned IT maintenance, to a minimum and shall inform its counterparties in a timely manner, prior to the planned unavailability.

Article 23

Implementation of the common data exchange solutions

1. Depending on the data exchange requirements under Article 20(2), transmission system operators shall make available and use the common data exchange solutions defined in Article 21.

2. Where data exchange solutions between a transmission system operator and concerned counterparties are in place on **1 October 2018** and provided that the existing data exchange solutions are compatible with Article 22 and with data exchange requirements under Article 20(2), the existing data exchange solutions may continue to apply after consultation with network users and subject to the approval of the national regulatory authority of the transmission system operator.

Article 24

Development process for common network operation tools

1. For each data exchange requirement under Article 20(2), a common network operation tool **developed by Entsog** in accordance with Article 8(3)(a) of Regulation (EC) No 715/2009 **exists**. A common network operation tool shall specify the common data exchange solution relevant for the respective data exchange requirement **as mentioned in Article 21**. A common network operation tool may also include business requirement specifications, release management and implementation guidelines.

CHAPTER VI
FINAL PROVISIONS

Article 25

Implementation monitoring

1. **Six months after the expiry of the deadline for transposing and implementing this Regulation the Energy Community Secretariat** shall monitor and analyse how transmission system operators have implemented Chapters II to V of this Regulation **<...> and submit its report to the Energy Community Permanent High Level Group.**

2. By at the latest **three months after the expiry of the deadline for transposing and implementing this Regulation** transmission system operators shall communicate to **the Energy Community Secretariat** all necessary information enabling **the Energy Community Secretariat** to comply with its obligations under paragraph 1.

Article 26

Entry into force[1]

1. Each Contracting Party shall transpose and implement Commission Regulation (EU) No 2015/703 by 1 October 2018.

2. This Decision [2018/02/PHLG-EnC] shall be made binding on all market participants. Transposition shall be made without changes to the structure and text of Commission Regulation (EU) No 2015/703 other than translation and the adaptations made by the present Decision.

3. Each Contracting Party shall notify the Energy Community Secretariat of completed transposition within two weeks following the adoption of such measures.

4. In transposing this Decision [2018/02/PHLG-EnC] Contracting Parties shall task national regulatory authorities with the monitoring of and enforcing compliance with this Decision [2018/02/PHLG-EnC].

ANNEX

Conversion factors between reference conditions

Reference temperature in °C (combustion, volume)	25/20 to 25/0	25/20 to 15/15	25/20 to 0/0	25/0 to 15/15	25/0 to 0/0	15/15 to 0/0
Volume-basis real superior calorific value	1,0738	1,0185	1,0766	0,9486	1,0026	1,0570
Volume-basis real inferior calorific value	1,0738	1,0176	1,0741	0,9477	1,0003	1,0555
Real Wobbe index	1,0736	1,0185	1,0764	0,9487	1,0026	1,0569

Source: EN ISO 13443 'Natural gas – Standard reference conditions'

COMMISSION REGULATION (EU) 2017/459 of 16 March 2017 establishing a network code on capacity allocation mechanisms in gas transmission systems

Incorporated and adapted by Permanent High Level Group Decision 2018/06/PHLG-EnC of 28 November 2018.

The adaptations made by Permanent High Level Group Decision 2018/06PHLG-EnC are highlighted in **bold and blue**.

CHAPTER I
GENERAL PROVISIONS

Article 1
Subject matter

This Regulation establishes a network code setting up capacity allocation mechanisms in gas transmission systems for existing and incremental capacity. This Regulation shall set out how adjacent transmission system operators cooperate in order to facilitate capacity sales, having regard to general commercial as well as technical rules related to capacity allocation mechanisms.

Article 2
Scope

1. This Regulation shall apply to interconnection points **between Contracting Parties**. It may also apply to entry points from and exit points to third countries, subject to the decision of the relevant national regulatory authority. This Regulation shall not apply to exit points to end consumers and distribution networks, entry points from 'liquefied natural gas' (LNG) terminals and production facilities, and entry points from or exit points to storage facilities.

2. The standardised capacity allocation mechanisms set up in accordance with this Regulation shall include an auction procedure for relevant interconnection points within the **Energy Community** and the standard capacity products to be offered and allocated. Where incremental capacity is offered, alternative allocation mechanisms may also be used, subject to the conditions set out in Article 30(2).

3. This Regulation shall apply to all technical and interruptible capacity at interconnection points as well as to additional capacity in the meaning of point 2.2.1 of Annex I of Regulation (EC) No 715/2009 and to incremental capacity. **<…>**

4. Where an alternative capacity allocation mechanism according to Article 30 is applied, Article 8(1) to (7), Articles 11 to 18, Article 19(2) and Article 37 shall not be applicable to the offer levels, unless decided otherwise by the relevant national regulatory authorities.

5. Where implicit capacity allocation methods are applied, national regulatory authorities may decide not to apply Articles 8 to 37.

6. In order to prevent foreclosure of downstream supply markets, national regulatory authorities may, after consulting network users, decide to take proportionate measures to limit up-front bidding for capacity by any single network user at interconnection points within a **Contracting Party**.

Article 3

Definitions

For the purposes of this Regulation, the definitions **and rules** in Article 2 of Regulation (EC) No 715/2009, Article 3 **and Article 24** of Commission Regulation (EU) 2017/460 and Article 2 Directive 2009/73/EC shall apply. In addition, the following definitions shall apply:

1. 'incremental capacity' means a possible future increase via market-based procedures in technical capacity or possible new capacity created where none currently exists that may be offered based on investment in physical infrastructure or long-term capacity optimisation and subsequently allocated subject to the positive outcome of an economic test, in the following cases:

(a) at existing interconnection points;

(b) by establishing a new interconnection point or points;

(c) as physical reverse flow capacity at an interconnection point or points, which has not been offered before;

2. 'interconnection point' means a physical or virtual point connecting adjacent entry-exit systems or connecting an entry-exit system with an interconnector, in so far as these points are subject to booking procedures by network users;

3. 'alternative allocation mechanism' means an allocation mechanism for offer level or incremental capacity designed on a case-by-case basis by the transmission system operators, and approved by the national regulatory authorities, to accommodate conditional demand requests;

4. 'standard capacity product' means a certain amount of transport capacity over a given period of time, at a specified interconnection point;

5. 'offer level' means the sum of the available capacity and the respective level of incremental capacity offered for each of the yearly standard capacity products at an interconnection point;

6. 'implicit allocation method' means a capacity allocation method where, possibly by means of an auction, both transmission capacity and a corresponding quantity of gas are allocated at the same time;

7. 'bidding round' means the period of time during which network users can submit, amend and withdraw bids;

8. 'large price step' means a fixed or variable amount that is defined per interconnection point and standard capacity product;

9. 'incremental capacity project' means a project to increase the amount of technical capacity at an existing interconnection point or to establish a new interconnection point based on capacity allocation in the preceding incremental capacity process;

10. 'economic test' means a test applied to assess the economic viability of incremental capacity projects;

11. 'incremental capacity process' means a process to assess the market demand for incremental capacity that includes a non-binding phase, in which network users express and quantify their demand for incremen-

tal capacity, and a binding phase, in which binding commitments for contracting capacity are requested from network users by one or more transmission system operators;

12. 'bundled capacity' means a standard capacity product offered on a firm basis which consists of corresponding entry and exit capacity at both sides of every interconnection point;

13. 'interconnection agreement' means an agreement entered into by adjacent transmission system operators, whose systems are connected at a particular interconnection point, which specifies terms and conditions, operating procedures and provisions, in respect of delivery and/or withdrawal of gas at the interconnection point with the purpose of facilitating efficient interoperability of the interconnected transmission networks, as set out in Chapter II of Regulation (EU) 2015/703;

14. 'competing capacities' means capacities for which the available capacity at one point of the network cannot be allocated without fully or partly reducing the available capacity at another point of the network;

15. 'auction calendar' means a table displaying information relating to specific auctions which is published by ENTSOG **<…>** every calendar year for auctions taking place during the period of March until February of the following calendar year and consisting of all relevant timings for auctions, including starting dates and standard capacity products to which they apply;

16. 'gas day' means the period from 5.00 to 5.00 UTC the following day for winter time and from 4.00 to 4.00 UTC the following day when daylight saving is applied;

17. 'within-day capacity' means capacity offered and allocated after the closure of the day-ahead capacity auctions with respect to that day;

18. 'ascending clock auction' means an auction in which a network user places requested quantities against defined price steps, which are announced sequentially;

19. 'uniform-price auction' means an auction in which the network user in a single bidding round bids price as well as quantity and all network users, who are successful in gaining capacity, pay the price of the lowest successful bid;

20. 'reserve price' means the eligible floor price in the auction;

21. 'small price step' means a fixed or variable amount that is defined per interconnection point and standard capacity product which is smaller than the large price step;

22. 'first-time undersell' means an occurrence where the aggregate demand across all network users is less than the capacity offered at the end of the second bidding round or a subsequent bidding round;

23. 'virtual interconnection point' means two or more interconnection points which connect the same two adjacent entry-exit systems, integrated together for the purposes of providing a single capacity service;

24. 'f-factor' means the share of the present value of the estimated increase in the allowed or target revenue of the transmission system operator associated with the incremental capacity included in the respective offer level as set out in Article 22(1)(b) to be covered by the present value of binding commitments of network users for contracting capacity calculated as set out in Article 22(1)(a);

25. 'over-nomination' means the entitlement of network users who fulfil minimum requirements for submitting nominations to request interruptible capacity at any time within-day by submitting a nomination which increases the total of their nominations to a level higher than their contracted capacity.

26. 'protected customers' means all household customers who is connected to a gas distribution network and, in addition, where the Contracting Party concerned so decides, may

also mean one or more of the following, provided that enterprises or services as referred to in points (a) and (b) do not, jointly, represent more than 20 % of the total annual final gas consumption in that Contracting Party

(a) small and medium-sized enterprises, provided that they are connected to a gas distribution network;(b) an essential social service, provided that it is connected to a gas distribution or transmission network;

(b) a district heating installation to the extent that it delivers heating to household customers, small or medium-sized enterprises, or essential social services, provided that such installation is not able to switch to other fuels than gas.

CHAPTER II
PRINCIPLES OF COOPERATION

Article 4
Coordination of maintenance

Where maintenance of a pipeline or part of a transmission network has an impact on the amount of transmission capacity which can be offered at interconnection points, the transmission system operator(s) shall fully cooperate with their adjacent transmission system operator(s) regarding their respective maintenance plans in order to minimise the impact on potential gas flows and capacity at an interconnection point.

Article 5
Standardisation of communication

1. Transmission system operators shall coordinate the implementation of standard communication procedures, coordinated information systems and compatible electronic on-line communications, such as shared data exchange formats and protocols, as well as agree principles as to how this data is treated.

2. Standard communication procedures shall include, in particular, those relating to network users' access to the transmission system operators' auction system or a relevant booking platform and the review of auction information provided. The timing and content of the data to be exchanged shall be compliant with the provisions set out in Chapter III.

3. The standard communication procedures adopted by transmission systems operators shall include an implementation plan and duration of applicability, which shall be in line with the development of booking platform(s) as set out in Article 37. Transmission systems operators shall ensure confidentiality of commercially sensitive information.

Article 6

Capacity calculation and maximisation

1. The maximum technical capacity shall be made available to network users, taking into account system integrity, safety and efficient network operation.

(a) In order to maximise the offer of bundled capacity through the optimisation of the technical capacity transmission system operators shall take the following measures at interconnection points, giving priority to those interconnection points where there is contractual congestion pursuant to point 2.2.3(1) of Annex I to Regulation (EC) No 715/2009: the transmission system operators shall establish and apply a joint method, setting out the specific steps to be taken by the respective transmission system operators to achieve the required optimisation:

(1) the joint method shall include an in-depth analysis of the technical capacities, including any discrepancies therein on both sides of an interconnection point, as well as the specific actions and detailed timetable - including possible implications and containing the regulatory approvals required to recover costs and adjust the regulatory regime - necessary to maximise the offer of bundled capacity. Such specific actions shall not be detrimental to the offer of capacity at other relevant points of the concerned systems and points to distribution networks relevant for security of supply to final customers, such as those to storage facilities, LNG terminals and protected customers **<…>**;

(2) the calculation methodology and the rules of making available the capacity, adopted by the transmission system operators, shall address specific situations where competing capacities across systems involve interconnection points and exit points to storage facilities;

(3) this in-depth analysis shall take into account assumptions made in the **<…>** 10-year network development plan **where applicable <…>,** national investment plans, relevant obligations under the applicable national laws and any relevant contractual obligations;

(4) the relevant transmission system operators shall apply a dynamic approach to re-calculating technical capacity, where appropriate in conjunction with the dynamic calculation applied for additional capacity on the basis of point 2.2.2.2 of Annex I to Regulation (EC) No 715/2009, jointly identifying the appropriate frequency for re-calculation per interconnection point and having regard to the particular specificities thereof;

(5) in the joint method, adjacent transmission system operators shall consult other transmission system operators specifically affected by the interconnection point;

(6) transmission system operators shall have regard to information that network users may provide with regard to expected future flows when re-calculating the technical capacity.

(b) the transmission system operators shall jointly assess at least the following parameters and where appropriate adjust them:

(1) pressure commitments;

(2) all relevant demand and supply scenarios, including details on reference climatic conditions and network configurations associated with extreme scenarios;

(3) calorific value.

2. Where the optimisation of technical capacity causes costs to the transmission system operators, partic-

ularly costs that unevenly impact transmission system operators on either side of an interconnection point, transmission system operators shall be allowed to recover such efficiently incurred costs via the regulatory framework established by the relevant regulatory authorities in accordance with Article 13 of Regulation (EC) No 715/2009 and Article 42 of Directive 2009/73/EC. **<...>**

2a. For cross-border infrastructure, the **Energy Community** Regulatory Board shall decide upon those regulatory issues that fall within the competence of national regulatory authorities:

(a) where the competent national regulatory authorities have not been able to reach an agreement within a period of six months from when the case was referred to the last of those regulatory authorities; or

(b) upon a joint request from the competent national regulatory authorities. The competent national regulatory authorities may jointly request that the period referred to in point (a) is extended by a period of up to six months.

When preparing its decision, the **Energy Community** Regulatory Board shall consult the national regulatory authorities and the transmission system operators concerned and shall be informed of the proposals and observations of all the transmission system operators concerned.

Where a case has been referred to the **Energy Community** Regulatory Board under paragraph (2a), the **Energy Community** Regulatory Board

(a) shall provide its decision within a period of 6 months from the day of referral; and

(b) may, if necessary, provide an interim decision to ensure that security of supply or operational security of the infrastructure in question is protected.

3. Where appropriate, national regulatory authorities shall consult network users on the applied calculation method and joint approach.

4. Changes in the amount of bundled capacity offered at interconnection points as a result of the process pursuant to paragraph 1 shall be included in the report of the **Energy Community** Regulatory Board published pursuant to point 2.2.1(2) of Annex I to Regulation (EC) No 715/2009.

Article 7

Exchange of information between adjacent transmission system operators

1. Adjacent transmission system operators shall exchange nomination, re-nomination, matching and confirmation information at relevant interconnection points on a regular basis.

2. Adjacent transmission system operators shall exchange information about the maintenance of their individual transmission network in order to contribute to the decision making process with regard to the technical use of interconnection points. The procedures to exchange data between transmission system operators shall be integrated in their respective interconnection agreement.

CHAPTER III
ALLOCATION OF FIRM CAPACITY PRODUCTS

Article 8
Allocation methodology

1. Auctions shall be used for the allocation of capacity at interconnection points, except where the alternative allocation methodology pursuant to Article 30 is applied.

2. At all interconnection points the same auction design shall apply. The relevant auction processes shall start simultaneously for all concerned interconnection points. Each auction process, relating to a single standard capacity product, shall allocate capacity independently of every other auction process except where incremental capacity is offered or where, subject to the agreement of the directly involved transmission system operators and the approval of relevant national regulatory authorities, competing capacity is allocated. The national regulatory authority of any adjacent and affected **Contracting Party or** Member State may provide a position which shall be considered by the relevant national regulatory authority. In case incremental capacity is offered, the independent allocation shall not apply to the simultaneous auction processes for the respective offer levels, since these are dependent on each other, as only one offer level can be allocated.

3. The standard capacity products shall follow a logical order by which products covering yearly capacity shall be offered first, followed by the product with the next shortest duration for use during the same period. The timing of the auctions provided for in Articles 11 to 15 shall be consistent with this principle.

4. The rules on standard capacity products as set out in Article 9 and auctions as set out in Articles 11 to 15 shall apply to bundled capacity and unbundled capacity at an interconnection point.

5. For a given auction, the availability of the relevant standard capacity products shall be communicated in accordance with Articles 11 to 15 and according to the auction calendar.

6. An amount at least equal to 20% of the existing technical capacity at each interconnection point shall be set aside and offered in accordance with paragraph 7. If the available capacity is less than the proportion of technical capacity to be set aside, the whole of any available capacity shall be set aside.

This capacity shall be offered in accordance with point (b) of paragraph 7, while any remaining capacity set aside shall be offered in accordance with point (a) of paragraph 7.

7. Any capacity set aside pursuant to paragraph 6 shall be offered, subject to the following provisions:

(a) an amount at least equal to 10% of the existing technical capacity at each interconnection point shall be offered no earlier than in the annual yearly capacity auction as provided for in Article 11 held in accordance with the auction calendar during the fifth gas year preceding the start of the relevant gas year; and

(b) a further amount at least equal to 10% of the existing technical capacity at each interconnection point shall first be offered no earlier than the annual quarterly capacity auction as provided for in Article 12, held in accordance with the auction calendar during the gas year preceding the start of the relevant gas year.

8. In the case of incremental capacity, an amount at least equal to 10% of the incremental technical capacity at the concerned interconnection point shall be set aside and offered no earlier than the annual quarterly capacity auction as provided for in Article 12, held in accordance with the auction calendar during the gas

year preceding the start of the relevant gas year.

9. The exact proportion of capacity to be set aside pursuant to paragraphs 6 and 8 shall be subject to a stakeholder consultation, alignment between transmission system operators and approval by national regulatory authorities at each interconnection point. National regulatory authorities shall in particular consider setting aside higher shares of capacity with a shorter duration to avoid foreclosure of downstream supply markets.

10. Capacity created via non-market based procedures and for which the final investment decision has been taken without prior commitments from network users shall be offered and allocated as available standard capacity products as set out in this Regulation.

Article 9

Standard capacity products

1. Transmission system operators shall offer yearly, quarterly, monthly, daily and within-day standard capacity products.

2. Yearly standard capacity products shall be the capacity which may be applied for, in a given amount, by a network user for all gas days in a particular gas year (starting on 1 October).

3. Quarterly standard capacity products shall be the capacity which may be applied for, in a given amount, by a network user for all gas days in a particular quarter (starting on 1 October, 1 January, 1 April or 1 July respectively).

4. Monthly standard capacity products shall be the capacity which may be applied for, in a given amount, by a network user for all gas days in a particular calendar month (starting on the first day of each month).

5. Daily standard capacity products shall be the capacity which may be applied for, in a given amount, by a network user for a single gas day.

6. Within-day standard capacity products shall be the capacity which may be applied for, in a given amount, by a network user from a start time within a particular gas day until the end of the same gas day.

Article 10

Applied capacity unit

The capacity offered shall be expressed in energy units per unit of time. The following units shall be used: kWh/h or kWh/d. In case of kWh/d a flat flow rate over the gas day is assumed.

Article 11

Annual yearly capacity auctions

1. The yearly capacity auctions shall be held once a year.

2. Capacity for each yearly standard capacity product shall be auctioned through the annual yearly capacity auction using an ascending-clock auction algorithm in accordance with Article 17.

3. The auction process shall offer capacity at least for the upcoming 5 gas years and for no longer than the upcoming 15 gas years for existing capacity. When offering incremental capacity, the offer levels may be offered in yearly capacity auctions for a maximum of 15 years after the start of operational use.

4. As from 2020, annual yearly capacity auctions shall start on the first Monday of July each year unless otherwise specified in the auction calendar.

5. During the annual yearly capacity auction network users shall be able to participate in one or several concurrent auctions in relation to each interconnection point in order to apply for standard capacity products.

6. The capacity to be offered during the annual yearly capacity auction shall be equal to:

$$\mathbf{A - B - C + D + E - F}$$

Where:

A is the transmission system operator's technical capacity for each of the standard capacity products;

B for annual yearly auctions offering capacity for the next 5 years, is the amount of technical capacity (A) set aside in accordance with Article 8(7); for annual yearly auctions for capacity beyond the first 5 years, is the amount of technical capacity (A) set aside in accordance with Article 8(7);

C is the previously sold technical capacity, adjusted by the capacity which is re-offered in accordance with applicable congestion management procedures;

D is additional capacity, for such year, if any.

E is the incremental capacity for such year included in a respective offer level, if any;

F is the amount of incremental capacity (E), if any, set aside in accordance with Article 8(8) and (9).

7. The capacity to be offered may be either bundled capacity or unbundled capacity in accordance with Article 19. This also applies to all other auctions as set out in Articles 12 to 15.

8. At least 1 month before the auction starts, transmission system operators shall notify network users about the amount of firm capacity to be offered for each year for the upcoming annual yearly capacity auction.

9. The bidding rounds of each auction shall take place between 8.00 UTC to 17.00 UTC (winter time) or 7.00 UTC to 16.00 UTC (daylight saving) on all relevant gas days. Bidding rounds shall be opened and closed within each gas day, as specified in Article 17(2).

10. The allocation results of the auction shall be made available, as soon as reasonably possible, and no later than the next business day after the closing of the bidding round, simultaneously to individual network users participating in the respective auction.

In case of incremental capacity, the binding commitments of network users for contracting capacity, including whether the conditions for a repeated auction pursuant to Article 29(3) are met, shall be made available no later than the next business day after the closing of the bidding round, simultaneously to

individual network users participating in the respective auction. The results of the economic tests shall be made available no later than 2 business days after the closing of the bidding round, simultaneously to individual network users participating in the respective auction.

11. Aggregated information on auction results shall be published to the market.

Article 12

Annual quarterly capacity auctions

1. Four annual quarterly capacity auctions shall be held during each gas year.

2. Capacity for each quarterly standard capacity product shall be auctioned through the annual quarterly capacity auctions using an ascending-clock auction algorithm in accordance with Article 17.

3. Capacity for quarters of the upcoming gas year shall be auctioned via concurrent auctions for each quarter and in relation to each interconnection point as follows:

(a) for quarters one (October-December) through four (July-September) in the first annual quarterly capacity auction;

(b) for quarters two (January-March) through four (July-September) in the second annual quarterly capacity auction;

(c) for quarters three (April-June) through four (July-September) in the third annual quarterly capacity auction;

(d) for the last quarter (July-September) in the fourth annual quarterly capacity auction.

For each annual quarterly auction network users shall be able to participate in all of the concurrent auctions.

4. Each gas year the annual quarterly capacity auctions shall start on the following days, unless otherwise specified in the auction calendar:

(a) the first annual quarterly capacity auctions shall start on the first Monday of August;

(b) the second annual quarterly capacity auctions shall start on the first Monday of November;

(c) the third annual quarterly capacity auctions shall start on the first Monday of February;

(d) the fourth annual quarterly capacity auction shall start on the first Monday of May.

5. The capacity to be offered in all annual quarterly capacity auctions shall be equal to:

$$\mathbf{A - C + D}$$

Where:

A is the transmission system operator's technical capacity for each of the standard capacity products;

C is the previously sold technical capacity, adjusted by the capacity which is re-offered in accordance with applicable congestion management procedures;

D is additional capacity, for such quarter, if any.

