

Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005 (Text with EEA relevance)

REGULATION (EC) No 715/2009 OF THE
EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 13 July 2009

on conditions for access to the natural gas transmission
networks and repealing Regulation (EC) No 1775/2005

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee⁽¹⁾,

Having regard to the opinion of the Committee of the Regions⁽²⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty⁽³⁾,

Whereas:

- (1) The internal market in natural gas, which has been progressively implemented since 1999, aims to deliver real choice for all consumers in the Community, be they citizens or businesses, new business opportunities and more cross-border trade, so as to achieve efficiency gains, competitive prices and higher standards of service, and to contribute to security of supply and sustainability.
- (2) Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas⁽⁴⁾ and Regulation (EC) No 1775/2005 of the European Parliament and of the Council of 28 September 2005 on conditions for access to the natural gas transmission networks⁽⁵⁾ have made significant contributions towards the creation of such an internal market in natural gas.
- (3) Experience gained in the implementation and monitoring of a first set of Guidelines for Good Practice, adopted by the European Gas Regulatory Forum (the Madrid Forum) in 2002, demonstrates that in order to ensure the full implementation of the rules set out in those guidelines in all Member States, and in order to provide a minimum guarantee of equal market access conditions in practice, it is necessary to provide for them to become legally enforceable.
- (4) A second set of common rules entitled ‘the Second Guidelines for Good Practice’ was adopted at the meeting of the Madrid Forum on 24 and 25 September 2003 and the purpose of this Regulation is to lay down, on the basis of those guidelines,

basic principles and rules regarding network access and third party access services, congestion management, transparency, balancing and the trading of capacity rights.

- (5) Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas⁽⁶⁾ provides for the possibility of a combined transmission and distribution system operator. The rules set out in this Regulation do not therefore require modification of the organisation of national transmission and distribution systems that are consistent with the relevant provisions of that Directive.
- (6) High-pressure pipelines linking up local distributors to the gas network which are not primarily used in the context of local distribution are included in the scope of this Regulation.
- (7) It is necessary to specify the criteria according to which tariffs for access to the network are determined, in order to ensure that they fully comply with the principle of non-discrimination and the needs of a well-functioning internal market and take fully into account the need for system integrity and reflect the actual costs incurred, insofar as such costs correspond to those of an efficient and structurally comparable network operator and are transparent, whilst including appropriate return on investments, and, where appropriate, taking account of the benchmarking of tariffs by the regulatory authorities.
- (8) In calculating tariffs for access to networks, it is important to take account of the actual costs incurred, insofar as such costs correspond to those of an efficient and structurally comparable network operator, and are transparent, as well as of the need to provide appropriate return on investments and incentives to construct new infrastructure, including special regulatory treatment for new investments as provided for in Directive 2009/73/EC. In that respect, and in particular if effective pipeline-to-pipeline competition exists, the benchmarking of tariffs by the regulatory authorities will be a relevant consideration.
- (9) The use of market-based arrangements, such as auctions, to determine tariffs has to be compatible with the provisions laid down in Directive 2009/73/EC.
- (10) A common minimum set of third-party access services is necessary to provide a common minimum standard of access in practice throughout the Community, to ensure that third party access services are sufficiently compatible and to allow the benefits accruing from a well-functioning internal market in natural gas to be exploited.
- (11) At present, there are obstacles to the sale of gas on equal terms, without discrimination or disadvantage in the Community. In particular, non-discriminatory network access and an equally effective level of regulatory supervision do not yet exist in each Member State, and isolated markets persist.
- (12) A sufficient level of cross-border gas interconnection capacity should be achieved and market integration fostered in order to complete the internal market in natural gas.
- (13) The Communication of the Commission of 10 January 2007 entitled 'An Energy Policy for Europe' highlighted the importance of completing the internal market in

natural gas and creating a level playing field for all natural gas undertakings in the Community. The Communications of the Commission of 10 January 2007 entitled 'Prospects for the internal gas and electricity market' and 'Inquiry pursuant to Article 17 of Regulation (EC) No 1/2003 into the European gas and electricity sectors (Final Report)' demonstrated that the present rules and measures neither provide the necessary framework nor provide for the creation of interconnection capacities to achieve the objective of a well-functioning, efficient and open internal market.

