

Directive 2009/73/EC of the European Parliament and of the Council of
13 July 2009 concerning common rules for the internal market in natural
gas and repealing Directive 2003/55/EC (Text with EEA relevance)

CHAPTER V

DISTRIBUTION AND SUPPLY

Article 24

Designation of distribution system operators

Member States shall designate, or shall require undertakings which own or are responsible for distribution systems to designate, for a period of time to be determined by Member States, having regard to considerations of efficiency and economic balance, one or more distribution system operators and shall ensure that those operators act in accordance with Articles 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 fulfil those tasks, the distribution system operator shall have at its disposal the necessary resources including human, technical, financial and physical resources. This should not prevent the existence of appropriate coordination mechanisms to ensure that the economic and management supervision rights of the parent company in respect of return on assets, regulated indirectly in accordance with Article 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 fulfil his task.

3 Where the distribution system operator is part of a vertically integrated undertaking, the Member States shall ensure that the activities of the distribution system operator are monitored by regulatory authorities or other competent bodies so that it cannot take advantage of its vertical integration to distort competition. In particular, vertically integrated distribution system operators shall not, in their communication and branding, create confusion in respect of the separate identity of the supply branch of the vertically integrated undertaking.

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