6. Two weeks before the auctions start, transmission system operators shall notify network users about the amount of capacity to be offered for each quarter for the upcoming annual quarterly capacity auction.

7. The bidding rounds of each auction, shall take place between 8.00 UTC to 17.00 UTC (winter time) or 7.00 UTC to 16.00 UTC (daylight saving) on all relevant gas days. Bidding rounds shall be opened and

closed within each gas day, as specified in Article 17(2).

8. The allocation results of the auction shall be published, as soon as reasonably possible, and no later than the next business day after the closing of the bidding round, simultaneously to individual network users participating in the respective auction.

9. Aggregated information on the auction results shall be published to the market.

Article 13

Rolling monthly capacity auctions

1. The rolling monthly capacity auction shall be held once a month.

2. Capacity for each monthly standard capacity product shall be auctioned through the rolling monthly capacity auction using an ascending-clock auction algorithm according to Article 17. Each month, the monthly standard capacity product for the following calendar month shall be auctioned.

3. During the rolling monthly capacity auction network users shall be able to apply for one monthly standard capacity product.

4. Rolling monthly capacity auctions shall start on the third Monday of each month for the following monthly standard capacity product unless otherwise specified in the auction calendar.

5. The capacity to be offered in the rolling monthly capacity auction shall be, each month, equal to:

A – C + D

Where:

A is the transmission system operator's technical capacity for each of the standard capacity products;

C is the previously sold technical capacity, adjusted by the capacity which is re-offered in accordance with applicable congestion management procedures;

D is additional capacity, for such month, if any.

6. One week before the auction starts, transmission system operators shall notify network users about the amount of capacity to be offered for the upcoming rolling monthly capacity auction.

7. The bidding rounds of each auction shall take place between 8.00 UTC to 17.00 UTC (winter time) or 7.00 UTC to 16.00 UTC (daylight saving) on all relevant gas days. Bidding rounds shall be opened and closed within each gas day, as specified in Article 17(2).

8. The allocation results of the auction shall be published, as soon as reasonably possible, and no later than the next business day after the closing of the bidding round, simultaneously to individual network users participating in the respective auction.

9. Aggregated information on the auction results shall be published to the market.

Article 14

Rolling day-ahead capacity auctions

1. The rolling day-ahead capacity auction shall be held once a day.

2. Every day, a standard capacity product for the following gas day shall be auctioned through the rolling day-ahead capacity auction.

3. Capacity for each daily standard capacity product shall be auctioned through the rolling day-ahead capacity auction using a uniform price auction algorithm according to Article 18. Each day, the daily standard capacity product for the following gas day shall be auctioned.

4. During the rolling day-ahead capacity auction network users shall be able to apply for capacity for one daily standard capacity product.

5. The bidding round shall open every day at 15.30 UTC (winter time) or 14.30 UTC (daylight saving).

6. A capacity bid for the daily standard capacity product for the rolling day-ahead capacity auction shall be handled as follows: submission, withdrawal or amendment from 15.30 UTC to 16.00 UTC (winter time) or 14.30 UTC to 15.00 UTC (daylight saving).

7. The capacity to be offered in the rolling day-ahead capacity auction shall be, each day, equal to:

A – C + D

Where:

A is the transmission system operator's technical capacity for each of the standard capacity products;

C is the previously sold technical capacity, adjusted by the capacity which is re-offered in accordance with applicable congestion management procedures;

D is additional capacity, for such day, if any.

8. At the time the bidding round opens, transmission system operators shall notify network users about the amount of capacity to be offered for the upcoming rolling day-ahead capacity auction.

9. The allocation results of the auction shall be published, no later than 30 minutes after the closing of the bidding round, simultaneously to individual network users participating in the respective auction.

10. Aggregated information on the auction results shall be published to the market.

Article 15

Within-day capacity auctions

1. Subject to capacity being made available, a within-day capacity auction shall be held every hour during gas day using a uniform price auction algorithm in accordance with Article 18.

2. The first bidding round shall open directly on the next hour bar following the publication of results of the last day-ahead auction (including interruptible capacity if offered) in accordance with Article 14. The first bidding round closes at 1.30 UTC (winter time) or 0.30 UTC (daylight saving) before the gas day. The allocation of successful bids shall be effective from 5.00 UTC (winter time) or 4.00 UTC (daylight saving) on the relevant gas day.

3. The last bidding round shall close at 0.30 UTC (winter time) or 23.30 UTC (daylight saving) on the relevant gas day.

4. Network users shall be entitled to place, withdraw or amend bids from the opening of each bidding round until closure of that bidding round.

5. Each hour on the relevant gas day, capacity effective from the hour + 4 shall be auctioned as within-day capacity.

6. Each bidding round shall open at the start of every hour on the relevant gas day.

7. The duration of each bidding round shall be 30 minutes as of the opening of the bidding round.

8. The capacity to be offered in the within-day capacity auction shall be, each hour, equal to:

A – C + D

Where:

A is the transmission system operator's technical capacity for each of the standard capacity products;

C is the previously sold technical capacity, adjusted by the capacity which is re-offered in accordance with applicable congestion management procedures; D is additional capacity, if any.

9. Transmission system operators shall publish the available amount of within-day firm capacity on offer, after closure of the last day-ahead auction and in accordance with Article 32(9).

10. Transmission system operators shall provide network users who bid in the day-ahead auctions with the option to have valid unsuccessful bids automatically entered into the subsequent within-day auction.

11. The capacity shall be allocated within 30 minutes of the closure of the bidding round provided that the bids are accepted and the transmission system operator runs the allocation process.

12. The results of the auction shall be made available simultaneously to individual network users.

13. Aggregated information on the auction results shall be published at least at the end of each day.

Article 16

Auction algorithms

1. If several standard capacity products are offered during an auction, the respective allocation algorithm shall be applied separately for each standard capacity product when it is being allocated. Bids for the different standard capacity products shall be considered independently from each other in the application of the auction algorithm.

2. For annual yearly, annual quarterly and rolling monthly capacity auctions, an ascending clock auction algorithm, with multiple bidding rounds, as provided for in Article 17, shall be applied.

3. For rolling day-ahead capacity auctions and within-day capacity auctions, a uniform-price auction algorithm, with a single bidding round, shall be applied in accordance with Article 18.

Article 17

Ascending clock auction algorithm

1. Ascending clock auctions shall enable network users to place volume bids against escalating prices announced in consecutive bidding rounds, starting at the reserve price P0.

2. The first bidding round, with an associated price equal to the reserve price P0, shall have a duration of 3 hours. Subsequent bidding rounds shall have a duration of 1 hour. There shall be a period of 1 hour between bidding rounds.

3. A bid shall specify:

(a) the identity of the network user applying;

(b) the concerned interconnection point and direction of the flow;

(c) the standard capacity product for which the capacity is applied for;

(d) per price step, the amount of capacity for the respective standard capacity product applied for;

(e) where incremental capacity is offered, the concerned offer level.

4. A bid shall be considered valid if it is submitted by a network user and complies with all provisions of this Article.

5. In order for network users to participate in an auction, it shall be mandatory for network users to place a volume bid in the first bidding round.

6. Transmission system operators shall provide network users with the option to enter bids automatically against any price step.

7. Once the relevant bidding round closes, no modification, withdrawal or variation to valid bids shall be accepted. All valid bids shall become binding commitments of a network user to book capacity to the amount requested per announced price, provided the clearing price of the auction is that which is announced in the relevant bidding round.

8. The volume bid in any bidding round per network user shall be equal or smaller to the capacity offered in a specific auction. The volume bid per network user at a specific price shall be equal to or less than the volume bid placed by this network user in the previous round, except where paragraph 16 applies.

9. Bids may be freely entered, modified and withdrawn during a bidding round, providing all bids comply with paragraph 8. Valid bids shall remain valid until modified or withdrawn.

10. A large price step and a small price step shall be defined per interconnection point and per standard capacity product and shall be published in advance of the relevant auction. The small price step shall be set such that an increase by an integer number of small price steps is equal to an increase by a large price step.

11. The determination of the large price step shall seek to minimise, as far as reasonably possible, the length of the auction process. The determination of the small price step shall seek to minimise, as far as reasonably possible, the level of unsold capacity where the auction closes at a price higher than the reserve price.

12. If the aggregate demand across all network users is less than or equal to the capacity offered at the end of the first bidding round, the auction shall close.

13. If the aggregate demand across all network users is greater than the capacity offered at the end of the first bidding round or a subsequent bidding round, a further bidding round shall be opened with a price

equal to the price in the previous bidding round, plus the large price step.

14. If the aggregate demand across all network users is equal to the capacity offered at the end of the second bidding round or a subsequent bidding round, the auction shall close.

15. If a first-time undersell occurs, a price reduction shall take place and a further bidding round shall be opened. The further bidding round will have a price equal to the price applicable in the bidding round preceding the first-time undersell, plus the small price step. Further bidding rounds with increments of the small price step shall then be opened until the aggregate demand across all network users is less than or equal to the capacity offered, at which point the auction shall close.

16. The volume bid per network user in all bidding rounds where small price steps are applied shall be equal to or less than the volume bid placed by this network user in the bidding round which preceded the first-time undersell. The volume bid per network user for a specific small price step shall be equal to or smaller than the volume bid placed by this network user in the previous bidding round of small price steps. The volume bid per network user in all bidding rounds where small price steps are applied shall be equal to or greater than the volume bid placed by this network user during the bidding round in which the first-time undersell occurred.

17. If the aggregate demand across all network users is greater than the capacity offered in the bidding round with a price equal to that which led to the first-time undersell, minus one small price step, the auction shall close. The clearing price shall be the price that led to the first-time undersell and the successful bids shall be those submitted during the original bidding round in which the first-time undersell occurred.

18. After each bidding round, the demand of all network users in a specific auction shall be published as soon as reasonably possible in an aggregated form.

19. The price announced for the last bidding round in which the auction closes shall be considered as the clearing price of the specific auction, except cases where paragraph 17 applies.

20. All network users who have placed valid volume bids at the clearing price shall be allocated the capacity according to their volume bids at the clearing price. Where incremental capacity is offered, the allocation of incremental capacity shall be subject to the outcome of the economic test according to Article 22. Successful network users shall pay the clearing price of the specific auction, which may be a fixed or a floating payable price approach set out in Article 24 of Regulation (EU) 2017/460, and any other possible charges applicable at the time when the capacity allocated to them can be used.

21. Following every closed auction, the final auction result including the aggregation of allocated capacities and the clearing price shall be published. Successful network users shall be informed about the amount of capacities they are allocated, individual information shall be communicated only to concerned parties. Where incremental capacity is allocated, this paragraph shall only apply to the auction results of the offer level offering the largest amount of capacity that resulted in a positive economic test according to Article 22(3).

22. If an ascending clock auction has not ended by the scheduled starting point (according to the auction calendar) of the next auction for capacity covering the same period, the first auction shall close and no capacity shall be allocated. The capacity shall be offered in the next relevant auction.

Article 18

Uniform-price auction algorithm

1. In a uniform-price auction, there is a single bidding round in which the network user bids price as well as quantity.

2. During the bidding round of a given auction, network users may submit up to 10 bids. Each bid shall be treated independently from other bids. After the closure of the bidding round, remaining bids may not be modified or withdrawn.

3. A bid shall specify:

(a) the identity of the network user applying;

(b) the concerned interconnection point and direction of the flow;

(c) the standard capacity product for which the capacity is applied for;

(d) the amount of capacity for the respective standard capacity product applied for, which shall be equal to or smaller than the capacity offered in a specific auction;

(e) the minimum amount of capacity for the respective standard capacity product which the network user is willing to be allocated according to the relevant algorithm in case the network user is not allocated the amount requested in accordance with point (d);

(f) the bid prices, which shall not be less than the reserve price applicable for the relevant standard capacity product, which the network user is willing to pay in respect of the capacity applied for. Bids with a bid price below the reserve price shall not be accepted.

4. The transmission system operator shall rank all bids relating to a given standard capacity product according to their bid price, the highest price ranking first.

5. All remaining bids at bidding round closing time shall be considered as binding on those network users that are allocated at least the minimum amount of capacity requested in accordance with point (e) of paragraph 3.

6. Following the ranking of the bids in accordance with paragraph 4, and subject to paragraphs 7 to 10, capacity shall be allocated to the bids in function of their price ranking. All bids for which capacity is allocated shall be considered as successful. After the allocation of capacity, the remaining unallocated capacity shall be reduced by such quantity.

7. Following the application of paragraph 6 and subject to paragraph 9, where the amount of capacity bid for by a network user exceeds the remaining unallocated capacity (after capacity has been allocated to network users placing higher bids), this network user shall be allocated capacity equal to the remaining unallocated capacity.

8. Following the application of paragraph 7 and subject to paragraph 9, where each of two or more bids specifies the same bid price, and the amount of relevant capacity remaining applied for in aggregate under such bids exceeds the remaining unallocated amount, the remaining unallocated amount shall be allocated pro rata to the amounts applied for in each such bid.

9. Where the amount to be allocated in respect of a bid pursuant to paragraphs 6, 7 or 8 is less than the minimum amount of capacity according to point (e) of paragraph 3, the bid shall be considered unsuccessful, and a revised allocation shall be made between remaining equal price bid(s) under paragraph 8,

or an allocation shall be made in respect of the next priced bid, pursuant to paragraph 6.

10. Where the remaining amount to be allocated in respect of any bid pursuant to paragraphs 6, 7, 8 or 9 is equal to zero, no further capacity shall be allocated to the remaining bids. Those bids shall be considered unsuccessful.

11. The clearing price shall be defined as the price of the lowest successful bid, if the demand exceeds the offer at the reserve price. In all other cases, the clearing price shall be equal to the reserve price.

Successful network users shall pay the clearing price of the specific auction, which may be a fixed or floating payable price approach as set out in Article 24 of Regulation (EU) 2017/460 and any other possible charges applicable at the time when the capacity allocated to them can be used.

CHAPTER IV
BUNDLING OF CAPACITY AT INTERCONNECTION POINTS

Article 19
Bundled capacity products

Adjacent transmission system operators shall jointly offer bundled capacity products, according to the following principles:

1. on both sides of an interconnection point all firm capacity shall be offered as bundled capacity, in so far as there is available firm or incremental capacity on both sides of the interconnection point;

2. transmission system operators shall offer capacity for the relevant standard capacity product on a booking platform, in accordance with Article 37 and in accordance with the applicable allocation procedure, as set out in Chapter III;

3. the bundled capacity to be offered by the transmission system operators concerned at an interconnection point shall be contracted through a single allocation procedure;

4. network users shall comply with applicable terms and conditions of the transport contract(s) of the transmission system operators concerned as from the time the transport capacity is contracted;

5. where there is more available firm capacity on one side of an interconnection point than on the other side for any period considered, the transmission system operator with the most available firm capacity may offer such extra capacity to the network users as an unbundled product in accordance with the auction calendar and the following rules:

(a) where there is an existing unbundled transport contract at the other side of the interconnection point, capacity may be offered on an unbundled basis not exceeding the amount and duration of the existing transport contract at the other side;

(b) where such extra capacity does not fall under point (a) of paragraph 5, it may be offered for a maximum period of 1 year;

6. any unbundled capacity allocated in accordance with paragraph 5 may be used and nominated as such. It may also be traded on the secondary market;

7. adjacent transmission system operators shall establish a joint nomination procedure for bundled capac-

ity, providing network users with the means to nominate the flows of their bundled capacity via a single nomination;

8. the obligations to offer bundled capacity also apply, to the extent that they are relevant, to secondary capacity markets. Without prejudice to paragraph 1, capacity originally allocated as bundled capacity can only be resold as bundled capacity on the secondary market;

9. where two or more interconnection points connect the same two adjacent entry-exit systems, the adjacent transmission system operators concerned shall offer the available capacities at the interconnection points at one virtual interconnection point. In case more than two transmission system operators are involved because capacity in one or both entry-exit systems is marketed by more than one transmission system operator, the virtual interconnection point shall include all of these transmission system operators, to the extent possible. In all cases a virtual interconnection point shall be established only if the following conditions are met:

(a) the total technical capacity at the virtual interconnection points shall be equal to or higher than the sum of the technical capacities at each of the interconnection points contributing to the virtual interconnection points;

(b) they facilitate the economic and efficient use of the system including but not limited to rules set out in Article 16 of Regulation (EC) No 715/2009.

Adjacent transmission system operators shall start the necessary analysis and shall establish functional virtual interconnection points no later than 1 November 2021.

Article 20

Alignment of main terms and conditions for bundled capacity products

<…>

4. **<…>** Transmission system operators, subject to the approval of national regulatory authority, may apply the terms and conditions set out in the template **published on ENTSOG's website covering contractual provisions which are not affected by fundamental differences in principles of national law or jurisprudence, for the offer of bundled capacity products** in the case of newly contracted bundled capacity products.

Article 21

Bundling in case of existing transport contracts

1. The network users who are parties to unbundled transport contracts at respective interconnection points, shall aim to reach an agreement on the bundling of the capacity via contractual arrangements ('bundling arrangement'), in compliance with the provisions set out in Article 19. These network users and transmission system operators shall report to the relevant national regulatory authorities of all bundling arrangements reached by all parties to existing transport contracts.

2. The transmission system operators who are parties to the existing transport contracts may participate in the discussions regarding the bundling arrangement at any time, upon invitation of the network users

who are parties to the existing transport contracts.

3. **Nine months after the expiry of the deadline for transposition of this Regulation**, transmission system operators shall offer network users holding mismatched unbundled capacity at one side of an interconnection point a free-of-charge capacity conversion service. Such a capacity conversion service shall apply to annual, quarterly or monthly capacity products for bundled firm capacity at that interconnection point which the network user had to acquire because insufficient unbundled capacity on the other side of the interconnection point was offered by an adjacent transmission system operator. This service shall be offered on a non-discriminatory basis and shall prevent additional charges from being applied to network users for capacity they already hold. In particular, payments for the part of the contracted bundled capacity which network users already hold as mismatched unbundled capacity shall be limited to a possible auction premium. This service shall be based on the conversion model **developed** by ENTSOG **<…>**. The implementation may be facilitated by the capacity booking platform(s) referred to in Article 37. The use of this service shall be reported annually to the respective national regulatory authorities.

4. Where a bundling arrangement is agreed upon between respective network users, the transmission system operators involved at the interconnection point shall be informed by the parties of such intended bundling arrangement without undue delay and the transfer of the concerned capacity shall be implemented.

In any case, the bundling arrangement shall be implemented subject to the applicable terms and conditions of existing related transport contracts. Once the bundling arrangement is implemented, the relevant capacity shall be treated as bundled capacity.

5. In any case, the duration of the bundling arrangements regarding the capacity bundled under the amendment of the existing contracts shall not exceed the duration of the original transport contracts.

6. All capacity shall be bundled at the earliest opportunity. Existing transport contracts for unbundled capacity cannot be renewed, prolonged or rolled over after their expiration date. Such capacity shall become available capacity as of the expiration date of the transport contracts.

CHAPTER V
INCREMENTAL CAPACITY PROCESS

Article 22
Economic test

1. The economic test set out in this Article shall be carried out by the transmission system operator(s) or by the national regulatory authority, as decided by the national regulatory authority, for each offer level of an incremental capacity project after binding commitments of network users for contracting capacity have been obtained by the involved transmission system operators and shall consist of the following parameters:

(a) the present value of binding commitments of network users for contracting capacity, which is calculated as the discounted sum of the following parameters:

(i) the sum of the respective estimated reference prices and a potential auction premium and a potential mandatory minimum premium multiplied by the amount of contracted incremental capacity;

(ii) the sum of a potential auction premium and a potential mandatory minimum premium multiplied

by the amount of available capacity that was contracted in combination with the incremental capacity;

(b) the present value of the estimated increase in the allowed or target revenue of the transmission system operator associated with the incremental capacity included in the respective offer level, as approved by the relevant national regulatory authority in accordance with Article 28(2);

(c) the f-factor.

2. The outcome of the economic test application shall be:

(a) positive, where the value of the parameter set out in paragraph 1(a) is at least equal to the share of the parameter set out in paragraph 1(b) as defined by the f-factor;

(b) negative, where the value of the parameter set out in paragraph 1(a) is lower than the share of the parameter set out in paragraph 1(b) as defined by the f-factor.

3. An incremental capacity project shall be initiated if the economic test has a positive outcome on both sides of an interconnection point for at least one offer level that includes incremental capacity. In case more than one offer level results in a positive outcome of the economic test, the offer level with the largest amount of capacity that resulted in a positive outcome shall be used for proceeding with the incremental capacity project towards commissioning. In case no offer level results in a positive outcome, the specific incremental capacity process shall be terminated.

Article 23

The f-factor

1. When applying the economic test referred to in Article 22, the national regulatory authority shall set the level of the f-factor for a given offer level, taking into account the following:

(a) the amount of technical capacity set aside in accordance with Article 8(8) and (9);

(b) positive externalities of the incremental capacity project on the market or the transmission network, or both;

(c) the duration of binding commitments of network users for contracting capacity compared to the economic life of the asset;

(d) the extent to which the demand for the capacity established in the incremental capacity project can be expected to continue after the end of the time horizon used in the economic test.

2. If the economic test has a positive outcome then the investment costs associated with the incremental capacity shall be reflected in an increase in the allowed or target revenue in accordance with the applicable national rules.

Article 24

Combination into single economic test

1. In order to facilitate the offer of bundled capacity products, individual economic test parameters of the involved transmission system operators for a given offer level shall be combined into a single economic test.

2. The single economic test shall consist of the following parameters:

(a) the present value of binding commitments of network users for contracting bundled capacity, which is the sum of the values according to Article 22(1)(a) of the involved transmission system operators;

(b) the sum of the individual present values of the estimated increase in the allowed or target revenue of the involved transmission system operators that is attributable to the incremental capacity of a respective offer level;

(c) the f-factor that defines the share of the parameter set out in point (b) that needs to be covered by the parameter set out in point (a) and allows all the involved transmission system operators individually to cover their upfront defined respective shares.

3. The outcome of the single economic test application shall be positive where all underlying economic tests result in positive outcomes as set out in Article 22(2)(a) taking into account a possible redistribution of revenues according to paragraphs 4 and 5. Otherwise, the outcome of the single economic test application shall be negative.

4. In case a redistribution of revenues could potentially lead to a decrease in the level of binding commitments of network users for contracting capacity required for a positive single economic test outcome, transmission system operators may submit to the relevant national regulatory authorities for coordinated approvals the mechanisms for a redistribution of revenues from incremental capacity.

5. A redistribution of revenues may be carried out as follows:

(a) during the process of integrating the individual economic test parameters into a single economic test;

(b) in case the single economic test has a negative outcome while at the same time the level of binding commitment of network users for contracting capacity exceeds the minimum required to cover the individual present value of the increase in the allowed or target revenue for at least one of the involved transmission system operators.

Article 25

Publication requirements relating to the economic test

1. For a given incremental capacity project, the transmission system operator(s) shall submit to the relevant national regulatory authority(-ies) for approval the following information for each offer level:

(a) the reference prices estimated for the time horizon of the initial offer of incremental capacity that are used for the calculation of the parameter set out in Article 22(1)(a) and 24(2)(a), respectively in case separate or a single economic test is applied;

(b) the parameters set out in Article 22(1)(b) to (c) and 24(2)(b) to (c), respectively in case separate or a single economic test is applied;

(c) if applicable, the range of the level for the mandatory minimum premium referred to in Article 33(4) of Regulation (EU) 2017/460 for each offer level and interconnection point applied in the first auction and possibly in subsequent auctions in which the incremental capacity is offered as defined in Article 33(3) of Regulation (EU) 2017/460.

2. Following the approval by the relevant national regulatory authority(-ies), the information set out in paragraph 1 shall be published by the involved transmission system operator(s) as set out in Article 28(3).