- (14) In addition to thoroughly implementing the existing regulatory framework, the regulatory framework for the internal market in natural gas set out in Regulation (EC) No 1775/2005 should be adapted in line with those communications.
- (15) In particular, increased cooperation and coordination among transmission system operators is required to create network codes for providing and managing effective and transparent access to the transmission networks across borders, and to ensure coordinated and sufficiently forward looking planning and sound technical evolution of the transmission system in the Community, including the creation of interconnection capacities, with due regard to the environment. The network codes should be in line with framework guidelines which are non-binding in nature (framework guidelines) and which are developed by the Agency for the Cooperation of Energy Regulators established by Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators⁽⁷⁾ (the Agency). The Agency should have a role in reviewing, based on matters of fact, draft network codes, including their compliance with the framework guidelines, and it should be enabled to recommend them for adoption by the Commission. The Agency should assess proposed amendments to the network codes and it should be enabled to recommend them for adoption by the Commission. Transmission system operators should operate their networks in accordance with those network codes.
- (16) In order to ensure optimal management of the gas transmission network in the Community a European Network of Transmission System Operators for Gas (the ENTSO for Gas), should be established. The tasks of the ENTSO for Gas should be carried out in compliance with Community competition rules which remain applicable to the decisions of the ENTSO for Gas. The tasks of the ENTSO for Gas should be well-defined and its working method should ensure efficiency, transparency and the representative nature of the ENTSO for Gas. The network codes prepared by the ENTSO for Gas are not intended to replace the necessary national network codes for non cross-border issues. Given that more effective progress may be achieved through an approach at regional level, transmission system operators should set up regional structures within the overall cooperation structure, whilst ensuring that results at regional level are compatible with network codes and non-binding ten-year network development plans at Community level. Cooperation within such regional structures presupposes effective unbundling of network activities from production and supply activities. In the absence of such unbundling, regional cooperation between transmission system operators gives rise to a risk of anti-competitive conduct. Member States should promote cooperation and monitor the effectiveness of the network

operations at regional level. Cooperation at regional level should be compatible with progress towards a competitive and efficient internal market in gas.

- (17) All market participants have an interest in the work expected of the ENTSO for Gas. An effective consultation process is therefore essential and existing structures set up to facilitate and streamline the consultation process, such as the European Association for the Streamlining of Energy Exchange, national regulators or the Agency should play an important role.
- (18) In order to ensure greater transparency regarding the development of the gas transmission network in the Community, the ENTSO for Gas should draw up, publish and regularly update a non-binding Community-wide ten-year network development plan (Community-wide network development plan). Viable gas transmission networks and necessary regional interconnections, relevant from a commercial or security of supply point of view, should be included in that network development plan.
- (19) To enhance competition through liquid wholesale markets for gas, it is vital that gas can be traded independently of its location in the system. The only way to do this is to give network users the freedom to book entry and exit capacity independently, thereby creating gas transport through zones instead of along contractual paths. The preference for entry-exit systems to facilitate the development of competition was already expressed by most stakeholders at the 6th Madrid Forum on 30 and 31 October 2002. Tariffs should not be dependent on the transport route. The tariff set for one or more entry points should therefore not be related to the tariff set for one or more exit points, and vice versa.
- (20) References to harmonised transport contracts in the context of non-discriminatory access to the network of transmission system operators do not mean that the terms and conditions of the transport contracts of a particular system operator in a Member State must be the same as those of another transmission system operator in that Member State or in another Member State, unless minimum requirements are set which must be met by all transport contracts.
- (21) There is substantial contractual congestion in the gas networks. The congestion-management and capacity-allocation principles for new or newly negotiated contracts are therefore based on the freeing-up of unused capacity by enabling network users to sublet or resell their contracted capacities and the obligation of transmission system operators to offer unused capacity to the market, at least on a day-ahead and interruptible basis. Given the large proportion of existing contracts and the need to create a true level playing field between users of new and existing capacity, those principles should be applied to all contracted capacity, including existing contracts.
- (22) Although physical congestion of networks is, at present, rarely a problem in the Community, it may become one in the future. It is important, therefore, to provide the basic principle for the allocation of congested capacity in such circumstances.
- (23) Market monitoring undertaken over recent years by the national regulatory authorities and by the Commission has shown that current transparency requirements and rules on

access to infrastructure are not sufficient to secure a genuine, well-functioning, open and efficient internal market in gas.