Article 26

Market demand assessment

1. Immediately after the start of the annual yearly capacity auction at least in each odd-numbered year, transmission system operators shall cooperate in the processes of assessing market demand for incremental capacity and of conducting technical studies for incremental capacity projects for their joint interconnection points. The first demand assessment shall be conducted in **2021**.

2. No later than 8 weeks after the start of the annual yearly capacity auction at least in each odd-numbered year, the concerned transmission system operators on each side of an entry-exit system border shall produce common market demand assessment reports, each covering all interconnection points of at least one entry-exit system border. The market assessment report shall evaluate the prospective demand for incremental capacity of all network users pursuant to paragraph 8 and shall state whether an incremental capacity project is initiated.

3. The market demand assessment report shall be published in one or more official languages of the **Contracting Party** and to the extent possible in English on the websites of the concerned transmission system operators no later than 16 weeks after the start of the annual yearly capacity auction at least in each odd-numbered year.

4. **Transmission system operators**, shall **complete** the demand assessment reports **based on the** standard template **developed by ENTSOG** and publish the reports on **their** website.

5. If demand for incremental capacity is expressed by network users no later than 8 weeks after the start of the annual yearly auction in even-numbered years, the concerned transmission system operators may agree to conduct a market demand assessment also in an even-numbered year, provided that:

(a) the process set out in Articles 26-30 can be concluded before the start of the next demand assessment cycle referred to in paragraph 1; and

(b) the auction calendar is respected.

6. Transmission system operators shall consider non-binding demand indications submitted no later than 8 weeks after the start of the annual yearly auction in the ongoing market demand assessment.

7. Transmission system operators may consider non-binding demand indications submitted after the deadline set out in paragraph 6 in the ongoing market demand assessment, or introduce them into the next market demand assessment.

8. The non-binding demand indications referred to in paragraphs 6 and 7 shall contain at least the following information:

(a) the two or more adjacent entry-exit systems between which demand for incremental capacity - on one or both sides of an interconnection point - is expressed and the requested direction;

(b) the gas year(s) for which a demand for incremental capacity is expressed;

(c) the amount of capacity demanded between the respective entry-exit systems;

(d) information on non-binding demand indications which were or will be submitted to other transmission system operators, in case such indications are linked to each other, such as demand for capacities at several related interconnection points;

9. Network users shall indicate whether their demand is subject to any conditions in relation to points (a)

to (d) of paragraph 8.

10. Transmission system operators shall respond to non-binding demand indications within 16 weeks after the start of the annual yearly auctions, or within 8 weeks of receipt of demand indications in accordance with paragraph 7. The response shall provide at least the following:

(a) whether the demand indicated can be considered by the transmission system operator in the ongoing process; or

(b) whether, in the case of demand indications in accordance with paragraph 7, they are sufficient to consider the initiation of an incremental capacity process according to paragraph 5; or (c) in which market demand assessment report, according to paragraph 3, the indicated demand will be assessed, provided that the demand indicated cannot be considered under points (a) or (b), which is to be justified.

11. A transmission system operator may charge fees for activities resulting from the submission of non-binding demand indications. Such fees shall reflect the administrative costs for submitting demand indications, and shall be subject to approval by the relevant national regulatory authority and published on the transmission system operator's website. Such fees shall be reimbursed to the respective network user if the economic test for at least one offer level that includes incremental capacity at the respective interconnection point is positive.

12. The market demand assessment report shall take into account all of the following criteria:

(a) whether the **<…>** 10-year network development plan, **where applicable**, identifies a physical capacity gap whereby a specific region is undersupplied in a reasonable peak scenario and where offering incremental capacity at the interconnection point in question could close the gap; or a national network development plan identifies a concrete and sustained physical transport requirement;

(b) whether no yearly standard capacity product linking two adjacent entry-exit systems is available in the annual yearly capacity auction for the year in which incremental capacity could be offered for the first time and in the 3 subsequent years, because all the capacity has been contracted;

(c) whether network users submitted non-binding demand indications requesting incremental capacity for a sustained number of years and all other economically efficient means for maximising the availability of existing capacity are exhausted.

13. The market demand assessment report shall include at least the following:

(a) a conclusion on whether to initiate an incremental capacity project;

(b) the aggregated non-binding demand indications received no later than 8 weeks after the start of the annual yearly capacity auction in the year of the publication of the respective demand assessment report;

(c) the aggregated non-binding demand indications submitted after the deadline referred to in paragraph 6 during the previous incremental capacity process in case these demand indications were not considered for the previous demand assessment;

(d) the aggregated non-binding demand indications submitted in accordance with paragraph 7 where the transmission system operators has decide to consider them in the ongoing market demand assessment;

(e) an assessment of the expected amount, direction and duration of demand for incremental capacity at the interconnection points with each adjacent entry-exit system or interconnectors;

(f) a conclusion on whether technical studies for incremental capacity projects will be conducted, specifying for which interconnection points and for which expected demand level;

(g) provisional timelines for the incremental capacity project, technical studies and the consultation referred to in Article 27(3);

(h) a conclusion on what fees, if any, will be introduced, according to paragraph 10;

(i) the types and, where available the aggregated size of conditional demand indications according to point paragraph 9;

(j) how transmission system operators intend to apply Article 11(3) with regards to limitation of the number of years being offered in the annual yearly capacity auctions during the incremental process.

14. Transmission system operators and the relevant national regulatory authorities shall publish respective points of contact for incremental capacity projects initiated at the publication of the market demand assessment report and update this information on a regular basis throughout the project.

Article 27

Design phase

1. The day after the publication of the market demand assessment report, the design phase shall start, if the demand assessment report identifies demand for incremental capacity projects.

2. Transmission system operators active at the respective interconnection point shall conduct technical studies for incremental capacity projects in order to design the incremental capacity project and coordinated offer levels based on technical feasibility and the market demand assessment reports.

3. No later than 12 weeks after the start of the design phase, the concerned transmission system operators shall conduct a joint public consultation on the draft project proposal in one or more official languages of the **Contracting Party** and to the extent possible in English for a minimum of 1 month and no longer than 2 months. These operators shall take all reasonable steps to ensure cross-border coordination.

The consultation shall cover at least the following elements:

(a) a description of the incremental capacity project, including a cost estimate;

(b) the offer levels for bundled capacity products at the interconnection point;

(c) where relevant, based on conditional demand indications received, the transmission system operators' proposed alternative allocation mechanism including its justification;

(d) provisional timelines of the incremental capacity project;

(e) general rules and conditions that a network users must accept to participate and access capacity in the binding capacity allocation phase of the incremental capacity process, including any collateral to be provided by network users and how possible delays in the provision of capacity or the event of a disruption to the project are dealt with contractually;

(f) where a fixed price approach is followed for the incremental capacity project, the elements IND and RP described in Article 24(b) of Regulation (EU) 2017/460.

(g) the level of user commitments, expressed as an estimate of the f-factor as applied in accordance with Article 23, which, after having consulted with the transmission system operators, is proposed and subsequently approved by the concerned national regulatory authorities;

(h) any additional demand indications received in accordance with Article 26(7);

(i) whether the incremental capacity is likely to result in a sustained, significant decrease in the utilisation of other non-depreciated gas infrastructure in the same and adjacent entry-exit systems or along the same gas transport route.

4. In the process of designing coordinated offer levels, the transmission system operators shall closely co-operate with the involved national regulatory authorities and coordinate across borders in order to enable offers of incremental capacity as bundled products. The project proposal and design of coordinated offer levels shall take into account the results of the consultation provided for in paragraph 3.

Article 28

Approval and publication

1. Following the consultation and finalisation of the design phase for an incremental capacity project in accordance with Article 27, the involved transmission system operators shall submit the project proposal for an incremental capacity project to the relevant national regulatory authorities for coordinated approvals. The project proposal shall also be published by the involved transmission system operators in one or more official languages of the **Contracting Party** and to the extent possible in English and shall include at least the following information:

(a) all offer levels, reflecting the range of expected demand for incremental capacity at the relevant interconnection points as a result of the processes provided for in paragraph 3 of Article 27 and Article 26;

(b) the general rules and conditions that a network user must accept to participate and access capacity in the binding capacity allocation phase of the incremental capacity process, including any collaterals to be provided by network users and how possible delays in the provision of capacity or the event of a disruption to the project are dealt with contractually;

(c) timelines of the incremental capacity project, including any changes since the consultation described in paragraph 3 of Article 27, and measures to prevent delays and minimise the impact of delays;

(d) the parameters defined in Article 22(1);

(e) whether an exceptionally extended time horizon for contracting capacity for an additional period of up to 5 years beyond the allocation of up to 15 years after the start of the operational use may be required, in accordance with Article 30;

(f) where applicable, the proposed alternative allocation mechanism including its justification pursuant to Article 30(2) as well as the conditions approved by the transmission system operator for the binding phase pursuant to Article 30(3);

(g) where a fixed price approach is followed for the incremental capacity project, the elements described in Article 24(b) of Regulation (EU) 2017/460.

2. Within 6 months of receipt of the complete project proposal by the last of the relevant regulatory authorities, those national regulatory authorities shall publish coordinated decisions on the project proposal defined in paragraph 1 in one or more official languages of the **Contracting Party** and to the extent possible in English. The decisions shall include justifications. National regulatory authorities shall inform each other of the receipt of the project proposal and its completeness in order to determine the start of the 6 months period.

When preparing the national regulatory authority's decision, each national regulatory authority shall consider the views of the other national regulatory authorities involved. In any case national regulatory authorities shall take into account any detrimental effects on competition or the effective functioning of the internal gas market associated with the incremental capacity projects concerned.

If a relevant national regulatory authority objects to the submitted project proposal, it shall inform the other involved national regulatory authorities as soon as possible. In such a situation, all the national regulatory authorities involved shall take all reasonable steps to work together and reach a common agreement.

Where the relevant national regulatory authorities cannot reach an agreement on the proposed alternative allocation mechanism within the 6 months period referred to in the first subparagraph, the **Energy Community Regulatory Board** shall decide on the alternative allocation mechanism to be implemented, following the process set out in **Article 6(2a) of this Regulation**.

3. Upon the publication of the decisions of the relevant national regulatory authorities pursuant to paragraph 2 and no later than 2 months before the offer of incremental capacity in the annual yearly capacity auction, the transmission system operators shall publish jointly a notice in one or more official languages of the **Contracting Party** and to the extent possible in English including the following minimum information

(a) the information defined in paragraph 1 as approved by the national regulatory authorities;

(b) a template of the contract(s) related to the capacity offered.

Article 29

Auctioning of incremental capacity

1. Subject to the completion of the steps provided for in Article 27, the involved transmission system operators shall offer the incremental capacity together with the respective available capacity in the annual yearly capacity auction as standard bundled products in ascending clock auctions according to Article 17 as a default and in accordance with Article 8(8) and (9) and Article 19.

2. The auctions for the respective offer levels shall be conducted in parallel and independently from each other in accordance with Article 17 and subject to Article 8(2). Only coordinated offer levels shall be auctioned.

3. In order to minimise potential auction premia and to achieve a positive economic test outcome for the highest possible offer level, a new auction may be initiated once and only if:

(a) there were at least two offer levels set by the transmission system operators before the start of the auctions described in paragraph 2; and

(b) at least one offer level was unsuccessful and resulted in a negative economic test; and (c) the next smaller offer level of the lowest unsuccessful offer level resulted in a positive economic test, and cleared with an auction premium for at least one yearly standard capacity product.

If these conditions are met, the new auction may be initiated for the lowest unsuccessful offer level referred in point (b).

4. If the new auction does not result in a positive economic test outcome, the allocation results of the original auction referred to in point (c) shall prevail in accordance with Articles 17(20) and (21).

Article 30

Principles for alternative allocation mechanisms

1. An alternative allocation mechanism covers a maximum of 15 years after the start of operational use.

If the economic test could not be passed based on the 15 years' bookings, national regulatory authorities may exceptionally extend the time horizon by up to 5 additional years.

2. An alternative capacity allocation mechanism can be used, subject to national regulatory authorities' approval, where it is reasonable to conclude from the market demand assessment pursuant to Article 26 or the consultation defined in Article 27(3) that the ascending clock auction is not suitable and that the incremental capacity project fulfils both of the following conditions:

(a) it involves more than two entry-exit systems and bids are requested along several interconnection points during the allocation procedure;

(b) bids with a duration of more than 1 year are requested.

3. In an alternative allocation mechanism network users may submit binding conditional bids for contracting capacity subject to one or more of the following conditions specified by the transmission system operators in the approved project proposal pursuant to Article 28(1):

(a) commitments linking or excluding commitments at other interconnection points;

(b) commitments across a number of different yearly standard capacity products at an interconnection point;

(c) commitments conditional on the allocation of a specific or minimum amount of capacity.

4. The alternative allocation mechanism is subject to approvals by the concerned national regulatory authorities according to Article 28(2). The mechanism shall be transparent and non-discriminatory but may allow for the prioritisation of booking duration or bids for higher amounts of capacity for a yearly standard capacity product.

5. If either booking duration or bids for higher amounts of capacity are prioritised, national regulatory authorities shall decide on setting aside an amount of at least 10 % and up to 20 % of the technical capacity at each interconnection point when applying Article 8(8). Capacity set aside in this manner shall be offered in accordance with Article 8(7).

Article 31

Transitional arrangements

In the case of incremental capacity projects initiated before the **expiry of the deadline for transposition** of this Regulation **in the Energy Community**, Articles 26 to 30 shall apply unless such projects have been granted the applicable approvals for capacity allocation by the respective national regulatory authorities before **4 month after expiry of the deadline for transposition of this Regulation in the Energy Community.**

CHAPTER VI
INTERRUPTIBLE CAPACITY

Article 32
Allocation of interruptible services

1. As from **9 months after the expiry of the deadline for transposition of this Regulation in the Energy Community**, transmission system operators may only offer standard capacity products for interruptible capacity of a duration longer than one day if the corresponding monthly, quarterly or yearly standard capacity product for firm capacity was sold at an auction premium, was sold out, or was not offered.

2. Transmission system operators shall offer a daily capacity product for interruptible capacity in both directions at interconnection points where the respective standard capacity product for firm capacity was sold out day-ahead or was not offered. At unidirectional interconnection points where firm capacity is offered only in one direction, transmission system operators shall offer at least a daily product for interruptible capacity in the other direction.

3. If interruptible capacity is offered, this shall not be detrimental to the amount of firm capacity on offer. Transmission system operators shall not set aside capacity that can be offered as firm capacity in order to offer it as interruptible capacity.

4. To the extent interruptible capacity products other than daily products are offered, the same standard capacity products for firm capacity shall also apply for interruptible capacity, in terms of duration of the products.

5. To the extent interruptible capacity is offered, it shall be allocated via an auction process with the exception of within-day interruptible capacity.

6. Within-day interruptible capacity shall be allocated by means of an over-nomination procedure.

7. Within-day interruptible capacity shall only be allocated when firm capacity, whether technical capacity or additional capacity, is sold out.

8. Where auctions are held for any interruptible products longer than within-day transmission system operators shall, if known, publish the amounts of interruptible capacity on offer before the start of the auction process.

9. If offered, interruptible capacity shall be allocated by means of a separate auction after firm capacity of equal duration has been allocated, but before the auction of firm capacity with a shorter duration starts, with the exception of within-day interruptible capacity.

10. If offered, interruptible capacity auctions shall be conducted in accordance with the same design principles and timescales as applied for firm capacity. The exact auction dates to be used for the interruptible capacity auctions shall be detailed within the auction calendar with the exception of within-day interruptible capacity. For the annual yearly, all annual quarterly and all rolling monthly capacity auctions, the transmission system operators shall notify network users about the amount of interruptible capacity to be offered one week before the auction starts. Where an auction of firm capacity has not closed on the scheduled start day for the interruptible auctions, the interruptible auctions shall open no later than the next business day after the closing of the respective auctions of firm capacity. In such cases, any change in the offered amounts shall be notified at least 12 hours before the start of the respective interruptible capacity auction.

Article 33

Minimum interruption lead times

1. Interruptible capacities shall have minimum interruption lead times, which shall be decided jointly by adjacent transmission system operators.

2. The default minimum interruption lead time for a given gas hour shall be 45 minutes after the start of the re-nomination cycle for that gas hour. Where two transmission system operators wish to shorten the lead time for interruptions, any related agreement entered into between the transmission system operators shall be subject to competent national regulatory authority approval.

Article 34

Coordination of interruption process

The transmission system operator that initiates the interruption shall notify the relevant adjacent transmission system operator. Adjacent transmission system operators shall notify their respective affected network users as soon as possible, but with due regard to the reliability of the information.

Article 35

Defined sequence of interruptions

1. The order in which interruptions shall be performed, if the total of nominations exceeds the quantity of gas that can flow at a certain interconnection point, shall be determined based on the contractual time stamp of the respective transport contracts on an interruptible basis. In case of an interruption, transport contract coming into force earlier shall prevail over transport contract coming into force later.

2. If, after applying the procedure provided for in paragraph 1, two or more nominations are ranked at the same position within the interruption order and the transmission system operator does not interrupt all of them, a pro rata reduction of these specific nominations shall apply.

3. To accommodate the differences between the various interruptible capacity services within the **Energy Community**, the adjacent transmission system operators shall implement and coordinate the joint procedures provided for in this Article on an interconnection point by interconnection point basis.

Article 36

Reasons for interruptions

Transmission system operators shall include reasons for interruptions either directly in their interruptible transport contracts or in the general terms and conditions that govern these contracts. Reasons for interruptions can include but are not limited to gas quality, pressure, temperature, flow patterns, use of firm

contracts, maintenance, upor downstream constraints, public service obligations and capacity management deriving from congestion management procedures.

CHAPTER VII
CAPACITY BOOKING PLATFORMS

Article 37
Capacity booking platforms

1. Transmission system operators shall apply this Regulation by offering capacity by means of one or a limited number of joint web-based booking platforms. Transmission system operators can operate such platforms themselves or via an agreed party that, where necessary, acts on behalf of them towards the network users.

2. Joint booking platforms shall apply the following rules:

(a) the rules and procedures for the offer and allocation of all capacity in accordance with Chapter III shall apply;

(b) the establishment of a process to offer firm bundled capacity in accordance with Chapter IV shall have priority;

(c) functionalities for network users to offer and obtain secondary capacity shall be provided;

(d) in order to use the services of the booking platforms network users shall accede to and be compliant with all applicable legal and contractual requirements that enable them to book and use capacity on the relevant transmission system operators' network under a transport contract;

(e) capacity at any single interconnection point or virtual interconnection point shall be offered at not more than one booking platform but a transmission system operator may offer capacity at different interconnection or virtual interconnection points through different booking platforms.

3. Within 6 months from **expiry of the deadline for transposition** of this Regulation in the **Energy Community** all transmission system operators shall reach a contractual agreement to use a single booking platform to offer capacity on the two sides of their respective interconnection points or virtual interconnection points. If no agreement is reached by the transmission system operators within that period, the matter shall be referred immediately by the transmission system operators to the respective national regulatory authorities. The national regulatory authorities shall then, within a period of a further 6 months from the date of referral, jointly select the single booking platform for a period not longer than 3 years. If the national regulatory authorities are not able to jointly select a single booking platform within 6 months from the date of referral, Article **(2a) of this Regulation** shall apply. The **Energy Community Regulatory Board** shall decide on the booking platform to be used, for a period not longer than 3 years, at the specific interconnection point or virtual interconnection point.

4. In case the selection of the booking platform at an interconnection point or virtual interconnection point was made either by the national regulatory authorities or by the **Energy Community Regulatory Board**, the transmission system operators shall reach a contractual agreement on the use of a booking platform at the latest by the end of the period referred to in the last sentence of paragraph 3, for which the selection was made by the national regulatory authorities or the **Energy Community Regulatory Board**. If no contractual agreement is reached, the procedure set out in paragraph 3 shall be resumed.

5. The establishment of one or a limited number of joint booking platforms shall facilitate and simplify

capacity booking at interconnection points across the **Energy Community** for the benefit of network users. **<…>**

6. For increases in technical capacity, the allocation results shall be published on the booking platform which is used for auctioning existing capacity, and for new capacity created where none currently exists, on a joint booking platform agreed by the relevant transmission system operators.

CHAPTER VIII
FINAL PROVISIONS

Article 38

Implementation monitoring

1. **<…> In context of its implementation monitoring responsibilities, the Secretar**iat shall monitor and analyse how transmission system operators have implemented this Regulation **<…>**.

2. Transmission system operators shall submit to **the Secretariat** all information required by **the Secretariat** to comply with its obligations pursuant to paragraph 1 by **no later than 9 months after the expiry of the deadline for transposition of this Regulation**.

3. The confidentiality of commercially sensitive information shall be preserved by **the Secretariat**.

4. **Not later than two years after the expiry of the deadline for transposition of this Regulation**, the **Energy Community Regulatory Board** shall **<…>** report on the conditionalities stipulated in contracts for standard capacity products for firm capacity, having regard to their effect on efficient network use and the integration of the **Energy Community** gas markets. The **Energy Community Regulatory Board** shall be supported in its assessment by the relevant national regulatory authorities and transmission system operators.

Article 39

<…>

Article 40

<…>

COMMISSION REGULATION (EU) 2017/460 of 16 March 2017 establishing a network code on harmonised transmission tariff structures for gas

Incorporated and adapted by Permanent High Level Group Decision 2018/07/PHLG-EnC of 28 November 2018.

The adaptations made by Permanent High Level Group Decision 2018/07/PHLG-EnC are highlighted in **bold and blue**.

CHAPTER I
GENERAL PROVISIONS

Article 1
Subject matter

This Regulation establishes a network code setting out the rules on harmonised transmission tariff structures for gas, including rules on the application of a reference price methodology, the associated consultation and publication requirements as well as the calculation of reserve prices for standard ca- pacity products.

Article 2
Scope

1. This Regulation shall apply to all entry points and all exit points of gas transmission networks with the exception of Chapters III, V, VI, Article 28, Article 31(2) and (3) and Chapter IX which shall apply only to interconnection points. Chapters III, V, VI, Article 28 and Chapter IX shall apply to entry points from third countries or exit points to third countries, or both, where the national regulatory authority takes a decision to apply Regulation (EU) 2017/459 at those points.

2. **<...>**

Article 3
Definitions

For the purposes of this Regulation, the definitions in Article 2 of Regulation (EC) No 715/2009, Article 3 of **Commission** Regulation (EU) 2017/459, **<...>** , Article 2 of Commission Regulation (EU) 2015/703 as well as Article 2 of Directive 2009/73/EC shall apply. In addition, the following definitions shall apply:

(1) 'reference price' means the price for a capacity product for firm capacity with a duration of one year, which is applicable at entry and exit points and which is used to set capacity-based transmission tariffs;

(2) 'reference price methodology' means the methodology applied to the part of the transmission services revenue to be recovered from capacity-based transmission tariffs with the aim of deriving reference prices;

(3) 'non-price cap regime' means a regulatory regime, such as the revenue cap, rate of return and cost plus regime, under which the allowed revenue for the transmission system operator is set in accordance with Article 41(6)(a) of Directive 2009/73/EC;

(4) 'non-transmission services revenue' means the part of the allowed or target revenue which is recovered by non-transmission tariffs;

(5) 'regulatory period' means the time period for which the general rules for the allowed or target revenue are set in accordance with Article 41(6)(a) of Directive 2009/73/EC;

(6) 'transmission services revenue' means the part of the allowed or target revenue which is recovered by transmission tariffs;

(7) 'transmission tariffs' means the charges payable by network users for transmission services provided to them;

(8) 'intra-system network use' means transporting gas within an entry-exit system to customers connected to that same entry-exit system;

(9) 'cross-system network use' means transporting gas within an entry-exit system to customers connected to another entry-exit system;

(10) 'homogeneous group of points' means a group of one of the following types of points: entry interconnection points, exit interconnection points, domestic entry points, domestic exit points, entry points from storage facilities, exit points to storage facilities, entry points from liquefied natural gas facilities (hereinafter, referred to as 'LNG facilities'), exit points to LNG facilities and entry points from production facilities;

(11) 'allowed revenue' means the sum of transmission services revenue and non-transmission services revenue for the provision of services by the transmission system operator for a specific time period within a given regulatory period which such transmission system operator is entitled to obtain under a non-price cap regime and which is set in accordance with Article 41(6)(a) of Directive 2009/73/EC;

(12) 'transmission services' means the regulated services that are provided by the transmission system operator within the entry-exit system for the purpose of transmission;

(13) 'non-transmission tariffs' means the charges payable by network users for non-transmission services provided to them;

(14) 'target revenue' means the sum of expected transmission services revenue calculated in accordance with the principles set out in Article 13(1) of Regulation (EC) No 715/2009 and expected non-transmis- sion services revenue for the provision of services by the transmission system operator for a specific time period within a given regulatory period under a price cap regime;

(15) 'non-transmission services' means the regulated services other than transmission services and other than services **related to the balancing of the transmission network** that are provided by the transmission system operator;

(16) 'multiplier' means the factor applied to the respective proportion of the reference price in order to calculate the reserve price for a non-yearly standard capacity product;

(17) 'price cap regime' means a regulatory regime under which a maximum transmission tariff based on the target revenue is set in accordance with Article 41(6)(a) of Directive 2009/73/EC;

(18) 'cost driver' means a key determinant of the transmission system operator's activity which is correlated to the costs of that transmission system operator, such as distance or technical capacity;

(19) 'cluster of entry or exit points' means a homogeneous group of points or group of entry points or of exit points located within the vicinity of each other and which are considered as, respectively, one entry point or one exit point for the application of the reference price methodology;

(20) 'flow scenario' means a combination of an entry point and an exit point which reflects the use of the transmission system according to likely supply and demand patterns and for which there is at least one pipeline route allowing to flow gas into the transmission network at that entry point and out of the transmission network at that exit point, irrespective of whether the capacity is contracted at that entry point and that exit point;

(21) 'seasonal factor' means the factor reflecting the variation of demand within the year which may be applied in combination with the relevant multiplier;

(22) 'fixed payable price' means a price calculated in accordance with Article 24(b) where the reserve price is not subject to any adjustments;

(23) 'tariff period' means the time period during which a particular level of reference price is applicable, which minimum duration is one year and maximum duration is the duration of the regulatory period;

(24) 'regulatory account' means the account aggregating at least under- and over-recovery of the transmission services revenue under a non-price cap regime;

(25) 'auction premium' means the difference between the clearing price and the reserve price in an auction;

(26) 'floating payable price' means a price calculated in accordance with Article 24(a) where the reserve price is subject to adjustments such as revenue reconciliation, adjustment of the allowed revenue or adjustment of the forecasted contracted capacity.

Article 4

Transmission and non-transmission services and tariffs

1. A given service shall be considered a transmission services where both of the following criteria are met:

(a) the costs of such service are caused by the cost drivers of both technical or forecasted contracted capacity and distance;

(b) the costs of such service are related to the investment in and operation of the infrastructure which is part of the regulated asset base for the provision of transmission services.

Where any of the criteria set out in points (a) and (b) are not complied with, a given service may be attributed to either transmission or non-transmission services subject to the findings of the periodic consultation by the transmission system operator(s) or the national regulatory authority and decision by the national regulatory authority, as set out in Articles 26 and 27.

2. Transmission tariffs may be set in a manner as to take into account the conditions for firm capacity products.

3. The transmission services revenue shall be recovered by capacity-based transmission tariffs.

As an exception, subject to the approval of the national regulatory authority, a part of the transmission services revenue may be recovered only by the following commodity-based transmission tariffs which are set separately from each other:

(a) a flow-based charge, which shall comply with all of the following criteria:

(i) levied for the purpose of covering the costs mainly driven by the quantity of the gas flow;

(ii) calculated on the basis of forecasted or historical flows, or both, and set in such a way that is is the same at all entry points and the same at all exit points;

(iii) expressed in monetary terms or in kind.

(b) a complementary revenue recovery charge, which shall comply with all of the following criteria:

(i) evied for the purpose of managing revenue under- and over-recovery;

(ii) calculated on the basis of forecasted or historical capacity allocations and flows, or both;

(iii) applied at points other than interconnection points;

(iv) applied after the national regulatory authority has made an assessment of its cost-reflectivity and its impact on cross-subsidisation between interconnection points and points other than in- tercon-nection points.

4. The non-transmission services revenue shall be recovered by non-transmission tariffs applicable for a given non-transmission service. Such tariffs shall be as follows:

(a) cost-reflective, non-discriminatory, objective and transparent;

(b) charged to the beneficiaries of a given non-transmission service with the aim of minimising cross-sub-sidisation between network users within or outside a **Contracting Party**, or both.

Where according to the national regulatory authority a given non-transmission service benefits all network users, the costs for such service shall be recovered from all network users.

Article 5

Cost allocation assessments

1. The national regulatory authority or the transmission system operator, as decided by the national regulatory authority, shall perform the following assessments and shall publish them as part of the final consultation referred to in Article 26:

(a) a cost allocation assessment relating to the transmission services revenue to be recovered by capaci-ty-based transmission tariffs and based exclusively on the cost drivers of

(i) technical capacity; or

(ii) forecasted contracted capacity; or

(iii) technical capacity and distance; or

(iv) forecasted contracted capacity and distance;

(b) a cost allocation assessment relating to the transmission services revenue to be recovered by com-modity-based transmission tariffs, if any, and based exclusively on the cost drivers of:

(i) the amount of gas flows; or

(ii) the amount of gas flows and distance. 2. The cost allocation assessments shall indicate the degree of cross-subsidisation between intra-system and cross-system network use based on the proposed reference price methodology.

3. The cost allocation assessment referred to in paragraph 1(a) shall be carried out as follows:

(a) the transmission services capacity revenue to be obtained from intra-system network use at both all entry points and all exit points shall be divided by the value of the relevant capacity cost driver(s) for intra-system network use in order to calculate the intra-system capacity ratio, which is defined as a monetary unit per measurement unit, such as in euro per MWh/day, in accordance with the following formula:

$$\mathrm{Ratio}_{\mathrm{cap}}^{\mathrm{intra}} = \frac{\mathrm{Revenue}_{\mathrm{cap}}^{\mathrm{intra}}}{\mathrm{Driver}_{\mathrm{cap}}^{\mathrm{intra}}}$$

Where:

$\mathrm{Revenue}_{\mathrm{cap}}^{\mathrm{intra}}$ is the revenue, defined in a monetary unit such as the euro, which is obtained from capacity tariffs and charged for intra-system network use;

$\mathrm{Driver}_{\mathrm{cap}}^{\mathrm{intra}}$ is the value of capacity-related cost driver(s) for intra-system network use, such as the sum of the average daily forecasted capacities contracted at each intra-system entry point and intra-system exit point, or cluster of points, and is defined in a measurement unit such as MWh/day.

(b) the transmission services capacity revenue to be obtained from cross-system network use at both all entry points and all exit points shall be divided by the value of the relevant capacity cost driver(s) for cross-system network use in order to calculate the cross-system capacity ratio, which is defined as a mon- etary unit per measurement unit, such as in euro per MWh/day, in accordance with the following formula:

$$\mathrm{Ratio}_{\mathrm{cap}}^{\mathrm{cross}} = \frac{\mathrm{Revenue}_{\mathrm{cap}}^{\mathrm{cross}}}{\mathrm{Driver}_{\mathrm{cap}}^{\mathrm{cross}}}$$

Where:

$\mathrm{Revenue}_{\mathrm{cap}}^{\mathrm{cross}}$ is the revenue, defined in a monetary unit such as the euro, which is obtained from capacity tariffs and charged for cross-system network use;

$\mathrm{Driver}_{\mathrm{cap}}^{\mathrm{cross}}$ is the value of capacity-related cost driver(s) for cross-system network use, such as the sum of the average daily forecasted capacities contracted at each cross-system entry and exit point, or cluster of points, and is defined in a measurement unit such as MWh/day.

(c) the capacity cost allocation comparison index between the ratios referred to in points (a) and (b), which is defined in percentage, shall be calculated in accordance with the following formula:

$$\mathrm{Comp}_{\mathrm{cap}} = \frac{2 \times \left|\mathrm{Ratio}_{\mathrm{cap}}^{\mathrm{intra}} - \mathrm{Ratio}_{\mathrm{cap}}^{\mathrm{cross}}\right|}{\mathrm{Ratio}_{\mathrm{cap}}^{\mathrm{intra}} + \mathrm{Ratio}_{\mathrm{cap}}^{\mathrm{cross}}} \times 100\,\%$$

4. The cost allocation assessment referred to in paragraph 1(b) shall be carried out as follows:

(a) the transmission services commodity revenue to be obtained from intra-system network use at both all entry points and all exit points shall be divided by the value of the relevant commodity cost driver(s) for intra-system network use in order to calculate the intra-system commodity ratio, which is defined as a monetary unit per measurement unit, such as in euro per MWh, in accordance with the following formula:

$$\mathrm{Ratio}_{\mathrm{comm}}^{\mathrm{intra}} = \frac{\mathrm{Revenue}_{\mathrm{comm}}^{\mathrm{intra}}}{\mathrm{Driver}_{\mathrm{comm}}^{\mathrm{intra}}}$$

Where:

$\mathrm{Revenue}_{\mathrm{comm}}^{\mathrm{intra}}$ is the revenue, defined in a monetary unit such as the euro, which is obtained from commodity tariffs and charged for intra-system network use;

$\mathrm{Driver}_{\mathrm{comm}}^{\mathrm{intra}}$ is the value of commodity-related cost driver(s) for intra-system network use, such as the sum of the average daily forecasted flows at each intra-system entry and exit point, or cluster of points, and is defined in a measurement unit such as MWh.

(b) the transmission services commodity revenue to be obtained from cross-system network use at both all entry points and all exit points shall be divided by the value of the relevant commodity cost driver(s) for cross-system network use in order to calculate the cross-system commodity ratio, which is defined as a monetary unit per measurement unit, such as in euro per MWh, in accordance with the following formula:

$$\mathrm{Ratio}_{\mathrm{comm}}^{\mathrm{cross}} = \frac{\mathrm{Revenue}_{\mathrm{comm}}^{\mathrm{cross}}}{\mathrm{Driver}_{\mathrm{comm}}^{\mathrm{cross}}}$$

Where:

$\mathrm{Revenue}_{\mathrm{comm}}^{\mathrm{cross}}$ is the revenue, defined in a monetary unit such as the euro, which is obtained from commodity tariffs and charged on cross-system network use;

$\mathrm{Driver}_{\mathrm{comm}}^{\mathrm{cross}}$ is the value of commodity-related cost driver(s) for cross-system network use, such as the sum of the average daily forecasted flows at each cross-system entry and exit point, or cluster of points, and is defined in a measurement unit such as MWh.

(c) the commodity cost allocation comparison index between the ratios referred to in points (a) and (b), which is defined in percentage, shall be calculated in accordance with the following formula:

$$\mathrm{Comp}_{\mathrm{comm}} = \frac{2 \times \left| \mathrm{Ratio}_{\mathrm{comm}}^{\mathrm{intra}} - \mathrm{Ratio}_{\mathrm{comm}}^{\mathrm{cross}} \right|}{\mathrm{Ratio}_{\mathrm{comm}}^{\mathrm{intra}} + \mathrm{Ratio}_{\mathrm{comm}}^{\mathrm{cross}}} \times 100\,\%$$

5. The transmission services revenue to be obtained from intra-system network use at entry points referred to in paragraphs 3(a) and 4(a) shall be calculated as follows:

(a) the amount of allocated capacity or, respectively, flows attributed to the provision of transmission services for cross-system network use at all entry points shall be deemed equal to the amount of capacity or, respectively, flows attributed to the provision of transmission services for cross-system network use at all exit points;

(b) the capacity and, respectively, flows, determined as set out in point (a) of this paragraph shall be used to calculate the transmission services revenue to be obtained from cross-system network use at entry points;

(c) the difference between the overall transmission services revenue to be obtained at entry points and the resulting value referred to in point (b) of this paragraph shall be equal to the transmission services revenue to be obtained from intra-system network use at entry points.

6. Where distance is used as a cost driver in combination with technical or forecasted contracted capacity or flows, the capacity weighted average distance or, respectively, commodity weighted average distance shall be used. Where the results of the capacity, or respectively commodity cost allocation comparison indexes referred to in paragraph 3(c) or, respectively paragraph 4(c), exceed 10 percent, the national regulatory authority shall provide the justification for such results in the decision referred to in Article 27(4).

CHAPTER II
REFERENCE PRICE METHODOLOGIES

Article 6

Reference price methodology application

1. The reference price methodology shall be set or approved by the national regulatory authority as set out in Article 27. The reference price methodology to be applied shall be subject to the findings of the periodic consultations carried out in accordance with Article 26 by the transmission system operator(s) or the national regulatory authority, as decided by the national regulatory authority.

2. The application of the reference price methodology shall provide a reference price.

3. The same reference price methodology shall be applied to all entry and exit points in a given entry-exit system subject to the exceptions set out in Articles 10 and 11.

4. Adjustments to the application of the reference price methodology to all entry and exit points may only be made in accordance with Article 9 or as a result of one or more of the following:

(a) benchmarking by the national regulatory authority, whereby reference prices at a given entry or exit point are adjusted so that the resulting values meet the competitive level of reference prices;

(b) equalisation by the transmission system operator(s) or the national regulatory authority, as decided by the national regulatory authority, whereby the same reference price is applied to some or all points within a homogeneous group of points;

(c) rescaling by the transmission system operator(s) or the national regulatory authority, as decided by the national regulatory authority, whereby the reference prices at all entry or all exit points, or both, are adjusted either by multiplying their values by a constant or by adding to or subtracting from their values a constant.

Article 7

Choice of a reference price methodology

The reference price methodology shall comply with Article 13 of Regulation (EC) No 715/2009 and with the following requirements. It shall aim at:

(a) enabling network users to reproduce the calculation of reference prices and their accurate forecast;

(b) taking into account the actual costs incurred for the provision of transmission services considering the level of complexity of the transmission network;

(c) ensuring non-discrimination and prevent undue cross-subsidisation including by taking into account the cost allocation assessments set out in Article 5;

(d) ensuring that significant volume risk related particularly to transports across an entry-exit system is not assigned to final customers within that entry-exit system;

(e) ensuring that the resulting reference prices do not distort cross-border trade.

Article 8

Capacity weighted distance reference price methodology

1. The parameters for the capacity weighted distance reference price methodology shall be as follows:

(a) the part of the transmission services revenue to be recovered from capacity-based transmission tariffs;

(b) the forecasted contracted capacity at each entry point or a cluster of entry points and at each exit point or a cluster of exit points;

(c) where entry points and exit points can be combined in a relevant flow scenario, the shortest distance of the pipeline routes between an entry point or a cluster of entry points and an exit point or a cluster of exit points;

(d) the combinations of entry points and exit points, where some entry points and some exit points can be combined in a relevant flow scenario;

(e) the entry-exit split referred to in Article 30(1)(b)(v)(2) shall be 50/50.

Where entry points and exit points cannot be combined in a flow scenario, this combination of entry and exit points shall not be taken into account.

2. The reference prices shall be derived in the following sequential steps:

(a) the weighted average distance for each entry point or each cluster of entry points and for each exit point or each cluster of exit points shall be calculated, taking into account, where relevant, the combi- nations referred to in paragraph 1(d), in accordance with the following respective formulas:

(i) for an entry point or cluster of entry points, as the sum of the products of capacity at each exit point or cluster of exit points and the distance from this entry point or cluster of entry points to each exit point or cluster of exit points, divided by the sum of capacities at each exit point or cluster of exit points:

$$AD_{En} = \frac{\sum_{all\ Ex} CAP_{Ex} \times D_{En,Ex}}{\sum_{all\ Ex} CAP_{Ex}}$$

Where:

AD_{En} is the weighted average distance for an entry point or a cluster of entry points;

CAP_{Ex} is the forecasted contracted capacity at an exit point or a cluster of exit points;

$D_{En,Ex}$ is the distance between a given entry point or a cluster of entry points and a given exit point or a cluster of exit points referred to in paragraph 1(c).

(ii) for an exit point or cluster of exit points, as the sum of the products of capacity at each entry point or cluster of entry points and the distance to this exit point or cluster of exit points from each entry point or cluster of entry points, divided by the sum of capacities at each entry point or cluster of entry points:

$$AD_{Ex} = \frac{\sum_{all\ En} CAP_{En} \times D_{En,Ex}}{\sum_{all\ En} CAP_{En}}$$

Where:

AD_{Ex} is the weighted average distance for an exit point or a cluster of exit points;

CAP_{En} is the forecasted contracted capacity at an entry point or a cluster of entry points;

$D_{En,Ex}$ is the distance between a given entry point or a cluster of entry points and a given exit point or

a cluster of exit points referred to in paragraph 1(c).

(b) the weight of cost for each entry point or each cluster of entry points and for each exit point or each cluster of exit points shall be calculated in accordance with the following respective formulas:

$$W_{c,En} = \frac{CAP_{En} \times AD_{En}}{\sum_{all\ En} CAP_{En} \times AD_{En}}$$

$$W_{c,Ex} = \frac{CAP_{Ex} \times AD_{Ex}}{\sum_{all\ Ex} CAP_{Ex} \times AD_{Ex}}$$

Where:

$\mathbf{W_{c,En}}$ is the weight of cost for a given entry point or a cluster of entry points;

$\mathbf{W_{c,Ex}}$ is the weight of cost for a given exit point or a cluster of exit points;

$\mathbf{AD_{En}}$ is the weighted average distance for an entry point or a cluster of entry points;

$\mathbf{AD_{Ex}}$ is the weighted average distance for an exit point or a cluster of exit points;

$\mathbf{CAP_{En}}$ is the forecasted contracted capacity at an entry point or a cluster of entry points;

$\mathbf{CAP_{Ex}}$ is the forecasted contracted capacity at an exit point or a cluster of exit points.

(c) the part of the transmission services revenue to be recovered from capacity-based transmission tariffs at all entry points and the part of the transmission services revenue to be recovered from capacity-based transmission tariffs at all exit points shall be identified by applying the entry-exit split;

(d) the part of the transmission services revenue to be recovered from capacity-based transmission tariffs at each entry point or each cluster of entry points and for each exit point or each cluster of exit points shall be calculated in accordance with the following respective formulas:

$$\mathbf{R_{En} = W_{c,En} \times R_{\sum En}}$$

$$\mathbf{R_{Ex} = W_{c,Ex} \times R_{\sum Ex}}$$

Where:

$\mathbf{W_{c,En}}$ is the weight of cost for a given entry point or a cluster of entry points;

$\mathbf{W_{c,Ex}}$ is the weight of cost for a given exit point or a cluster of exit points;

$\mathbf{R_{En}}$ is the part of the transmission services revenue to be recovered from capacity-based transmission tariffs at an entry point or a cluster of entry points;

$\mathbf{R_{Ex}}$ is the part of the transmission services revenue to be recovered from capacity-based transmission tariffs at an exit point or a cluster of exit points;

$\mathbf{R_{\sum En}}$ is the part of the transmission services revenue to be recovered from capacity-based transmission tariffs at all entry points;

$\mathbf{R_{\sum Ex}}$ is the part of the transmission services revenue to be recovered from capacity-based transmission tariffs at all exit points."

(e) the resulting values referred to in point (d) shall be divided by the forecasted contracted capacity at each entry point or each cluster of entry points and at each exit point or each cluster of exit points in accordance with the following respective formulas:

$$T_{En} = \frac{R_{En}}{CAP_{En}}$$

$$T_{Ex} = \frac{R_{Ex}}{CAP_{Ex}}$$

Where:

$\mathbf{T_{En}}$ is the reference price at an entry point or each entry point within a cluster of entry points;

$\mathbf{T_{Ex}}$ is the reference price at an exit point or each exit point within a cluster of exit points;

$\mathbf{CAP_{En}}$ is the forecasted contracted capacity at an entry point or a cluster of entry points;

$\mathbf{CAP_{Ex}}$ is the forecasted contracted capacity at an exit point or a cluster of exit points.

Article 9

Adjustments of tariffs at entry points from and exit points to storage facilities and at entry points from LNG facilities and infrastructure ending isolation

1. A discount of at least 50 % shall be applied to capacity-based transmission tariffs at entry points from and exit points to storage facilities, unless and to the extent a storage facility which is connected to more than one transmission or distribution network is used to compete with an interconnection point.

2. At entry points from LNG facilities, and at entry points from and exit points to infrastructure developed with the purpose of ending the isolation of **Contracting Parties** in respect of their gas transmission systems, a discount may be applied to the respective capacity-based transmission tariffs for the purposes of increasing security of supply.

Article 10

Rules for entry-exit systems within a Contracting Party where more than one transmission system operator is active

1. In accordance with Article 6(3), the same reference price methodology shall be applied jointly by all transmission system operators within an entry-exit system within a **Contracting Party**.

2. As an exception to paragraph 1 and subject to paragraph 3, the national regulatory authority may decide:

(a) that the same reference price methodology is applied separately by each transmission system operator within an entry-exit system;

(b) as an exception to Article 6(3), when planning entry-exit system mergers, on intermediate steps allowing for different reference price methodologies to be applied separately by each transmission sys- tem operator within the entry-exit systems concerned. Such a decision shall set out the time period for the application of the intermediate steps. The national regulatory authority or the transmission system operators, as decided by the national regulatory authority, shall carry out an impact assessment and a cost benefit analysis prior to implementing such intermediate steps.

As a result of applying different reference price methodologies separately, the transmission services revenue

of the transmission system operators involved shall be adjusted accordingly.

3. In order to allow for the proper application of the same reference price methodology jointly, an effective inter-transmission system operator compensation mechanism shall be established.

The decision referred to in paragraph 2(a) or, respectively, paragraph 2(b) may be taken where the following conditions are complied with:

(a) an effective inter-transmission system operator compensation mechanism is established with the aim to:

(i) prevent detrimental effects on the transmission services revenue of the transmission system operators involved;

(ii) avoid cross-subsidisation between intra-system and cross-system network use;

(b) such separate application ensures that the costs correspond to those of an efficient transmission system operator.

4. The maximum time period set out in the decision referred to in paragraph 2(a) or, respectively, par- agraph 2(b) shall be no later than five years as from the date referred to in Article 38(2). Sufficiently in advance of the date set out in that decision, the national regulatory authority may decide to postpone this date.

5. At the same time as the final consultation in accordance with Article 26, the national regulatory au- thority shall conduct a consultation on the principles of an effective inter-transmission system operator compensation mechanism referred to in paragraph 3 and its consequences on the tariff levels. The inter-transmission system operator compensation mechanism shall be applied in accordance with Article 41(6)(a) of Directive 2009/73/EC and published together with the consultation responses received.

6. The reserve price referred to in Article 22(1) shall be calculated as set out therein. Where paragraph 2 is applied, the following two calculations shall be carried out:

(a) the calculation set out in Article 22(1) shall be carried out by each transmission system operator involved;

(b) the weighted average of the resulting values referred to in point (a) shall be calculated in accordance with the formula set out in Article 22(1)(b), mutatis mutandis.

7. The final consultation referred to in Article 26 shall be conducted by all transmission system operators jointly or by the national regulatory authority. Where paragraph 2 is applied, such consultation shall be conducted by each transmission system operator separately or by the national regulatory authority, as decided by the national regulatory authority.