- (24) Equal access to information on the physical status and efficiency of the system is necessary to enable all market participants to assess the overall demand and supply situation and to identify the reasons for movements in the wholesale price. This includes more precise information on supply and demand, network capacity, flows and maintenance, balancing and availability and usage of storage. The importance of that information for the functioning of the market requires alleviating existing limitations to publication for confidentiality reasons.
- (25) Confidentiality requirements for commercially sensitive information are, however, particularly relevant where data of a commercially strategic nature for the company are concerned, where there is only one single user for a storage facility, or where data are concerned regarding exit points within a system or subsystem that is not connected to another transmission or distribution system but to a single industrial final customer, where the publication of such data would reveal confidential information as to the production process of that customer.
- (26) To enhance trust in the market, its participants need to be sure that those engaging in abusive behaviour can be subjected to effective, proportionate and dissuasive penalties. The competent authorities should be given the competence to investigate effectively allegations of market abuse. To that end, it is necessary that competent authorities have access to data that provides information on operational decisions made by supply undertakings. In the gas market, all those decisions are communicated to the system operators in the form of capacity reservations, nominations and realised flows. System operators should keep information in relation thereto available to and easily accessible by the competent authorities for a fixed period of time. The competent authorities should, furthermore, regularly monitor the compliance of the transmission system operators with the rules.
- (27) Access to gas storage facilities and liquefied natural gas (LNG) facilities is insufficient in some Member States, and therefore the implementation of the existing rules needs to be improved. Monitoring by the European Regulators' Group for Electricity and Gas concluded that the voluntary guidelines for good third-party access practice for storage system operators, agreed by all stakeholders at the Madrid Forum, are being insufficiently applied and therefore need to be made binding.
- (28) Non-discriminatory and transparent balancing systems for gas, operated by transmission system operators, are important mechanisms, particularly for new market entrants which may have more difficulty balancing their overall sales portfolio than companies already established within a relevant market. It is therefore necessary to lay down rules to ensure that transmission system operators operate such mechanisms in a manner compatible with non-discriminatory, transparent and effective access conditions to the network.
- (29) The trading of primary capacity rights is an important part of developing a competitive market and creating liquidity. This Regulation should therefore lay down basic rules relating to such trading.

- (30) National regulatory authorities should ensure compliance with the rules contained in this Regulation and the Guidelines adopted pursuant thereto.
- (31) In the Guidelines annexed to this Regulation, specific detailed implementing rules are defined on the basis of the Second Guidelines for Good Practice. Where appropriate, those rules will evolve over time, taking into account the differences of national gas systems.
- (32) When proposing to amend the Guidelines annexed to this Regulation, the Commission should ensure prior consultation of all relevant parties concerned with the Guidelines, represented by the professional organisations, and of the Member States within the Madrid Forum.
- (33) The Member States and the competent national authorities should be required to provide relevant information to the Commission. Such information should be treated confidentially by the Commission.
- (34) This Regulation and the Guidelines adopted in accordance with it are without prejudice to the application of the Community rules on competition.
- (35) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission⁽⁸⁾.
- (36) In particular, the Commission should be empowered to establish or adopt the Guidelines necessary for providing the minimum degree of harmonisation required to achieve the aims of this Regulation. Since those measures are of general scope and are designed to amend non-essential elements of this Regulation, inter alia by supplementing it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.
- (37) Since the objective of this Regulation, namely the setting of fair rules for access conditions to natural gas transmission networks, storage and LNG facilities cannot be sufficiently achieved by the Member States and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity, as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.
- (38) Given the scope of the amendments that are being made herein to Regulation (EC) No 1775/2005, it is desirable, for reasons of clarity and rationalisation, that the provisions in question should be recast by bringing them all together in a single text in a new Regulation,

HAVE ADOPTED THIS REGULATION:

Article 1

Subject matter and scope

This Regulation aims at:

- (a) setting non-discriminatory rules for access conditions to natural gas transmission systems taking into account the special characteristics of national and regional markets with a view to ensuring the proper functioning of the internal market in gas;
- (b) setting non-discriminatory rules for access conditions to LNG facilities and storage facilities taking into account the special characteristics of national and regional markets; and
- (c) facilitating the emergence of a well-functioning and transparent wholesale market with a high level of 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 Member States 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 Commission 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 two months of the day of receipt of such notification, the Commission 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 Commission may request the Agency to provide its opinion on the national regulatory authority's decision. In such a case, the two-month period referred to in the first subparagraph shall be extended by two further months.

In the absence of an opinion by the Commission within the periods referred to in the first and second subparagraphs, the Commission shall be deemed not to raise objections against the regulatory authority's decision.

2 Within two months of receiving an opinion of the Commission, 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 Commission's opinion shall be published together.

3 At any time during the procedure regulatory authorities and/or the Commission 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 fulfilment of their tasks under this Article.

4 Regulatory authorities and the Commission shall preserve the confidentiality of commercially sensitive information.

5 The Commission may adopt Guidelines setting out the details of the procedure to be followed for the application of paragraphs 1 and 2 of this Article. Those measures, designed to amend non-essential elements of this Regulation by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 28(2).

6 Where the Commission has received notification of the certification of a transmission system operator under Article 9(10) of Directive 2009/73/EC, the Commission shall take a decision relating to certification. The regulatory authority shall comply with the Commission decision.