8. The information referred to in Articles 29 and 30 shall be published on an aggregated level for all transmission system operators involved. Where paragraph 2 is applied, the following two actions shall be carried out:

(a) such information shall be published individually for each transmission system operator involved;

(b) the information on the entry-exit split referred to in Article 30(1)(b)(v)(2) for the entry-exit system shall be published by the national regulatory authority.

Article 11

Rules for entry-exit systems covering more than one Contracting Party or covering Contracting Party(-ies) and Member State(s) where more than one transmission system operator is active

The same reference price methodology may be applied jointly or separately or different reference price methodologies may be applied separately where more than one transmission system operator is active in an entry-exit system covering more than one **Contracting Party** or Member State.

CHAPTER III
RESERVE PRICES

Article 12

General provisions

1. For yearly standard capacity products for firm capacity, the reference prices shall be used as reserve prices. For non-yearly standard capacity products for firm capacity, the reserve prices shall be calculated as set out in this Chapter. For both yearly and non-yearly standard capacity products for interruptible capacity, the reserve prices shall be calculated as set out in this Chapter. The level of multipliers and of seasonal factors, set out in accordance with Article 13, and the level of discounts for the standard capacity products for interruptible capacity, set out in accordance with Article 16, may be different at interconnection points.

2. Where the tariff period and gas year do not coincide, separate reserve prices may be applied respec- tively:

(a) for the time period from 1 October to the end of the prevailing tariff period; and

(b) for the time period from the beginning of the tariff period following the prevailing tariff period to 30 September.

3. The respective reserve prices published according to Article 29 shall be binding for the subsequent gas year or beyond the subsequent gas year in case of fixed payable price, beginning after the annual yearly capacity auction, unless:

(a) the discounts for monthly and daily standard capacity products for interruptible capacity are recalculated within the tariff period if the probability of interruption referred to in Article 16 changes by more than twenty percent;

(b) the reference price is recalculated within the tariff period due to exceptional circumstances under which the non-adjustment of tariff levels would jeopardise the operation of the transmission system operator.

Article 13

Level of multipliers and seasonal factors

1. The level of multipliers shall fall within the following ranges:

(a) for quarterly standard capacity products and for monthly standard capacity products, the level of the respective multiplier shall be no less than 1 and no more than 1,5;

(b) for daily standard capacity products and for within-day standard capacity products, the level of the respective multiplier shall be no less than 1 and no more than 3. In duly justified cases, the level of the respective multipliers may be less than 1, but higher than 0, or higher than 3.

2. Where seasonal factors are applied, the arithmetic mean over the gas year of the product of the multiplier applicable for the respective standard capacity product and the relevant seasonal factors shall be within the same range as for the level of the respective multipliers set out in paragraph 1.

3. By **1 October 2025**, the maximum level of multipliers for daily standard capacity products and for within-day standard capacity products shall be no more than 1,5, if by 1 **October 2023** the **Energy Community Regulatory Board** issues a recommendation <…> that the maximum level of multipliers should be reduced to this level. This recommendation shall take into account the following aspects related to the use of multipliers and seasonal factors before and as from 31 May **2021**:

(a) changes in booking behaviour;

(b) impact on the transmission services revenue and its recovery;

(c) differences between the level of transmission tariffs applicable for two consecutive tariff periods;

(d) cross-subsidisation between network users having contracted yearly and non-yearly standard capacity products;

(e) impact on cross-border flows.

Article 14

Calculation of reserve prices for non-yearly standard capacity products for firm capacity in absence of seasonal factors

The reserve prices for non-yearly standard capacity products for firm capacity shall be calculated as follows:

(a) for quarterly standard capacity products, for monthly standard capacity products and for daily standard capacity products, in accordance with the following formula:

$$\mathbf{P_{st} = (M \times T / 365) \times D}$$

Where:

$\mathbf{P_{st}}$ is the reserve price for the respective standard capacity product;

M is the level of the multiplier corresponding to the respective standard capacity product;

T is the reference price;

D is the duration of the respective standard capacity product expressed in gas days. For leap years, the

formula shall be adjusted so that the figure 365 is substituted with the figure 366.

(b) for within-day standard capacity products, in accordance with the following formula:

$$\mathbf{P_{st} = (M \times T / 8760) \times H}$$

Where:

$\mathbf{P_{st}}$ is the reserve price for the within-day standard capacity product;

M is the level of the corresponding multiplier;

T is the reference price;

H is the duration of the within-day standard capacity product expressed in hours. For leap years, the formula shall be adjusted so that the figure 8760 is substituted with the figure 8784.

Article 15

Calculation of reserve prices for non-yearly standard capacity products for firm capacity with seasonal factors

1. Where seasonal factors are applied, the reserve prices for non-yearly standard capacity products for firm capacity shall be calculated in accordance with the relevant formulas set out in Article 14 which shall be then multiplied by the respective seasonal factor calculated as set out in paragraphs 2 to 6.

2. The methodology set out in paragraph 3 shall be based on the forecasted flows, unless the quantity of the gas flow at least for one month is equal to 0. In such case, the methodology shall be based on the forecasted contracted capacity.

3. For monthly standard capacity products for firm capacity, the seasonal factors shall be calculated in the following sequential steps:

(a) for each month within a given gas year the usage of the transmission system shall be calculated on the basis of forecasted flows or forecasted contracted capacity using:

(i) the data for the individual interconnection point, where the seasonal factors are calculated for each interconnection point;

(ii) the average data on the forecasted flows or the forecasted contracted capacity, where the seasonal factors are calculated for some or all of the interconnection points.

(b) the resulting values referred to in point (a) shall be summed up;

(c) the usage rate shall be calculated by dividing each of the resulting values referred to in point (a) by the resulting value referred to in point (b);

(d) each of the resulting values referred to in point (c) shall be multiplied by 12. Where the resulting values are equal to 0, these values shall be adjusted to whichever of the following is the lower: 0,1 or the lowest of the resulting values other than 0;

(e) the initial level of the respective seasonal factors shall be calculated by raising each of the resulting values referred to in point (d) to the same power which is no less than 0 and no more than 2;

(f) the arithmetic mean of the products of the resulting values referred to in point (e) and the multiplier for monthly standard capacity products shall be calculated;

(g) the resulting value referred to in point (f) shall be compared with the range referred to in Article 13(1), as follows:

(i) if this value falls within this range then the level of seasonal factors shall be equal to with the respectie resulting values referred to in point (e);

(ii) if this value falls outside of this range then point (h) shall apply.

(h) the level of seasonal factors shall be calculated as the product of the respective resulting values referred to in point (e) and the correction factor calculated as follows:

(i) where the resulting value referred to in point (f) is more than 1,5, the correction factor shall be calculated as 1,5 divided by this value;

(ii) where the resulting value referred to in point (f) is less than 1, the correction factor shall be calculated as 1 divided by this value.

4. For daily standard capacity products for firm capacity and within-day standard capacity products for firm capacity, the seasonal factors shall be calculated by carrying out the steps set out in paragraph 3(f) to (h), *mutatis mutandis*.

5. For quarterly standard capacity products for firm capacity, the seasonal factors shall be calculated in sequential steps as follows:

(a) the initial level of the respective seasonal factors shall be calculated as either of the following:

(i) equal to the arithmetic mean of the respective seasonal factors applicable for the three relevant months;

(ii) no less than the lowest and no more than the highest level of the respective seasonal factors applicable for the three relevant months.

(b) the steps set out in paragraph 3(f) to (h) shall be carried out, using the resulting values referred to in point (a), *mutatis mutandis*.

6. For all non-yearly standard capacity products for firm capacity, the values resulting from the calculation referred to in paragraphs 3 to 5 may be rounded up or down.

Article 16

Calculation of reserve prices for standard capacity products for interruptible capacity

1. The reserve prices for standard capacity products for interruptible capacity shall be calculated by multiplying the reserve prices for the respective standard capacity products for firm capacity calculated as set out in Articles 14 or 15, as relevant, by the difference between 100% and the level of an ex-ante discount calculated as set out in paragraphs 2 and 3.

2. An ex-ante discount shall be calculated in accordance with the following formula:

$$\mathbf{Di_{ex\text{-}ante} = Pro \times A \times 100\ \%}$$

Where:

$\mathbf{Di_{ex\text{-}ante}}$ is the level of an ex-ante discount;

Pro factor is the probability of interruption which is set or approved in accordance with Article 41(6)(a)

of Directive 2009/73/EC pursuant to Article 28, and which refers to the type of standard capacity product for interruptible capacity;

A is the adjustment factor which is set or approved in accordance with Article 41(6)(a) of Directive 2009/73/EC pursuant to Article 28, applied to reflect the estimated economic value of the type of stand- ard capacity product for interruptible capacity, calculated for each, some or all interconnection points, which shall be no less than 1.

3. The Pro factor referred to in paragraph 2 shall be calculated for each, some or all interconnection points per type of standard capacity product for interruptible capacity offered in accordance with the following formula on the basis of forecasted information related to the components of this formula:

$$\mathrm{Pro} = \frac{\mathrm{N} \times \mathrm{D_{int}}}{\mathrm{D}} \times \frac{\mathrm{CAP_{av.\,int}}}{\mathrm{CAP}}$$

Where:

N is the expectation of the number of interruptions over D;

$\mathbf{D_{int}}$ is the average duration of the expected interruptions expressed in hours;

D is the total duration of the respective type of standard capacity product for interruptible capacity ex- pressed in hours;

$\mathbf{CAP_{av.\,int}}$ is the expected average amount of interrupted capacity for each interruption where such amount is related to the respective type of standard capacity product for interruptible capacity;

CAP is the total amount of interruptible capacity for the respective type of standard capacity product for interruptible capacity.

4. As an alternative to applying ex-ante discounts in accordance with paragraph 1, the national regulatory authority may decide to apply an ex-post discount, whereby network users are compensated after the actual interruptions incurred. Such ex-post discount may only be used at interconnection points where there was no interruption of capacity due to physical congestion in the preceding gas year.

The ex-post compensation paid for each day on which an interruption occurred shall be equal to three times the reserve price for daily standard capacity products for firm capacity.

CHAPTER IV
RECONCILIATION OF REVENUE

Article 17
General provisions

1. Where and to the extent that the transmission system operator functions under a non-price cap regime, the following principles shall apply:

(a) the under- or over-recovery of the transmission services revenue shall be minimised having due regard to necessary investments;

(b) the level of transmission tariffs shall ensure that the transmission services revenue is recovered by the transmission system operator in a timely manner;

(c) significant differences between the levels of transmission tariffs applicable for two consecutive tariff periods shall be avoided to the extent possible.

2. Where and to the extent that the transmission system operator functions under a price cap regime or applies a fixed payable price approach set out in Article 24(b), no revenue reconciliation shall occur and all risks related to under- or over-recovery shall be covered exclusively by the risk premium. In such case Articles 18, 19(1) to (4) and 20 shall not apply.

3. Subject to the requirements of periodic consultations pursuant to Article 26 and subject to approval in accordance with Article 41(6)(a) of Directive 2009/73/EC, non-transmission services revenue may be reconciled as set out in this Chapter, mutatis mutandis.

Article 18

Under- and over-recovery

The under- or over-recovery of the transmission services revenue shall be equal to:

$\mathbf{R_A - R}$

Where:

$\mathbf{R_A}$ is the actually obtained revenue related to the provision of transmission services;

R is the transmission services revenue. The values of R_A and R shall be attributed to the same tariff period and, where an effective inter-transmission system operator compensation mechanism referred to in Article 10(3) is established, shall take such mechanism into account.

Where the difference calculated in accordance with paragraph 1 is positive, it shall indicate an over-recovery of the transmission services revenue. Where such difference is negative, it shall indicate an under-recovery of the transmission services revenue.

Article 19

Regulatory account

1. The regulatory account shall indicate the information referred to in Article 18(1) for a given tariff period and may include other information, such as the difference between the anticipated and the actual cost components.

2. The transmission system operator's under- or over-recovered transmission services revenue shall be attributed to the regulatory account, unless other rules have been enacted in accordance with Article 41(6)(a) of Directive 2009/73/EC.

3. Where incentive mechanisms for capacity sales are implemented, subject to a decision in accordance with Article 41(6)(a) of Directive 2009/73/EC, only a part of the transmission system operator's under- or over-recovery shall be attributed to the regulatory account. In such case, the residual part thereof shall be kept or paid, as relevant, by the transmission system operator.

4. Each transmission system operator shall use one regulatory account.

5. Subject to a decision in accordance with Article 41(6)(a) of Directive 2009/73/EC, the earned auction premium, if any, may be attributed to a specific account separate from the regulatory account referred to in

paragraph 4. The national regulatory authority may decide to use this auction premium for reducing physical congestion or, where the transmission system operator functions only under a non-price cap regime, to decrease the transmission tariffs for the next tariff period(s) as set out in Article 20.

Article 20

Reconciliation of regulatory account

1. The full or partial reconciliation of the regulatory account shall be carried out in accordance with the applied reference price methodology and, in addition, by using the charge referred to in Article 4(3)(b), if applied.

2. The reconciliation of the regulatory account shall be carried out pursuant to the rules enacted in accordance with Article 41(6)(a) of Directive 2009/73/EC over a given reconciliation period, meaning the time period over which the regulatory account referred to in Article 19 shall be reconciled.

3. The regulatory account shall be reconciled with the aim of reimbursing to the transmission system operator the under-recovery and of returning to the network users the over-recovery.

CHAPTER V
PRICING OF BUNDLED CAPACITY AND CAPACITY AT VIRTUAL INTERCONNECTION POINTS

Article 21

Pricing of bundled capacity

1. The reserve price for a bundled capacity product shall be equal to the sum of the reserve prices for the capacities contributing to such product. The reserve prices for corresponding entry and exit capacities shall be made available when the bundled capacity product is offered and allocated by means of a joint booking platform referred to in Article 37 of Regulation (EU) 2017/459.

2. The revenue originating from the bundled capacity product sales corresponding to the reserve price for such product shall be attributed to the respective transmission system operators as follows:

(a) after each transaction for a bundled capacity product;

(b) in proportion to the reserve prices for the capacities contributing to such product.

3. The auction premium originating from the bundled capacity product sales shall be attributed in ac- cordance with the agreement between the respective transmission system operators which is subject to the approval by the national regulatory authority or authorities to be granted no later than three months before the start of the annual yearly capacity auctions. In absence of such approval by all national regulatory authorities involved, the auction premium shall be attributed to the respective transmission system operators equally.

4. Where the interconnection point concerned connects adjacent entry-exit systems of two **Contracting Parties**, the respective national regulatory authorities shall submit the agreement referred to in paragraph 3 to the **Energy Community Regulatory Board** for information.

Article 22

Pricing of capacity at a virtual interconnection point

1. The reserve price for an unbundled standard capacity product offered at a virtual interconnection point shall be calculated in accordance with either of the following approaches:

(a) calculated on the basis of the reference price, where the applied reference price methodology allows for taking into account the established virtual interconnection point;

(b) equal to the weighted average of the reserve prices, where such average is calculated on the basis of the reference prices for each interconnection point contributing to such virtual interconnection point, where the applied reference price methodology does not allow for taking into account the established virtual interconnection point, in accordance with the following formula:

$$P_{st,\,VIP} = \frac{\sum_i^n (P_{st,\,i} \times CAP_i)}{\sum_i^n CAP_i}$$

Where:

$\mathbf{P_{st,\,VIP}}$ is the reserve price for a given unbundled standard capacity product at the virtual interconnection point;

i is an interconnection point contributing to the virtual interconnection point;

n is the number of interconnection points contributing to the virtual interconnection point;

$\mathbf{P_{st'}}$ i is the reserve price for a given unbundled standard capacity product at interconnection point i;

$\mathbf{CAP_i}$ is technical capacity or forecasted contracted capacity, as relevant, at interconnection point i.

2. The reserve price for a bundled standard capacity product offered at a virtual interconnection point shall be calculated as set out in Article 21(1).

CHAPTER VI
CLEARING PRICE AND PAYABLE PRICE

Article 23

Calculation of clearing price at interconnection points

The clearing price for a given standard capacity product at an interconnection point shall be calculated in accordance with the following formula:

$\mathbf{P_{cl} = P_{R,au} + AP}$

Where:

$\mathbf{P_{cl}}$ is the clearing price;

$\mathbf{P_{R,au}}$ is the applicable reserve price for a standard capacity product which is published at the time when this product is auctioned;

AP is the auction premium, if any.

Article 24

Calculation of payable price at interconnection points

The payable price for a given standard capacity product at an interconnection point shall be calculated in accordance with either of the following formulas:

(a) where the floating payable price approach is applied:

$$\mathbf{P_{flo} = P_{R,flo} + AP}$$

Where:

$\mathbf{P_{flo}}$ is the floating payable price;

$\mathbf{P_{R,flo}}$ is the reserve price for a standard capacity product applicable at the time when this product may be used;

AP is the auction premium, if any.

(b) where the fixed payable price approach is applied:

$$\mathbf{P_{fix} = (P_{R,y} \times IND) + RP + AP}$$

Where:

$\mathbf{P_{fix}}$ is the fixed payable price;

$\mathbf{P_{R,y}}$ is the applicable reserve price for a yearly standard capacity product which is published at the time when this product is auctioned;

IND is the ratio between the chosen index at the time of use and the same index at the time the product was auctioned;

RP is the risk premium reflecting the benefits of certainty regarding the level of transmission tariff, where such premium shall be no less than 0;

AP is the auction premium, if any.

Article 25

Conditions for offering payable price approaches

1. Where and to the extent that the transmission system operator functions under a non-price cap regime, the conditions for offering payable price approaches shall be as follows:

(a) for cases where only existing capacity is offered:

(i) the floating payable price approach shall be offered;

(ii) the fixed payable price approach shall not be allowed.

(b) for incremental capacity and existing capacity offered in the same auction or same alternative allocation mechanism:

(i) the floating payable price approach may be offered;

(ii) the fixed payable price approach may be offered where one of the following conditions is met:

(1) an alternative allocation mechanism set out in Article 30 of Regulation (EU) 2017/459 is used;

(2) a project is included in the **list of Projects of Energy Community Interest or Pro- jects of Mutual Interest** as set out in Article 3 of Regulation (EU) No 347/2013 **as adopted and adapted by Ministerial Council Decision 2015/09/MC-EnC.**

2. Where and to the extent that the transmission system operator functions under a price cap regime, the floating payable price approach or the fixed payable price approach, or both, may be offered.

CHAPTER VII
CONSULTATION REQUIREMENTS

Article 26
Periodic consultation

1. One or more consultations shall be carried out by the national regulatory authority or the transmission system operator(s), as decided by the national regulatory authority. To the extent possible and in order to render more effective the consultation process, the consultation document should be published in the English language. The final consultation prior to the decision referred to in Article 27(4) shall comply with the requirements set out in this Article and Article 27, and shall include the following information:

(a) the description of the proposed reference price methodology as well as the following items:

(i) the indicative information set out in Article 30(1)(a), including:

(1) the justification of the parameters used that are related to the technical characteristics of the system;

(2) the corresponding information on the respective values of such parameters and the assumptions applied.

(ii) the value of the proposed adjustments for capacity-based transmission tariffs pursuant to Article 9;

(iii) the indicative reference prices subject to consultation;

(iv) the results, the components and the details of these components for the cost allocation as- sessments set out in Article 5;

(v) the assessment of the proposed reference price methodology in accordance with Article 7;

(vi) where the proposed reference price methodology is other than the capacity weighted distance reference price methodology detailed in Article 8, its comparison against the latter accompanied by the information set out in point (iii);

(b) the indicative information set out in Article 30(1)(b)(i), (iv), (v);

(c) the following information on transmission and non-transmission tariffs:

(i) where commodity-based transmission tariffs referred to in Article 4(3) are proposed:

(1) the manner in which they are set;

(2) the share of the allowed or target revenue forecasted to be recovered from such tariffs;

(3) the indicative commodity-based transmission tariffs;

(ii) where non-transmission services provided to network users are proposed:

(1) the non-transmission service tariff methodology therefor;

(2) the share of the allowed or target revenue forecasted to be recovered from such tariffs;

(3) the manner in which the associated non-transmission services revenue is reconciled as referred to in Article 17(3);

(4) the indicative non-transmission tariffs for non-transmission services provided to network users;

(d) the indicative information set out in Article 30(2);

(e) where the fixed payable price approach referred to in Article 24(b) is considered to be offered under a price cap regime for existing capacity:

(i) the proposed index;

(ii) the proposed calculation and how the revenue derived from the risk premium is used;

(iii) at which interconnection point(s) and for which tariff period(s) such approach is proposed;

(iv) the process of offering capacity at an interconnection point where both fixed and floating payable price approaches referred to in Article 24 are proposed.

2. The final consultation prior to the decision referred to in Article 27(4) shall be open for at least two months. Consultation documents for any of the consultations referred to in paragraph 1 may require that replies submitted in response to the consultation shall include a non-confidential version suitable for publication.

3. Within one month following the end of the consultation, the transmission system operator(s) or the national regulatory authority, depending on the entity that publishes the consultation document referred to in paragraph 1, shall publish the consultation responses received and their summary. To the extent possible and in order to render more effective the consultation process, the summary should be provided in the English language.

4. The subsequent periodic consultations shall be conducted in accordance with Article 27(5).

5. **<…> For** the consultation document referred to in paragraph 1, **the template developed by Agency for Cooperation of European Regulators may be used. <…>**

Article 27

Periodic national regulatory authority decision-making

1. Upon launching the final consultation pursuant to Article 26 prior to the decision referred to in Article 27(4), the national regulatory authority or the transmission system operator(s), as decided by the national regulatory authority, shall forward the consultation documents to the **Energy Community Regulatory Board.**

2. The **Energy Community Regulatory Board** shall analyse the following aspects of the consultation document:

(a) whether all the information referred to in Article 26(1) has been published;

(b) whether the elements consulted on in accordance with Article 26 comply with the following requirements:

(i) whether the proposed reference price methodology complies with the requirements set out in Article 7;

(ii) whether the criteria for setting commodity-based transmission tariffs as set out in Article 4(3) are met;

(iii) whether the criteria for setting non-transmission tariffs as set out in Article 4(4) are met.

3. Within two months following the end of the consultation referred to in paragraph 1, the Energy Community Regulatory Board shall publish and send to the national regulatory authority or transmission system operator, depending on which entity published the consultation document, and the Energy Community Secretariat the conclusion of its analysis in accordance with par- agraph 2 in English.

The **Energy Community Regulatory Board** shall preserve the confidentiality of any commercially sensitive information.

4. Within five months following the end of the final consultation, the national regulatory authority, acting in accordance with Article 41(6)(a) of Directive 2009/73/EC, shall take and publish a motivated decision on all items set out in Article 26(1). Upon publication, the national regulatory authority shall send to the **Energy Community Regulatory Board** and the **Energy Community Secretariat** its decision.

5. The procedure consisting of the final consultation on the reference price methodology in accordance with Article 26, the decision by the national regulatory authority in accordance with paragraph 4, the calculation of tariffs on the basis of this decision, and the publication of the tariffs in accordance with Chapter VIII may be initiated as from the entry into force of this Regulation and shall be concluded no later than 31 May **2021**. The requirements set out in Chapters II, III and IV shall be taken into account in this procedure. The tariffs applicable for the prevailing tariff period at 31 May **2021** will be applicable until the end thereof. This procedure shall be repeated at least every five years starting from 31 May **2021**.

Article 28

Consultation on discounts, multipliers and seasonal factors

1. At the same time as the final consultation carried out in accordance with Article 26(1), the national regulatory authority shall conduct a consultation with the national regulatory authorities of all directly connected Member States and **Contracting Parties** and the relevant stakeholders on the following:

(a) the level of multipliers;

(b) if applicable, the level of seasonal factors and the calculations set out in Article 15;

(c) the levels of discounts set out in Articles 9(2) and 16.

After the end of the consultation a motivated decision shall be taken in accordance with Article 41(6)(a) of Directive 2009/73/EC on the aspects referred to in points (a) to (c) of this paragraph. Each national regulatory authority shall consider the positions of national regulatory authorities of directly connected Member States and **Contracting Parties**.

2. The subsequent consultations shall be conducted every tariff period as from the date of the decision referred to in paragraph 1. After each consultation and as set out in Article 32(a), the national regulatory authority shall take and publish a motivated decision on the aspects referred to in paragraph 1(a), (b) and (c).

3. When adopting the decision referred to in paragraphs 1 and 2, the national regulatory authority shall take into account the consultation responses received and the following aspects:

(a) for multipliers:

(i) the balance between facilitating short-term gas trade and providing long-term signals for efficient investment in the transmission system;

(ii) the impact on the transmission services revenue and its recovery;

(iii) the need to avoid cross-subsidisation between network users and to enhance cost-reflectivity of reserve prices;

(iv) situations of physical and contractual congestion;

(v) the impact on cross-border flows;

(b) for seasonal factors:

(i) the impact on facilitating the economic and efficient utilisation of the infrastructure;

(ii) the need to improve the cost-reflectivity of reserve prices.

CHAPTER VIII
PUBLICATION REQUIREMENTS

Article 29

Information to be published before the annual yearly capacity auction

For interconnection points and, where the national regulatory authority takes a decision to apply Regulation (EU) 2017/459, points other than interconnection points, the following information shall be published before the annual yearly capacity auction in accordance with the requirements set out in Articles 31 and 32 by the national regulatory authority or the transmission system operator(s), as decided by the national regulatory authority:

(a) for standard capacity products for firm capacity:

(i) the reserve prices applicable until at least the end of the gas year beginning after the annual yearly capacity auction;

(ii) the multipliers and seasonal factors applied to reserve prices for non-yearly standard capacity products;

(iii) the justification of the national regulatory authority for the level of multipliers;

(iv) where seasonal factors are applied, the justification for their application.

(b) for standard capacity products for interruptible capacity:

(i) the reserve prices applicable until at least the end of the gas year beginning after the annual yearly capacity auction;

(ii) an assessment of the probability of interruption including:

(1) the list of all types of standard capacity products for interruptible capacity offered includ- ing the respective probability of interruption and the level of discount applied;

(2) the explanation of how the probability of interruption is calculated for each type of product referred to in point (1);

(3) the historical or forecasted data, or both, used for the estimation of the probability of inter-

ruption referred to in point (2).

Article 30

Information to be published before the tariff period

1. The following information shall be published before the tariff period in accordance with the requirements set out in Articles 31 and 32 by the national regulatory authority or the transmission system operator(s), as decided by the national regulatory authority:

(a) information on parameters used in the applied reference price methodology that are related to the technical characteristics of the transmission system, such as:

(i) technical capacity at entry and exit points and associated assumptions;

(ii) forecasted contracted capacity at entry and exit points and associated assumptions;

(iii) the quantity and the direction of the gas flow for entry and exit points and associated assump- tions, such as demand and supply scenarios for the gas flow under peak conditions;

(iv) the structural representation of the transmission network with an appropriate level of detail;

(v) additional technical information about the transmission network, such as the length and the diameter of pipelines and the power of compressor stations.

(b) the following information:

(i) the allowed or target revenue, or both, of the transmission system operator;

(ii) the information related to changes in the revenue referred to in point (i) from one year to the next year;

(iii) the following parameters:

(1) types of assets included in the regulated asset base and their aggregated value;

(2) cost of capital and its calculation methodology;

(3) capital expenditures, including:

(a) methodologies to determine the initial value of the assets;

(b) methodologies to re-evaluate the assets;

(c) explanations of the evolution of the value of the assets;

(d) depreciation periods and amounts per asset type.

(4) operational expenditures;

(5) incentive mechanisms and efficiency targets;

(6) inflation indices.

(iv) the transmission services revenue;

(v) the following ratios for the revenue referred to in point (iv):

(1) capacity-commodity split, meaning the breakdown between the revenue from capaci- ty-based transmission tariffs and the revenue from commodity-based transmission tariffs;

(2) entry-exit split, meaning the breakdown between the revenue from capacity-based transmission tariffs at all entry points and the revenue from capacity-based transmission tariffs at all exit points;

(3) intra-system/cross-system split, meaning the breakdown between the revenue from intra-system network use at both entry points and exit points and the revenue from cross-sys- tem network use at both entry points and exit points calculated as set out in Article 5.

(vi) where and to the extent that the transmission system operator functions under a non-price cap regime, the following information related to the previous tariff period on regarding the rec- onciliation of the regulatory account:

(1) the actually obtained revenue, the under- or over-recovery of the allowed revenue and the part thereof attributed to the regulatory account and, if applicable, sub-accounts within such regulatory account;

(2) the reconciliation period and the incentive mechanisms implemented.

(vii) the intended use of the auction premium.

(c) the following information on transmission and non-transmission tariffs, accompanied by the relevant information related to their derivation:

(i) where applied, commodity-based transmission tariffs referred to in Article 4(3);

(ii) where applied, non-transmission tariffs for non-transmission services referred to in Article 4(4);

(iii) the reference prices and other prices applicable at points other than those referred to in Article 29.

2. In addition, the following information shall be published with regard to transmission tariffs:

(a) explanation of the following:

(i) the difference in the level of transmission tariffs for the same type of transmission service applicable for the prevailing tariff period and for the tariff period for which the information is published;

(ii) the estimated difference in the level of transmission tariffs for the same type of transmission service applicable for the tariff period for which the information is published and for each tariff period within the remainder of the regulatory period.

(b) at least a simplified tariff model, updated regularly, accompanied by the explanation of how to use it, enabling network users to calculate the transmission tariffs applicable for the prevailing tariff period and to estimate their possible evolution beyond such tariff period.

3. For the points excluded from the definition of relevant points referred to in point 3.2(1)(a) of Annex I to Regulation (EC) No 715/2009, the information on the amount of forecasted contracted capacity and the forecasted quantity of the gas flow shall be published as set out in point 3.2(2) of Annex I to Regulation (EC) No 715/2009.

Article 31

Form of publication

1. **For the Contracting Parties whose TSOs are members or observers of ENTSO for Gas** the information referred to in Articles 29 and 30 shall be published as set out in Article 32 via a link on the platform referred to in point 3.1.1(1)(h) of Annex I to Regulation (EC) No 715/2009 to the website of the respective entity. Such information shall be accessible to the public, free of charge and of any limitations as to its use. It shall be published:

(a) in a user-friendly manner;

(b) in a clear, easily accessible way and on a non-discriminatory basis;

(c) in a downloadable format;

(d) in one or more of the official languages of the **Contracting Party** and, **<…>** to the extent possible, in English.

2. **For the Contracting Parties whose TSOs are members or observers of ENTSO for Gas** the following information shall be published for interconnection points on the platform referred to in point 3.1.1(1)(h) of Annex I to Regulation (EC) No 715/2009:

(a) at the same time as set out in Article 29, the reserve prices for standard capacity products for firm capacity and for standard capacity products for interruptible capacity;

(b) at the same time as set out in Article 30, a flow-based charge referred to in Article 4(3)(a), where applied.

For other Contracting Parties such information shall be published on the website of the national transmission system operator(s) for gas.

3. The information referred to in paragraph 2 shall be published in the following manner:

(a) as set out in paragraph 1(a) to (c);

(b) in English;

(c) in a standardised table which shall include at least the following information:

(i) the interconnection point;

(ii) the direction of the gas flow;

(iii) the names of the relevant transmission system operators;

(iv)the start and the end time of the product;

(v) whether the capacity is firm or interruptible;

(vi) the indication of the standard capacity product;

(vii) the applicable tariff per kWh/h and per kWh/d in the local currency and in the euro taking into account the following:

(1) where the applied capacity unit is kWh/h, the information on the applicable tariff per kWh/d shall be non-binding, and vice versa;

(2) where the local currency is other than the euro, the information on the applicable tariff in euro shall be non-binding.

In addition, at the same time as set out in Article 30, such standardised table shall include the simulation of all the costs for flowing 1 GWh/day/year for each interconnection point in the local currency and in the euro subject to point vii(2).

4. Where the information referred to in paragraph 2 is different from the respective information referred to in paragraph 1, the respective information referred to in paragraph 1 shall prevail.

Article 32

Publication notice period

The deadline for the publication of the information set out in Articles 29 and 30 shall be as follows:

(a) for the information set out in Article 29, no later than thirty days before the annual yearly capacity auction;

(b) for the information set out in Article 30, no later than thirty days before the respective tariff period;

(c) for the respective transmission tariffs updated within the tariff period as set out in Article 12(3), immediately after the approval in accordance with Article 41(6)(a) of Directive 2009/73/EC.

Each update of the transmission tariffs shall be accompanied by information indicating the reasons for the changes in their level. Where Article 12(3)(b) is applied, it shall also be accompanied by the updated report referred to in Article 29(b) for the respective types of standard capacity products for interruptible capacity.

CHAPTER IX
INCREMENTAL CAPACITY

Article 33
Tariff principles for incremental capacity

1. The minimum price at which transmission system operators shall accept a request for incremental capacity is the reference price. For the calculation of the economic test, reference prices shall be derived by including into the reference price methodology the relevant assumptions related to the offer of in- cremental capacity.

2. Where the fixed payable price approach set out in Article 24(b) is considered to be offered for incremental capacity, the reserve price referred to in Article 24(b) shall be based on projected investment and operating costs. Once the incremental capacity is commissioned, such reserve price shall be adjusted proportionally to the difference, irrespective whether positive or negative, between the projected investment costs and the actual investment costs.

3. In case the allocation of all incremental capacity at the reference price would not generate sufficient revenues for a positive economic test outcome, a mandatory minimum premium may be applied in the first auction or alternative allocation mechanism in which the incremental capacity is offered. The man- datory minimum premium may also be applied in subsequent auctions when the capacity is offered that initially remained unsold or when capacity is offered that was initially set aside according to Article 8(8) and (9) of Regulation (EU) 2017/459. The decision on whether and in which auctions to apply a mandatory minimum premium shall be taken in accordance with Article 41(6)(a) of Directive 2009/73/EC.

4. The level of the mandatory minimum premium shall enable a positive economic test outcome with the revenues generated by the offered capacity in the first auction or alternative allocation mechanism in which the incremental capacity is on offer. The range of the level for the mandatory minimum premium, depending on the expected allocated capacity, shall be submitted to the relevant national regulatory authorities for approval in accordance with Article 25(1)(c) of Regulation (EU) 2017/459.

5. A mandatory minimum premium approved by the national regulatory authority shall be added to the reference price for the bundled capacity products at the respective interconnection point and shall exclusively be attributed to the transmission system operators for which the mandatory minimum premium was approved by the respective national regulatory authority. This default principle for the attribution of a mandatory minimum premium is without prejudice to the split of a possible additional auction premium according to Article 21(3) or an alternative agreement between the involved national regulatory authorities.

CHAPTER X
FINAL AND TRANSITIONAL PROVISIONS

Article 34

Methodologies and parameters used to determine the allowed or target revenue of transmission system operators

1. Before **1 October 2021**, the **Energy Community Regulatory Board** shall publish a report on the methodologies and parameters used to determine the allowed or target revenue of transmission system operators. The report shall be based on at least the parameters referred to in Article 30(1)(b)(iii).

2. National regulatory authorities shall submit to the **Energy Community Regulatory Board**, in accordance with the process defined by the **Energy Community Regulatory Board**, all necessary information related to the methodologies and parameters used to determine the allowed or target revenue of transmission system operators.

Article 35

Existing contracts

1. This Regulation shall not affect the levels of transmission tariffs resulting from contracts or capacity bookings concluded before **1 October 2019** where such contracts or capacity bookings foresee no change in the levels of the capacity- and/or commodity-based transmission tariffs except for indexation, if any.

2. The contract provisions related to transmission tariffs and capacity bookings referred to in paragraph 1 shall not be renewed, prolonged or rolled over after their expiration date.

3. Before **1 November 2019**, a transmission system operator shall send the contracts or the information on capacity bookings, if any, referred to in paragraph 1 to the national regulatory authority for information.

Article 36

Implementation monitoring

1**. <…> In context of its implementation monitoring responsibilities, the Energy Community Secretariat** shall monitor and analyse <…> how transmission system operators have implemented this Regulation. **<…>**

2. Transmission system operators shall submit to the **Energy Community Secretariat** all information required by the **Energy Community Secretariat** to comply with its obligations pursuant to paragraph 1, in accordance with the following deadlines:

(a) **1 July 2020** as regards the requirements under Chapter VIII;

(b) 31 December **2021** as regards all other provisions of this Regulation.

3. **<...>**

4. The confidentiality of commercially sensitive information shall be preserved by the **Energy Community Secretariat.**

5. Within three years as from the deadline for transposition of this Regulation in the **Energy Community**, the **Energy Community Regulatory Board** shall publish a report on the application of reference price methodologies in **Contracting Parties**.

Article 37

Power to grant derogations

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

(a) not facilitate efficient gas trade and competition;

(b) not provide incentives for investment for new capacity or to maintain existing levels of capacity;

(c) unreasonably distort cross-border trade;

(d) distort competition with other infrastructure operators that offer services of a similar nature to those of the interconnector;

(e) not be implementable when taking into account the specific nature of interconnectors.

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

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

4. The national regulatory authorities shall notify their decisions granting such derogations to the **Energy Community Regulatory Board** and the **Energy Community Secretariat**.

5. The national regulatory authorities may revoke a derogation if the circumstances or underlying reasons, or both, no longer apply or upon a reasoned recommendation of the **Energy Community Regulatory Board** or the **Energy Community Secretariat** to revoke a derogation due to a lack of justification.

Article 38

<...>

REGULATION (EU) 312/2014 of 26 March 2014 establishing a network code on gas balancing of transmission networks

Incorporated and adapted by Permanent High Level Group Decision 2019/01/PHLG-EnC of 12 December 2019.

The adaptations made by Permanent High Level Group Decision 2019/01/PHLG-EnC are highlighted in **bold and blue**

CHAPTER I
GENERAL PROVISIONS

Article 1
Subject matter

This Regulation establishes a Network Code setting out gas balancing rules, including network-related rules on nomination procedures, imbalance charges, settlement processes associated with the daily imbalance charge and operational balancing between transmission system operators' networks.

Article 2
Scope

1. This Regulation shall apply to balancing zones within the borders of the **Energy Community Contracting Parties**.

2. <…>

3. This Regulation shall not apply to reconciliation that would be necessary between the allocations and actual consumption subsequently derived from final customer meter readings when obtained.

4. This Regulation shall not apply in emergency situations where the transmission system operator shall implement specific measures defined under the applicable national rules and on the basis of **the applicable Energy Community security of supply rules**, as appropriate.

5. The respective rights and obligations originating from this Regulation with regard to network users shall only apply to those network users which have concluded a legally binding agreement, being a transport contract or another contract, which enables them to submit trade notifications in accordance with Article 5.

Article 3
Definitions

For the purposes of this Regulation, the definitions in Article 2 of Regulation (EC) No 715/2009, Article 3 Commission Regulation (EU) No **459/2017** establishing a Network Code on Capacity Allocation Mech-

anisms in Gas Transmission Systems and **repealing Regulation (EU) 984/2013** as well as Article 2 of Directive 2009/73/EC shall apply. In addition, the following definitions shall apply:

(1) 'balancing zone' means an entry-exit system to which a specific balancing regime is applicable and which may include distribution systems or part of them;

(2) 'balancing action' means an action undertaken by the transmission system operator to change the gas flows onto or off the transmission network, excluding those actions related to gas unaccounted for as off-taken from the system and gas used by the transmission system operator for the operation of the system;

(3) 'neutrality charge for balancing' means a charge amounting to the difference between the amounts received or receivable and the amounts paid or payable by the transmission system operator due to performance of its balancing activities which is payable to or recoverable from the relevant network users;

(4) 'trading platform' means an electronic platform provided and operated by a trading platform operator by means of which trading participants may post and accept, including the right to revise and withdraw, bids and offers for gas required to meet short term fluctuations in gas demand or supply, in accordance with the terms and conditions applicable on the trading platform and at which the transmission system operator trades for the purpose of undertaking balancing actions;

(5) 'trading participant' means a network user or a transmission system operator holding a contract with the trading platform operator and satisfying the conditions necessary to transact on the trading platform.

(6) 'balancing platform' means a trading platform where a transmission system operator is a trading participant to all trades;

(7) 'balancing service' means a service provided to a transmission system operator via a contract for gas required to meet short term fluctuations in gas demand or supply, which is not a short term standardised product;

(8) 'confirmed quantity' means the quantity of gas confirmed by a transmission system operator to be scheduled or re-scheduled to flow on gas day D;

(9) 'daily imbalance charge' means the amount of money a network user pays or receives in respect of a daily imbalance quantity;

(10) 'daily metered' means that the gas quantity is measured and collected once per gas day;

(11) 'intraday metered' means that the gas quantity is measured and collected a minimum of two times within the gas day;

(12) 'non daily metered' means that the gas quantity is measured and collected less frequently than once per gas day;

(13) 'balancing portfolio' means a grouping of a network user's inputs and off-takes;

(14) 'notification quantity' means the quantity of gas transferred between a transmission system operator and a network user or network users or balancing portfolios, as appropriate;

(15) 'allocation' means the quantity of gas attributed to a network user by a transmission system operator as an input or an off-take expressed in kWh for the purpose of determining the daily imbalance quantity;

(16) 're-nomination cycle' means the process carried out by the transmission system operator in order to provide a network user with the message regarding the confirmed quantities following the receipt of a re-nomination;

(17) 'within day charge' means a charge levied or a payment made by a transmission system operator on

or to a network user as a result of a within day obligation;

(18) 'within day obligation' means a set of rules regarding network users' inputs and off-takes within the gas day imposed by a transmission system operator on network users;

(19) 'base case' means the model for information provision where the information on non- daily metered off-takes consists of a day ahead and within day forecasts;

(20) 'variant 1' means the model for information provision where the information on non- daily metered and daily metered off-takes is based on apportionment of measured flows during the gas day;

(21) 'variant 2' means the model for information provision where the information on non- daily metered off-takes is a day ahead forecast

CHAPTER II
BALANCING SYSTEM

Article 4
General principles

1. The network users shall be responsible to balance their balancing portfolios in order to minimise the need for transmission system operators to undertake balancing actions set out under this Regulation.

2. Balancing rules established in accordance with this Regulation shall reflect genuine system needs, taking into account the resources available to transmission system operators and shall provide incentives for network users to balance their balancing portfolios efficiently.

3. Network users shall have the possibility to enter into a legally binding agreement with a transmission system operator which enables them to submit trade notifications irrespective of whether they have contracted transport capacity or not.

4. In a balancing zone where more than one transmission system operator is active, this Regulation shall apply to all the transmission system operators within that balancing zone. In case the responsibility of keeping their transmission networks in balance has been transferred to an entity, this Regulation shall apply to that entity to the extent defined under the applicable national rules.

Article 5
Trade notifications and allocations

1. Gas transfer between two balancing portfolios within one balancing zone shall be made through disposing and acquiring trade notifications submitted to the transmission system operator in respect of the gas day.

2. The timing for submitting, withdrawing and amending trade notifications shall be defined by the transmission system operator in the transport contract or other legally binding agreement with network users taking into account the time, if any, for processing the trade notifications. The transmission system operator shall enable the network users to submit trade notifications close to the time when the trade notification becomes effective.

3. The transmission system operator shall minimise the time for processing trade notifications. The time for processing shall not take more than thirty minutes except where the time when the trade notification becomes effective permits to extend the time for processing up to two hours.

4. A trade notification shall provide at least the following information:

(a) the gas day for which gas is transferred;

(b) the identification of the balancing portfolios concerned;

(c) whether it is a disposing or an acquiring trade notification;

(d) the notification quantity expressed in kWh/d for daily notification quantity or in kWh/h for hourly notification quantity, as required by the transmission system operator.

5. If the transmission system operator receives a corresponding set of a disposing and an acquiring trade notifications and the notification quantities are equal then the transmission system operator shall allocate the notification quantity to the balancing portfolios concerned:

(a) as an off-take to the balancing portfolio of the network user making the disposing trade notification; and

(b) as an input to the balancing portfolio of the network user making the acquiring trade notification.

6. Where the notification quantities referred to in paragraph 5 are not equal, the transmission system operator shall either allocate the lower notification quantity specified in the relevant trade notification or shall reject both trade notifications. The applicable rule shall be defined by the transmission system operator in the applicable transport contract or other legally binding agreement.

7. A service provider shall not be prevented to act on behalf of a network user for the purpose of paragraph 5, subject to the prior approval of the transmission system operator.

8. A network user may make a trade notification on a gas day irrespective of whether any nomination was made by this network user for that gas day.

9. Paragraphs 1 to 8 shall apply, *mutatis mutandis*, to the transmission system operators trading in accordance with Article 6(3)(a).

CHAPTER III
OPERATIONAL BALANCING

Article 6
General provisions

1. The transmission system operator shall undertake balancing actions in order to:

(a) maintain the transmission network within its operational limits;

(b) achieve an end of day linepack position in the transmission network different from the one anticipated on the basis of expected inputs and off-takes for that gas day, consistent with economic and efficient operation of the transmission network.

2. While undertaking balancing actions the transmission system operator shall consider at least the following in respect of the balancing zone:

(a) the transmission system operator's own estimates of demand of gas over and within the gas day for which the balancing action(s) is (are) considered;

(b) nomination and allocation information and measured gas flows;

(c) gas pressures throughout the transmission network(s).

3. The transmission system operator shall undertake balancing actions through:

(a) purchase and sale of short term standardised products on a trading platform; and/or

(b) the use of balancing services.

4. While undertaking balancing actions the transmission system operator shall take into account the following principles:

(a) the balancing actions shall be undertaken on a non-discriminatory basis;

(b) the balancing actions shall have regard to any obligation upon transmission system operators to operate an economic and efficient transmission network.

Article 7

Short term standardised products

1. The short term standardised products shall be traded for delivery on a within day or day ahead basis seven days a week in accordance with the applicable rules of the trading platform as defined between the trading platform operator and the transmission system operator.

2. The originating trading participant is the trading participant that posts a bid or an offer to trade on the trading platform and the accepting trading participant is the trading participant that accepts it.

3. Where a title product is traded:

(a) one trading participant makes an acquiring trade notification and the other makes a disposing trade notification;

(b) both trade notifications shall specify the gas quantity transferred from the trading participant who makes a disposing trade notification to the trading participant who makes an acquiring trade notification;

(c) where an hourly notification quantity is used, it shall be applied flat to all the remaining hours of the gas day from a specified start time and shall be equal to zero for all the hours before this start time.

4. Where a locational product is traded:

(a) the transmission system operator shall determine the relevant entry and exit points or groups thereof that can be used;

(b) all the conditions specified in paragraph 3 shall be fulfilled;

(c) the originating trading participant shall modify the quantity of gas to be delivered to or off-taken from the transmission network at the specified entry or exit point by an amount equal to the notification quantity and provide evidence to the transmission system operator that the quantity was modified accordingly;

5. Where a temporal product is traded:

(a) the conditions specified in paragraph 3(a) and (b) shall be fulfilled;

(b) an hourly notification quantity shall be applied to the hours of the gas day from a specified start time

up to a specified end time and shall be equal to zero for all the hours before the start time and zero for all the hours after the end time.

6. Where a temporal locational product is traded, the conditions specified in paragraph 4(a), and (c) and paragraph 5 shall be fulfilled.

7. When establishing the short term standardised products, the transmission system operators from adjacent balancing zones shall cooperate in order to determine the relevant products. Each transmission system operator shall inform the relevant trading platform operators of the result of such cooperation without undue delay.

Article 8

Balancing services

1. The transmission system operator is entitled to procure balancing services for those situations in which short- term standardised products will not or are not likely to provide the response necessary to keep the transmission network within its operational limits or in the absence of liquidity of trade in short term standardised products.

2. For the purpose of undertaking balancing actions through the use of balancing services, the transmission system operator when procuring these balancing services shall consider at least the following:

(a) how balancing services will keep the transmission network within its operational limits;

(b) the response time of the balancing services compared to the response times of any available short term standardised products;

(c) the estimated cost of the procurement and use of balancing services compared to the estimated cost of use of any available short term standardised products;

(d) the area at which the gas needs to be delivered;

(e) the transmission system operator's gas quality requirements;

(f) to what extent the procurement and use of balancing services may affect the liquidity of the short term wholesale gas market.

3. Balancing services shall be procured in a market-based manner, through a transparent and non-discriminatory public tender procedure in accordance with the applicable national rules, in particular:

(a) prior to any commitment to contract for a balancing service, the transmission system operator shall publish a non-restrictive call for tender indicating the purpose, scope and related instructions to tenderers, to enable them to participate in the tender process;

(b) the results shall be published without prejudice to the protection of commercially sensitive information and individual results shall be disclosed to each tenderer.

4. Under specific circumstances a transparent and non-discriminatory procedure other than a public tender may be approved by the national regulatory authority.

5. Unless a decision by the national regulatory authority allows for a longer duration of a balancing service, the duration of a balancing service shall not exceed one year and the starting date shall occur within a twelve month period from the related binding commitment of the contracting parties.

6. The transmission system operator shall review the use of its balancing services annually in order to assess whether available short term standardised products would better meet the transmission system operator's operational requirements and whether the use of balancing services could be reduced for the next year.

7. The transmission system operator shall publish annually the information with regard to the balancing services procured and the related costs incurred.

Article 9

Merit order

1. Subject to the principles set out in Article 6(4), when deciding upon the appropriate balancing actions, the transmission system operator, shall:

(a) prioritise the use of title products where and to the extent appropriate over any other available short term standardised products.

(b) use the other short term standardised products when the following circumstances are met:

(1) locational products when, in order to keep the transmission network within its operational limits, gas flow changes are needed at specific entry and/or exit points and/or to start from a specific period of time within the gas day.

(2) temporal products when, in order to keep the transmission network within its operational limits, gas flow changes are needed within a specific period of time within the gas day. The transmission system operator shall only use a temporal product when it would be more economic and efficient than the purchase and sale of a combination of title products or locational products.

(3) temporal locational products when, in order to keep the transmission network within its operational limits, gas flow changes are needed at specific entry and/or exit points and within a specific period of time within the gas day. The transmission system operator shall only use a temporal locational product when it would be more economic and efficient than the purchase and sale of a combination of locational products.

(c) only use balancing services where short term standardised products will not or are not likely to provide, upon assessment of the transmission system operator concerned, the response necessary to keep the transmission network within its operational limits.

The transmission system operator shall take into account cost-efficiency within the respective levels of the merit order referred to under (a)-(c).

2. While trading in short- term standardised products, the transmission system operator shall prioritise the use of within day products over day ahead products where and to the extent appropriate.

3. The transmission system operator may seek approval from the national regulatory authority to trade within an adjacent balancing zone, and have the gas transported to and from this balancing zone, as an alternative to trading title products and/or locational products in its own balancing zone(s). When deciding on granting the approval, the national regulatory authority may consider alternative solutions to improve the functioning of the domestic market. The applicable terms and conditions shall be reconsidered on an annual basis by the transmission system operator and the national regulatory authority. The use of this balancing action shall not limit the access to and use by the network users of capacity at the interconnec-

tion point concerned.

4. The transmission system operator shall publish on a yearly basis the information with regard to the costs, frequency and quantity of the balancing actions undertaken in accordance with each of the requirements set out in paragraph 1 and of the balancing actions undertaken in accordance with paragraph 3.

Article 10

Trading platform

1. For the purpose of procurement of short- term standardised products, the transmission system operator shall trade on a trading platform that meets all of the following criteria:

(a) provides sufficient support throughout the gas day to both the network users to trade in and the transmission system operators to undertake appropriate balancing actions through trade in the relevant short term standardised products;

(b) provides transparent and non-discriminatory access;

(c) provides services on an equal treatment basis;

(d) ensures anonymous trading at least until a transaction is concluded;

(e) provides a detailed overview of the current bids and offers to all trading participants;

(f) ensures that all trades are duly notified to the transmission system operator.

2. The transmission system operator shall endeavour to ensure that the criteria set out in paragraph 1 are met on at least one trading platform. Where the transmission system operator has been unable to ensure that these criteria are met on at least one trading platform it shall take the necessary measures towards the establishment of a balancing platform or a joint balancing platform as set out in Article 47.

3. After each trade is concluded, the trading platform operator shall make available to the trading participants sufficient details to confirm the trade.

4. The trading participant shall be responsible for submitting trade notification to the transmission system operator as defined in Article 5 unless the responsibility is assigned to the trading platform operator or a third party in accordance with the applicable rules of the trading platform.

5. The trading platform operator shall:

(a) publish the evolution of the marginal buy price and the marginal sell price after each trade without undue delay; or

(b) provide the transmission system operator with the information where the transmission system operator elects to publish the evolution of the marginal buy price and the marginal sell price. The transmission system operator shall publish this information without undue delay.

Where there is more than one trading platform operator in the same balancing zone point (b) shall apply.

6. The trading platform operator shall only allow network users to trade on its trading platform if they are entitled to make trade notifications.

7. The transmission system operator shall without undue delay inform the trading platform operator of network user's losing the right to make trade notifications pursuant to the applicable contractual arrangement in force which shall result in the suspension of the network user's right to trade on the trading plat-

form, without prejudice to the other remedies that could be available in such case to the trading platform operator under the applicable rules of the trading platform.

Article 11

Incentives

1. With the view to foster the liquidity of the short term wholesale gas market, the national regulatory authority can incentivise the transmission system operator to undertake balancing actions efficiently or to maximise the undertaking of balancing actions through the trade in short term standardised products.

2. The transmission system operator may submit for approval to the national regulatory authority an incentive mechanism that shall be consistent with the general principles set out in this Regulation.

3. Prior to submitting the proposal referred to in paragraph 2, the transmission system operator may consult stakeholders upon the transmission system operator's own initiative or upon the national regulatory authority's request.

4. The incentive mechanism shall:

(a) be based on the transmission system operator's performance via capped payments to the transmission system operator for outperformance and by the transmission system operator for underperformance, that are measured against predetermined performance targets which may include, *inter alia*, costs targets;

(b) take into account the means available to the transmission system operator to control the performance;

(c) ensure that its application accurately reflects the allocation of responsibilities between the parties involved;

(d) be adapted to the state of development of the relevant gas market where it is to be implemented;

(e) be subject to a regular review by the national regulatory authority in close cooperation with the transmission system operator to evaluate where and to what extent changes thereto may be needed.

CHAPTER IV
NOMINATIONS

Article 12

General provisions

1. The gas quantity to be specified in the nomination and re-nomination shall be expressed either in kWh/d for daily nominations and re-nominations or in kWh/h for hourly nominations and re-nominations.

2. The transmission system operator may require network users to provide further information on nominations and re-nominations in addition to the requirements set out in this Regulation, including, *inter alia*, an accurate, updated and sufficiently detailed forecast of the expected inputs and off-takes, this in accordance with the specific need(s) of the transmission system operator.

3. Articles 13 to 16 regarding nominations and re-nominations for unbundled capacity products shall apply

mutatis mutandis to single nominations and re-nominations for bundled capacity products. Transmission system operators shall cooperate for the purpose of implementing nomination and re-nomination rules for bundled capacity products at interconnection points.

4. Article 15(3) and Article 17(1) shall be without prejudice to the rule for minimum interruption lead times referred to in Article 33 of Commission Regulation (EU) No 459/2017 of 16 March 2017 establishing a Network Code on Capacity Allocation Mechanisms in Gas Transmission Systems and repealing Regulation (EU) 984/2013.

Article 13

Information regarding nominations and re-nominations at interconnection points

Nominations and re-nominations provided by network users to the transmission system operators with regard to interconnection points shall contain at least the following information:

(1) interconnection point identification;

(2) direction of the gas flow;

(3) network user identification or, if applicable, its balancing portfolio identification;

(4) network user's counterparty identification or, if applicable, its balancing portfolio identification;

(5) start and end time of the gas flow for which the nomination or re-nomination is submitted;

(6) gas day D;

(7) the gas quantity requested to be transported.

Article 14

Nomination procedure at interconnection points

1. A network user shall be entitled to submit to the transmission system operator a nomination for gas day D no later than the nomination deadline on gas day D-1. The nomination deadline shall be 13:00 UTC (winter time) or 12:00 UTC (daylight saving) on gas day D-1.

2. The last nomination received by the transmission system operator from a network user before the nomination deadline shall be taken into account by the transmission system operator.

3. The transmission system operator shall send the message regarding the confirmed quantities to the respective network users no later than the confirmation deadline on gas day D-1. The confirmation deadline shall be 15:00 UTC (winter time) or 14:00 UTC (daylight saving) on gas day D-1.

4. The transmission system operators at either side of the interconnection point may agree to offer a pre-nomination cycle within which:

(a) network users are not obliged to submit nominations;

(b) network users may submit to transmission system operators the nominations for gas day D no later than 12:00 UTC (winter time) or 11:00 UTC (daylight saving) on gas day D-1;

(c) the transmission system operator shall send the message regarding the processed quantities to the re-

spective network users no later than 12:30 UTC (winter time) or 11:30 UTC (daylight saving) on gas day D-1.

5. In the absence of a valid nomination sent by the network user before the nomination deadline, the respective transmission system operators shall apply the default nomination rule agreed between these transmission system operators. The default nomination rule in force at an interconnection point shall be made available to the network users of the transmission system operators.

Article 15

Re-nomination procedure at interconnection points

1. A network user shall be entitled to submit re-nominations within the re-nomination period which starts immediately after the confirmation deadline and ends no earlier than three hours before the end of gas day D. The transmission system operator shall start a re-nomination cycle at the start of every hour within the re-nomination period.

2. The last re-nomination received by the transmission system operator from a network user before the re-nomination cycle starts shall be taken into account by the transmission system operator in the re-nomination cycle.

3. The transmission system operator shall send the message regarding the confirmed quantities to the respective network users within two hours from the start of each re-nomination cycle. The start time of the effective gas flow change shall be two hours from the start of the re-nomination cycle, unless:

(a) a later time is requested by the network user; or

(b) an earlier time is allowed by the transmission system operator.

4. It shall be assumed that any change to the gas flow occurs at the start of each hour.

Article 16

Specific provisions at interconnection points

1. Where daily and hourly nominations and re-nominations co-exist at an interconnection point, the transmission system operators or national regulatory authorities (as appropriate) may consult the stakeholders for the purpose of identifying whether harmonised nominations and re-nominations should be submitted at both sides of this interconnection point. This consultation shall consider at least the following:

(a) financial impact on transmission system operators and network users;

(b) impact on cross-border trade;

(c) impact on the daily balancing regime at the interconnection point(s).

2. Following this consultation, the proposed changes, if any, shall be approved by the national regulatory authorities. Once the proposed changes are approved the transmission system operators shall amend accordingly the existing interconnection agreements and the transport contracts or other legally binding agreements and publish those changes.

Article 17

Rejection of nominations and re-nominations or amendment of the requested gas quantity at interconnection points

1. The transmission system operator may reject:

(a) a nomination or re-nomination no later than two hours after the nomination deadline or the beginning of the re-nomination cycle in the following cases:

(i) it does not comply with the requirements as to its content;

(ii) it is submitted by an entity other than a network user;

(iii) the acceptance of the daily nomination or re-nomination would result in a negative implied nomination flow rate;

(iv) it exceeds the network user's allocated capacity;

(b) a re-nomination no later than two hours after the beginning of the re-nomination cycle in the following additional cases:

(i) it exceeds the network user's allocated capacity for the remaining hours, unless this re-nomination is submitted in order to request interruptible capacity, where offered by the transmission system operator;

(ii) the acceptance of the hourly re-nomination would result in an expected gas flow change before the end of the re-nomination cycle.

2. The transmission system operator shall not reject a network user's nomination and re-nomination on the sole ground that this network user's intended inputs are not equal to its intended off-takes.

3. In case a re-nomination is rejected, the transmission system operator shall use the network user's last confirmed quantity, if any.

4. Without prejudice to the specific terms and conditions applicable to interruptible capacity and capacity subject to congestion management rules, the transmission system operator may in principle only amend the gas quantity requested under a nomination and re-nomination in exceptional events, and emergency situations when there is an evident danger to system security and stability. Transmission system operators shall notify to the national regulatory authority any such action taken.

Article 18

Nomination and re-nomination procedure at points other than interconnection points

1. The national regulatory authority shall, if not determined already, after consultation of the transmission system operator, determine at which points other than interconnection points nominations and re-nominations are required.

2. Where nominations and re-nominations are required at points other than interconnection points the following principles shall apply:

(a) network users shall be entitled to submit re-nominations for the gas day;

(b) the transmission system operator shall confirm or reject the submitted nominations and re-nominations considering the timelines referred to in Article 17.

CHAPTER V
DAILY IMBALANCE CHARGES

Article 19
General provisions

1. Network users shall be bound to pay or be entitled to receive (as appropriate) daily imbalance charges in relation to their daily imbalance quantity for each gas day.

2. Daily imbalance charges shall be identified separately on the transmission system operator's invoices to network users.

3. The daily imbalance charge shall be cost reflective and shall take account of the prices associated with transmission system operator's balancing actions, if any, and of the small adjustment referred to in Article 22(6).

Article 20
Daily imbalance charge calculation methodology

1. The transmission system operator shall submit the daily imbalance charge calculation methodology to be applied in its balancing zone to the national regulatory authority for approval.

2. Once approved, the daily imbalance charge calculation methodology shall be published on the relevant website. Any update thereof shall be published in a timely manner.

3. The daily imbalance charge calculation methodology shall define:

(a) the calculation of the daily imbalance quantity referred to in Article 21;

(b) the derivation of the applicable price referred to in Article 22; and

(c) any other necessary parameter.

Article 21
Daily imbalance quantity calculation

1. The transmission system operator shall calculate a daily imbalance quantity for each network user's balancing portfolio for each gas day in accordance with the following formula:

daily imbalance quantity = inputs – off-takes

2. The daily imbalance quantity calculation shall be adapted accordingly where:

(a) a linepack flexibility service is offered; and/or

(b) any arrangement is in place whereby network users provide gas, including gas in kind, to cover:

(i) gas unaccounted for as off taken from the system, such as losses, metering errors; and/or

(ii) gas used by the transmission system operator for the operation of the system, such as fuel gas

3. Where the sum of a network user's inputs for the gas day is equal to the sum of its off-takes for this gas day, a network user is deemed balanced for this gas day.

4. Where the sum of a network user's inputs for the gas day is not equal to the sum of its off-takes for this gas day, a network user is deemed imbalanced for this gas day and daily imbalance charges shall be applied in accordance with Article 23.

5. The transmission system operator shall provide a network user with its initial and its final daily imbalance quantities in accordance with Article 37.

6. The daily imbalance charge shall be based on the final daily imbalance quantity.

Article 22

Applicable price

1. For the purpose of daily imbalance charge calculation as provided in Article 23 the applicable price shall be determined as follows:

(a) marginal sell price where the daily imbalance quantity is positive (i.e. the network user's inputs for that gas day exceed its off-takes for that gas day); or

(b) marginal buy price where the daily imbalance quantity is negative (i.e. the network user's off-takes for that gas day exceed its inputs for that gas day).

2. A marginal sell price and a marginal buy price shall be calculated for each gas day pursuant to the following:

(a) a marginal sell price is the lower of:

(i) the lowest price of any sales of title products in which the transmission system operator is involved in respect of the gas day; or

(ii) the weighted average price of gas in respect of that gas day, minus a small adjustment.

(b) a marginal buy price is the higher of:

(i) the highest price of any purchases of title products in which the transmission system operator is involved in respect of the gas day; or

(ii) the weighted average price of gas in respect of that gas day, plus a small adjustment.

3. For the purpose of determining the marginal sell price, the marginal buy price and the weighted average price, the related trades shall be made on trading platforms that are pre-identified by the transmission system operator and approved by the national regulatory authority. The weighted average price shall be the energy weighted average price of trades in title products carried out at the virtual trading point in respect of a gas day.

4. A default rule shall be defined in case paragraph 2(a) and (b) do not allow for the derivation of a marginal sell price and/or a marginal buy price.

5. Subject to the approval of the national regulatory authority, the price of locational products may be taken into account for the purpose of determining the marginal sell price, the marginal buy price and the weighted average price, where proposed by the transmission system operator with corresponding consideration of the extent of the transmission system operator's use of locational products.

6. The small adjustment shall:

(a) incentivise network users to balance their inputs and off-takes;

(b) be designed and applied in a non-discriminatory manner in order to:

(i) not deter market entry;

(ii) not impede the development of competitive markets;

(c) not have a detrimental impact on cross-border trade;

(d) not result in network users' excessive financial exposure to daily imbalance charges.

7. The value of the small adjustment may differ for determining the marginal buy price and the marginal sell price. The value of the small adjustment shall not exceed ten percent of the weighted average price unless the transmission system operator concerned can justify otherwise to the national regulatory authority and have it approved pursuant to Article 20.

Article 23

Daily imbalance charge

1. To calculate daily imbalance charges for each network user, the transmission system operator shall multiply a network user's daily imbalance quantity by the applicable price determined in accordance with Article 22.

2. Daily imbalance charges shall be applied as follows:

(a) if a network user's daily imbalance quantity for the gas day is positive then this network user shall be deemed to have sold gas to the transmission system operator equivalent to the daily imbalance quantity and therefore shall be entitled to receive a credit in respect of daily imbalance charges from the transmission system operator; and

(b) if a network user's daily imbalance quantity for the gas day is negative then this network user shall be deemed to have purchased gas from the transmission system operator equivalent to the daily imbalance quantity and therefore shall be obliged to pay daily imbalance charges to the transmission system operator.

CHAPTER VI
WITHIN DAY OBLIGATIONS

Article 24

General provisions

1. A transmission system operator is only entitled to apply within day obligations in order to incentivise network users to manage their within day position in view of ensuring the system integrity of its transmission network and minimising its need to undertake balancing actions.

2. Where the transmission system operator is required to provide information to network users to enable them to manage their exposures associated with within day positions, it shall be provided to them regularly. Where applicable, this information shall be provided upon a request submitted by each network user once.

Article 25

Types of within day obligations

There are three types of within day obligations, each incentivising the network user for a specific objective as set out in this Article:

(1) System-wide within day obligation

shall be designed to provide incentives for network users to keep the transmission network within its operational limits and shall set out the following:

(a) the operational limits of the transmission network within which it has to remain;

(b) the actions the network users can undertake to keep the transmission network within the operational limits;

(c) the consequential balancing actions of the transmission system operator when the operational limits of the transmission network are approached or reached;

(d) the attribution of costs and/or revenues to the network users and/or consequences on the within day position of these network users resulting from balancing actions undertaken by the transmission system operator;

(e) the related charge which shall be based on the individual within day position of the network user.

(2) Balancing portfolio within day obligation

shall be designed to incentivise network users to keep their individual position during the gas day within a pre-defined range and shall set out the following:

(a) for each balancing portfolio the range within which this balancing portfolio has to stay;

(b) how the range referred to above is determined;

(c) the consequences for network users not staying within the defined range and, where appropriate, details of how any corresponding charge is derived;

(d) the related charge which shall be based on the individual within day position of the network user.

(3) Entry-exit point within day obligation

shall be designed to provide incentives for network users to limit the gas flow or the gas flow variation under specific conditions at specific entry-exit points and shall set out the following:

(a) the limits in the gas flow and/or the gas flow variation;

(b) the entry and/or exit point or groups of entry and/or exit points to which such limits apply;

(c) the conditions under which such limits shall apply;

(d) the consequences of not complying with such limits.

This obligation is additional to any other agreements with final costumers containing, amongst other things, localised specific restrictions and obligations regarding the physical gas flow.

Article 26

Requirements for within day obligations

1. The transmission system operator may propose to the national regulatory authority a within day obligation or an amendment thereof. It may combine features of the different types described in Article 25 provided the proposal meets the criteria set out in paragraph 2. The transmission system operator's right of proposal is without prejudice to the right of the national regulatory authority to take a decision on its own initiative.

2. Any within day obligation shall meet the following criteria:

(a) a within day obligation and related within day charge, if any, shall not pose any undue barriers on cross-border trade and new network users entering the relevant market;

(b) a within day obligation shall only be applied where the network users are provided with adequate information before a potential within day charge is applied regarding their inputs and/or off-takes and have reasonable means to respond to manage their exposure;

(c) the main costs to be incurred by the network users in relation to their balancing obligations shall relate to their position at the end of the gas day;

(d) to the extent possible, within day charges shall be reflective of the costs of the transmission system operator for the undertaking of any associated balancing actions;

(e) a within day obligation will not result in network users being financially settled to a position of zero during the gas day;

(f) the benefits of introducing a within day obligation in terms of economic and efficient operation of the transmission network outweigh any potential negative impacts thereof, including on liquidity of trades at the virtual trading point.

3. The transmission system operator may propose different within day obligations for distinct categories of entry or exit points with the aim to provide better incentives for different categories of network users in order to avoid cross subsidies. The transmission system operator's right of proposal is without prejudice to the right of the national regulatory authority to take a decision on its own initiative.

4. The transmission system operator shall consult stakeholders, including the national regulatory authorities, the affected distribution system operators and transmission system operators in adjacent balancing zones, on any within day obligation it intends to introduce, including the methodology and assumptions used in arriving at the conclusion that it meets the criteria set out in paragraph 2.

5. Following the consultation process, the transmission system operator shall produce a recommendation document which shall include the finalised proposal and an analysis of:

(a) the necessity of the within day obligation, taking into account the transmission network's characteristics and the flexibility available to the transmission system operator through purchase and sale of short term standardised products or use of balancing services in accordance with Chapter III;

(b) the information available to enable network users to manage in a timely manner their within day positions;

(c) the expected financial impact on network users;

(d) the effect on new network users entering the relevant market, including any undue negative impact thereon;

(e) the effect on cross-border trade, including the potential impact on balancing in adjacent balancing zones;

(f) the impact on the short term wholesale gas market, including the liquidity thereof;

(g) the non-discriminatory nature of the within day obligation.

6. The transmission system operator shall submit the recommendation document to the national regulatory authority for the approval of the proposal in accordance with the procedure set out in Article 27. In parallel, the transmission system operator shall publish this recommendation document, subject to any confidentiality obligations that it may be bound by **<…>**.

Article 27

National regulatory authority decision making

1. The national regulatory authority shall take and publish a motivated decision within six months following the receipt of the complete recommendation document. In deciding whether to approve the proposed within day obligation, the national regulatory authority shall assess whether this within day obligation meets the criteria set out in Article 26(2).

2. Before taking the motivated decision the national regulatory authority shall consult with the national regulatory authorities of adjacent **Energy Community Contracting Parties and adjacent EU** Member States and take account of their opinions. The adjacent national regulatory authority(-ies) may **consult** the **Energy Community Regulatory Board <…>** on the decision referred to in paragraph 1.

Article 28

Existing within day obligations

Where the transmission system operator has within day obligation(s) at the date of **expiry of the deadline for transposition** of this Regulation, within six months from such date this transmission system operator shall follow the process set out in Article 26(5) to (7) and shall submit the within day obligation(s) to the national regulatory authority for approval in accordance with Article 27 to continue its (their) use.

CHAPTER VII
NEUTRALITY ARRANGEMENTS

Article 29

Principles of neutrality

1. The transmission system operator shall not gain or lose by the payment and receipt of daily imbalance charges, within day charges, balancing actions charges and other charges related to its balancing activities, which shall be considered as all the activities undertaken by the transmission system operator to fulfil the obligations set out in this Regulation.

2. The transmission system operator shall pass to network users:

(a) any costs and revenues arising from daily imbalance charges and within day charges;

(b) any costs and revenues arising from the balancing actions undertaken pursuant to Article 9, unless the national regulatory authority considers those costs and revenues as incurred inefficiently in accordance with the applicable national rules. This consideration shall be based upon an assessment which:

(i) shall demonstrate to what extent the transmission system operator could have reasonably mitigated the costs incurred when undertaking the balancing action; and

(ii) shall be made with regard to the information, the time and the tools available to the transmission system operator at the moment it decided to undertake the balancing action;

(c) any other costs and revenues related to the balancing activities undertaken by the transmission system operator, unless the national regulatory authority considers these costs and revenues as incurred inefficiently in accordance with the applicable national rules.

3. Where an incentive to promote efficient undertaking of balancing actions is implemented, the aggregate financial loss shall be limited to the transmission system operator's inefficiently incurred costs and revenues.

4. Transmission system operators shall publish the relevant data regarding the aggregate charges referred to in paragraph 1 and the aggregate neutrality charges for balancing, at least at the same frequency as the respective charges are invoiced to network users, but no less than once per month.

5. Notwithstanding paragraphs 1 and 2, the transmission system operator in its balancing role may be subject to an incentive mechanism as referred to in Article 11.

Article 30

Balancing neutrality cash flows

1. The neutrality charge for balancing shall be paid by or to the network user concerned.

2. The national regulatory authority shall set or approve and publish the methodology for the calculation of the neutrality charges for balancing, including their apportionment amongst network users and credit risk management rules.

3. The neutrality charge for balancing shall be proportionate to the extent the network user makes use of the relevant entry or exit points concerned or the transmission network.

4. The neutrality charge for balancing shall be identified separately when invoiced to network users and the invoice shall be accompanied by sufficient supporting information defined in the methodology referred to in paragraph 2.

5. Where the information model variant 2 is applied and thus the neutrality charge for balancing may be based on forecasted costs and revenues, the transmission system operator's methodology for the calculation of neutrality charge for balancing shall provide rules for a separate neutrality charge for balancing in respect of non- daily metered off-takes.

6. Where relevant, the transmission system operator's methodology for the calculation of the neutrality charge for balancing may provide rules for the division of the neutrality charge for balancing components and the subsequent apportionment of the corresponding sums amongst the network users in order to reduce cross subsidies.

Article 31

Credit risk management arrangements

1. The transmission system operator shall be entitled to take necessary measures and impose relevant contractual requirements, including financial security safeguards, on network users to mitigate their default in payment regarding any payment due for the charges referred to in Article 29 and 30.

2. The contractual requirements shall be on a transparent and equal treatment basis, proportionate to the purpose and defined in the methodology referred to in Article 30(2).

3. In case of a default attributable to a network user, the transmission system operator shall not be liable to bear any loss incurred provided the measures and requirements referred to paragraphs 1 and 2 were duly implemented and such loss shall be recovered in accordance with the methodology referred to in Article 30(2).

CHAPTER VIII
INFORMATION PROVISION

Article 32

Information obligations of transmission system operators towards the network users

The information provided to network users by the transmission system operator shall refer to:

(1) the overall status of the transmission network in accordance with point 3.4(5) of Annex I to Regulation (EC) No 715/2009;

(2) the transmission system operator's balancing actions referred to in Chapter III;

(3) the network user's inputs and off-takes for the gas day referred to in Articles 33 to 42.

Article 33

General provisions

1. If not already provided by the transmission system operator according to point 3.1.2 of Annex I to Regulation (EC) No 715/2009, the transmission system operator shall provide all information referred to under Article 32 in the following manner:

(a) on the transmission system operator's website or other system providing the information in electronic format;

(b) accessible to network users free of charge;

(c) in a user-friendly manner;

(d) clear, quantifiable and easily accessible;

(e) on a non-discriminatory basis;

(f) in consistent units either in kWh or kWh/d and kWh/h;

(g) in the official language(s) of the **Contracting Party** and in English.

2. Where a measured quantity cannot be obtained from a meter, a replacement value may be used. This replacement value shall be used as an alternative reference without any further warranty from the transmission system operator.

3. Providing access to the information shall not be construed as giving any specific warranty other than the availability of this information in a defined format and via a defined tool such as a website or web address and the related access of the network users to this information under normal conditions of use. In no circumstances shall the transmission system operators be liable to provide any further warranty, in particular as to the IT system of the network users.

4. The national regulatory authority shall decide on one information model per balancing zone. For information provision on intraday metered inputs and off-takes, the same rules shall apply to all models.

5. For balancing zones where the information model variant 2 is sought to be applied after the **expiry of the deadline for transposition** of this Regulation, a prior market consultation shall be conducted by the transmission system operator or the national regulatory authority as relevant.

Article 34

Intraday metered inputs and off-takes

1. For intraday metered inputs to and off-takes from the balancing zone, where a network user's allocation equals its confirmed quantity, the transmission system operator shall not be obliged to provide information other than the confirmed quantity.

2. For intraday metered inputs to and off-takes from the balancing zone, where a network user's allocation does not equal its confirmed quantity, on gas day D the transmission system operator shall provide network users with a minimum of two updates of their measured flows for at least the aggregate intraday metered inputs and off-takes according to either of the following two options, as decided by the transmission system operator:

(a) each update covers gas flows from the beginning of this gas day D; or

(b) each update covers incremental gas flows after that reported in the previous update.

3. The first updates shall cover at least four hours of gas flow within gas day D. These updates shall be provided without undue delay and within four hours after the gas flow and no later than 17:00 UTC (winter time) or 16:00 UTC (daylight saving).

4. The time of the second update provision shall be defined upon approval by the national regulatory authority and published by the transmission system operator.

5. The transmission system operator may request the network users to indicate which of the information referred to in paragraph 2 they have access to. Based on the response received, this transmission system operator shall provide the network user with the part of information it does not have access to, in accordance with paragraphs 2 to 4.

6. Where the transmission system operator is not responsible for apportioning the gas quantities between network users as part of the allocation process, as an exception to paragraph 2, it shall provide at least information on aggregate inputs and off-takes at a minimum of two times per gas day D on that gas day D.

Article 35

Daily metered off-takes

1. Where the information model variant 1 is applied, on gas day D the transmission system operator shall provide network users with a minimum of two updates of their apportionment of measured flows for at least the aggregate daily metered off-takes according to either of the following two options, as decided by the transmission system operator:

(a) each update covers gas flows from the beginning of this gas day D; or

(b) each update covers incremental gas flows after that reported in the previous update.

2. Each update shall be provided within two hours from the end of the final hour of gas flows.

Article 36

Non- daily metered off-takes

1. Where the information model base case is applied:

(a) on gas day D-1, the transmission system operator shall provide network users with a forecast of their non-daily metered off-takes for gas day D no later than 12:00 UTC (winter time) or 11:00 UTC (daylight saving);

(b) on gas day D, the transmission system operator shall provide network users with a minimum of two updates of the forecast of their non- daily metered off-takes.

2. The first update shall be provided no later than 13:00 UTC (winter time) or 12:00 UTC (daylight saving).

3. The time of the second update provision shall be defined upon approval by the national regulatory authority and published by the transmission system operator. This shall take into consideration the following:

(a) access to short term standardised products on a trading platform;

(b) accuracy of the forecast of a network users non- daily off-takes as compared to the time of its provision;

(c) time when the re-nomination period ends, as provided in Article 15(1);

(d) time of the first update of the forecast for a network user's non- daily metered off-takes.

4. Where the information model variant 1 is applied, on gas day D, the transmission system operator shall provide network users with a minimum of two updates of their apportionment of measured flows for at least the aggregate non- daily metered off-takes as referred to in Article 35.

5. Where the information model variant 2 is applied, on gas day D-1, the transmission system operator shall provide network users with a forecast of their non- daily metered off-takes for gas day D as referred to in paragraph 1(a).

Article 37

Inputs and off-takes after the gas day

1. No later than the end of gas day D+1, the transmission system operator shall provide each network user with an initial allocation for its inputs and off-takes on day D and an initial daily imbalance quantity.

(a) For the information models base case and variant 1, all gas delivered to the distribution system shall be allocated;

(b) For the information model variant 2, the non- daily metered off-takes shall equal the forecast of a network user's non- daily metered off-takes provided day ahead;

(c) For the information model variant 1, an initial allocation and an initial daily imbalance quantity shall be considered as the final allocation and the final daily imbalance quantity.

2. Where an interim measure referred to in Articles 47 to 51 applies, an initial allocation and an initial daily imbalance quantity can be provided within three gas days after gas day D in case it would not be technically or operationally feasible to comply with paragraph 1.

3. The transmission system operator shall provide each network user with the final allocation for its inputs and off-takes and the final daily imbalance quantity within a period of time defined under the applicable national rules.

Article 38

Cost benefit analysis

1. Within two years as from the **expiry of the deadline for transposition** of this Regulation, the transmission system operators shall assess the costs and benefits of:

(a) increasing the frequency of information provision to network users;

(b) reducing the related timelines of information provision;

(c) improving the accuracy of the information provided.

This cost benefit analysis shall specify the breakdown of costs and benefits among the categories of affected parties.

2. The transmission system operator shall consult the stakeholders on this assessment, in cooperation with the distribution system operators where they are affected.

3. On the basis of the consultation results, the national regulatory authority shall decide on any relevant changes of information provision.

Article 39

Information obligations of distribution system operator(s) and forecasting party(-ies) towards the transmission system operator

1. Each distribution system operator associated to a balancing zone and each forecasting party shall provide the transmission system operator in the respective balancing zone with the information necessary for information provision to the network users under this Regulation. This shall include inputs and off-takes on the distribution system regardless whether that system is a part of the balancing zone or not.

2. The information, its format and the procedure for its provision shall be defined in cooperation between the transmission system operator, the distribution system operator and the forecasting party, as relevant, to ensure the due provision of information by the transmission system operator to the network users under

this Chapter and in particular the criteria set out in Article 33(1).

3. This information shall be provided to the transmission system operator in the same format as defined under the applicable national rules and shall be consistent with the format used by the transmission system operator to provide the information to the network users.

4. The national regulatory authority may ask the transmission system operator, the distribution system operator and the forecasting party, to propose an incentive mechanism regarding the provision of an accurate forecast for a network user's non- daily metered off-takes which shall meet the criteria set out for the transmission system operator in Article 11(4).

5. The national regulatory authority shall designate the forecasting party in a balancing zone after prior consultation with the transmission system operators and distribution system operators concerned. The forecasting party shall be responsible for forecasting a network user's non-daily metered off-takes and where appropriate its subsequent allocation. It may be a transmission system operator, distribution system operator or a third party.

Article 40

Information obligations of the distribution system operator(s) towards the transmission system operator

The distribution system operator shall provide the transmission system operator with information on the intraday and daily metered inputs and off-takes on the distribution system consistent with the information requirements set out in Articles 34(2) to (6), 35 and 37. This information shall be provided to the transmission system operator within the time sufficient for the transmission system operator to provide the information to network users.

Article 41

Information obligations of the distribution system operator(s) towards the forecasting party

1. Distribution system operators are responsible for providing the forecasting party with sufficient and updated information for the purpose of the methodology for the forecast of a network user's non- daily metered off-takes application as set out in Article 42(2). This information shall be provided in a timely manner in accordance with the timelines defined by the forecasting party to be consistent with its needs.

2. Paragraph 1 shall apply, *mutatis mutandis*, to variant 1.

Article 42

Information obligations of the forecasting party towards the transmission system operator

1. The forecasting party shall provide the transmission system operator with forecasts of network user's non- daily metered off-takes and subsequent allocations consistent with the information requirements set

out in Articles 36 and 37. This information shall be provided to the transmission system operator within the time sufficient for the transmission system operator to provide the information to network users and for day ahead and within day forecasts of a network user's non daily metered off-takes no later than one hour before the deadlines referred to in Article 36(1)(a) and (b), unless a later time sufficient for the transmission system operator to provide this information to the network users is agreed by the transmission system operator and the forecasting party.

2. The methodology for the forecast of a network user's non-daily metered off-takes shall be based on a statistical demand model, with each non- daily metered off-take assigned with a load profile, consisting of a formula of the variation in gas demand versus variables such as temperature, day of week, customer type and holiday seasons. The methodology shall be subject to consultation before its adoption.

3. A report on the accuracy of the forecast of a network user's non-daily metered off-takes shall be published by the forecasting party at least every two years.

4. Where relevant, transmission system operators shall provide the data regarding gas flows within the time sufficient for the forecasting party to comply with its obligations under this Article.

5. Paragraphs 2 to 4 shall, *mutatis mutandis*, apply to variant 1.

CHAPTER IX
LINEPACK FLEXIBILITY SERVICE

Article 43
General provisions

1. A transmission system operator may offer the provision of a linepack flexibility service to network users after the approval of the related terms and conditions by the national regulatory authority.

2. The terms and conditions applicable to a linepack flexibility service shall be consistent with the responsibility of a network user to balance its inputs and off-takes over the gas day.

3. The linepack flexibility service shall be limited to the level of linepack flexibility available in the transmission network and deemed not required for carrying out its function of transmission according to the concerned transmission system operator's evaluation.

4. Gas delivered to and off-taken from the transmission network by network users under this service shall be taken into account for the purpose of calculation of their daily imbalance quantity.

5. The neutrality mechanism set out in Chapter VII shall not apply to the linepack flexibility service unless otherwise decided by the national regulatory authority.

6. Network users shall notify the transmission system operator concerned of the use of the linepack flexibility service by submitting nominations and re-nominations.

7. The transmission system operator may refrain from requiring the network users to submit nominations and re-nominations referred to in paragraph 6, where the absence of such a notification does not undermine the development of the short term wholesale gas market and the transmission system operator has sufficient information to provide an accurate allocation of the use of a linepack flexibility service the following gas day.

Article 44

Conditions for provision of linepack flexibility service

1. Linepack flexibility service can only be provided once all the following criteria are met:

(a) the transmission system operator shall not need to enter into any contracts with any other infrastructure provider, such as storage system operator or LNG system operator, for the purpose of provision of a linepack flexibility service;

(b) the revenues generated by the transmission system operator from the provision of a linepack flexibility service shall at least be equal to the costs incurred or to be incurred in providing this service;

(c) the linepack flexibility service shall be offered on a transparent and non-discriminatory basis and can be offered using competitive mechanisms;

(d) the transmission system operator shall not charge, either directly or indirectly, a network user for any costs incurred by the provision of a linepack flexibility service, should this network user not contract for it; and

(e) the provision of a linepack flexibility service shall not have a detrimental impact on cross-border trade.

2. The transmission system operator shall prioritise the reduction of within day obligations over the provision of a linepack flexibility service.

CHAPTER X
INTERIM MEASURES

Article 45

Interim measures: general provisions

1. In the absence of sufficient liquidity of the short-term wholesale gas market, suitable interim measures referred to in Articles 47 to 50 shall be implemented by the transmission system operators. Balancing actions undertaken by the transmission system operator in case of interim measures shall foster the liquidity of the short- term wholesale gas market to the extent possible.

2. The resort to an interim measure is without prejudice to the implementation of any other interim measure(s) as an alternative or additionally, provided that such measures aim at promoting competition and liquidity of the short term wholesale gas market and are consistent with the general principles set out in this Regulation.

3. The interim measures referred to in paragraph 1 and 2 shall be developed and implemented by each transmission system operator, in accordance with the report, referred to in Article 46(1), approved by the national regulatory authority in accordance with the procedure set out in Article 46.

4. The report shall foresee the termination of the interim measures no later than five years as from the **expiry of the deadline for transposition** of this Regulation.

Article 46

Interim measures: annual report

1. Where the transmission system operator foresees implementing or continuing to implement interim measures, it shall prepare a report which shall specify:

(a) a description of the state of development and the liquidity of the short term wholesale gas market at the time of preparing the report, including, where available to the transmission system operator, *inter alia*:

(i) the number of transactions concluded at the virtual trading point and the number of transactions in general;

(ii) the bid/offer spreads and the volumes of bids and offers;

(iii) the number of participants having access to the short term wholesale gas market;

(iv) the number of participants having been active on the short term wholesale gas market during a given period of time;

(b) the interim measures to be applied

(c) the reasons for the application of the interim measures:

(i) an explanation why they are needed due to the state of development of the short term wholesale gas market referred to in point (b);

(ii) an assessment of how they will increase the liquidity of the short term wholesale gas market.

(d) an identification of the steps that will be taken to remove the interim measures, including the criteria for making these steps and an assessment of the related timing.

2. The transmission system operator shall consult stakeholders on the proposed report.

3. Following the consultation process, the transmission system operator shall submit the report to the national regulatory authority for the approval. The first report shall be submitted within six months as from the **expiry of the deadline for transposition** of this Regulation and the subsequent reports updating it **<…>** shall be submitted annually.

4. The national regulatory authority shall take and publish a motivated decision within six months following the receipt of the complete report. Such a decision shall be notified, without delay, to the **Energy Community Regulatory Board and the Energy Community Secretariat**. In deciding whether to approve the report, the national regulatory authority shall assess its effect on balancing regimes' harmonisation, facilitation of market integration, ensuring non-discrimination, effective competition and the efficient functioning of the gas market.

5. The procedure as set out in Article 27(2) applies.

Article 47

Balancing platform

1. Where the short term wholesale gas market has or is anticipated to have insufficient liquidity or where temporal products and locational products required by the transmission system operator cannot reason-

ably be procured on this market, a balancing platform shall be established for the purpose of transmission system operator balancing.

2. The transmission system operators shall consider whether a joint balancing platform may be implemented for adjacent balancing zones in the framework of cooperation between the transmission system operators or where there is sufficient interconnection capacity and such joint balancing platform is deemed efficient to be implemented. If a joint balancing platform is established, it shall be operated by the transmission system operators concerned.

3. In case the situation described under paragraph 1 has not fundamentally changed after five years the national regulatory authority may, without prejudice to Article 45(4) and after submitting the appropriate amendment of the report, decide to continue the operation of the balancing platform for another period of no more than five years.

Article 48

Alternative to a balancing platform

Where the transmission system operator can demonstrate that as a result of insufficient interconnection capacity between balancing zones a balancing platform cannot increase the liquidity of the short term wholesale gas market and cannot enable the transmission system operator to undertake efficient balancing actions, it may use an alternative, such as balancing services, subject to the approval by the national regulatory authority. Where such an alternative is used, the terms and conditions of the subsequent contractual arrangements as well as the applicable prices and duration shall be specified

Article 49

Interim imbalance charge

1. Where interim measures referred to in Article 45 are necessary, the price derivation may be calculated in accordance with the report referred to in Article 46 which shall substitute the daily imbalance charge calculation methodology.

2. In that case, the price derivation may be based upon an administered price, a proxy for a market price or a price derived from balancing platform trades.

3. The proxy for a market price shall seek to satisfy the conditions provided for in Article 22(6). The design of this proxy shall consider the potential risk for market manipulation.

Article 50

Tolerance

1. Tolerances may only be applied in case network users do not have access:

(a) to a short term wholesale gas market that has sufficient liquidity;

(b) to gas required to meet short term fluctuations in gas demand or supply; or

(c) to sufficient information regarding their inputs and off-takes.

2. Tolerances shall be applied:

(a) with regard to network users' daily imbalance quantity;

(b) on a transparent and non-discriminatory basis;

(c) only to the extent necessary and for the minimum duration required.

3. The application of tolerances may reduce a network user's financial exposure to the marginal sell price or the marginal buy price in respect of a part of or the network user's entire daily imbalance quantity for the gas day.

4. The tolerance level shall be the maximum quantity of gas to be bought or sold by each network user at a weighted average price. If there is a remaining quantity of gas that constitutes each network user's daily imbalance quantity which exceeds the tolerance level, it shall be sold or bought at marginal sell price or marginal buy price.

5. The design of the tolerance level shall:

(a) reflect the transmission network's flexibility and network user's needs;

(b) reflect the level of risk to the network user in managing the balance of its inputs and off-takes;

(c) not undermine the development of the short term wholesale gas market;

(d) not result in an unduly excessive increase of the transmission system operator's balancing actions' costs.

6. The tolerance level shall be calculated on the basis of each network user's inputs and off-takes, excluding trades at the virtual trading point, for each gas day. The subcategories shall be defined under the applicable national rules.

7. The tolerance level applicable for a non- daily metered off-take defined under the applicable national rules shall be based upon the difference between the relevant forecast of a network user's non- daily metered off-takes and the allocation for non- daily metered off-take.

8. The tolerance level may include a component calculated taking into account the application of the deviation of the forecast of a network user's non- daily metered off-takes which is the amount by which the relevant forecast:

(a) exceeds the allocation for non- daily metered off-take in case the daily imbalance quantity is positive;

(b) is less than the allocation for non- daily metered off-take in case the daily imbalance quantity is negative.

CHAPTER XI
FINAL AND TRANSITIONAL PROVISIONS

Article 51

Release of surplus transmission system operator's flexibility

1. Where long- term contracts for the procurement of flexibility in force at the date of **expiry of the deadline for transposition** of this Regulation provide the transmission system operator with a right to off-take or input specified volumes of gas, the transmission system operator shall aim to reduce these amounts of flexibility.

2. While determining the amount of surplus flexibility available for input or off-take under a long- term contract in force, the transmission system operator shall take into account the use of the short- term standardised products.

3. The surplus flexibility may be released either:

(a) pursuant to the terms and conditions of the existing contract where it contains provisions permitting to reduce the gas quantity committed and/or to terminate the existing contract; or

(b) as follows in the absence of such contractual rights:

(i) the contract remains in force until its termination pursuant to the applicable terms and conditions;

(ii) the contracting parties shall consider additional arrangements in order to release back to the market any surplus gas not required for balancing purposes to give access to the other network users to greater amounts of flexibility.

4. Where the contract in force provides for reducing the flexibility by amounts consistent with the surplus availability, the transmission system operator shall reduce such flexibility as soon as reasonably possible as from the **expiry of the deadline for transposition** of this Regulation or as soon as the existence of the surplus can be established.

5. The transmission system operator shall consult stakeholders on specific proposals to be implemented as interim measures for release of any surplus flexibility under a long- term contract in force.

6. The transmission system operator shall publish information on its balancing actions undertaken pursuant to the long- term contract in force.

7. The national regulatory authority may set targets for the proportion by which the long- term contracts should be reduced in order to increase the liquidity of the short term wholesale gas market.

Article 52

Transitional provisions

1. The national regulatory authority may allow the transmission system operator, based on its justified request, to comply with the provisions of this Regulation within a twenty four-month period as from **12 December 2020**, provided no interim measure referred to in Chapter X is implemented by the transmission system operator. In case the national regulatory authority makes use of this possibility, this Regulation shall not apply in the balancing zone of that transmission system operator to the extent and for the duration of the transitional period laid down in the decision of the national regulatory authority.

2. The national regulatory authority shall take and publish a motivated decision in accordance with paragraph 1 within three months following the receipt of such a request. Such a decision shall be notified, without delay, to the **Energy Community Regulatory Board and the Energy Community Secretariat**.

Article 53

Entry into force

<...>[1]

1 Replaced by deadlines set by PHLG Decision 2019/01/PHLG-EnC.