Article 4

European network of transmission system operators for gas

All transmission system operators shall cooperate at Community level through the ENTSO for Gas, in order to promote the completion and functioning of the internal market in natural gas and cross-border trade and to ensure the optimal management, coordinated operation and sound technical evolution of the natural gas transmission network.

Article 5

Establishment of the ENTSO for Gas

1 By 3 March 2011, the transmission system operators for gas shall submit to the Commission and to the Agency the draft statutes, a list of members and draft rules of procedure, including the rules of procedures on the consultation of other stakeholders, of the ENTSO for Gas to be established.

2 Within two months of the day of the receipt, the Agency, after formally consulting the organisations representing all stakeholders, in particular the system users including customers, shall provide an opinion to the Commission on the draft statutes, list of members and draft rules of procedure.

3 The Commission shall deliver an opinion on the draft statutes, list of members and draft rules of procedures taking into account the opinion of the Agency provided for in paragraph 2 and within three months of the day of the receipt of the opinion of the Agency.

4 Within three months of the day of receipt of the Commission's opinion, the transmission system operators shall establish the ENTSO for Gas, adopt and publish its statutes and rules of procedure.

Article 6

Establishment of network codes

1 The Commission shall, after consulting the Agency, the ENTSO for Gas and the other relevant stakeholders establish an annual priority list identifying the areas set out in Article 8(6) to be included in the development of network codes.

2 The Commission shall request the Agency to submit to it within a reasonable period of time not exceeding six months a non-binding framework guideline (framework guideline) setting out clear and objective principles, in accordance with Article 8(7), for the development of network codes relating to the areas identified in the priority list. Each framework guideline shall contribute to non-discrimination, effective competition and the efficient functioning of the market. Upon a reasoned request from the Agency, the Commission may extend that period.

3 The Agency shall formally consult the ENTSO for Gas and the other relevant stakeholders in regard to the framework guideline, during a period of no less than two months, in an open and transparent manner.

4 If the Commission considers that the framework guideline does not contribute to non-discrimination, effective competition and the efficient functioning of the market, it may request the Agency to review the framework guideline within a reasonable period of time and re-submit it to the Commission.

5 If the Agency fails to submit or re-submit a framework guideline within the period set by the Commission under paragraphs 2 or 4, the Commission shall elaborate the framework guideline in question.

6 The Commission shall request the ENTSO for Gas to submit a network code which is in line with the relevant framework guideline, to the Agency within a reasonable period of time not exceeding 12 months.

7 Within a period of three months after the day of receipt of a network code, during which the Agency may formally consult the relevant stakeholders, the Agency shall provide a reasoned opinion to the ENTSO for Gas on the network code.

8 The ENTSO for Gas may amend the network code in the light of the opinion of the Agency and re-submit it to the Agency.

9 Once the Agency is satisfied that the network code is in line with the relevant framework guideline, the Agency shall submit the network code to the Commission and may recommend that it be adopted within a reasonable time period. The Commission shall provide reasons in the event that it does not adopt that network code.

10 Where the ENTSO for Gas has failed to develop a network code within the period of time set by the Commission under paragraph 6, the Commission may request the Agency to prepare a draft network code on the basis of the relevant framework guideline. The Agency may launch a further consultation in the course of preparing a draft network code under this paragraph. The Agency shall submit a draft network code prepared under this paragraph to the Commission and may recommend that it be adopted.

11 The Commission may adopt, on its own initiative where the ENTSO for Gas has failed to develop a network code, or the Agency has failed to develop a draft network code as referred to in paragraph 10 of this Article, or upon recommendation of the Agency under paragraph 9 of this Article, one or more network codes in the areas listed in Article 8(6).

Where the Commission proposes to adopt a network code on its own initiative, the Commission shall consult the Agency, the ENTSO for Gas and all relevant stakeholders in regard to the draft network code during a period of no less than two months. Those measures, designed to amend non-essential elements of this Regulation by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 28(2).

12 This Article shall be without prejudice to the Commission's right to adopt and amend the Guidelines as laid down in Article 23.

Article 7

Amendments of network codes

1 Draft amendments to any network code adopted under Article 6 may be proposed to the Agency by persons who are likely to have an interest in that network code, including the ENTSO for Gas, transmission system operators, network users and consumers. The Agency may also propose amendments of its own initiative.

2 The Agency shall consult all stakeholders in accordance with Article 10 of Regulation (EC) No 713/2009. Following this process, the Agency may make reasoned proposals for amendments to the Commission, explaining how such proposals are consistent with the objectives of the network codes set out in Article 6(2) of this Regulation.

3 The Commission may adopt, taking account of the Agency's proposals, amendments to any network code adopted under Article 6. Those measures, designed to amend non-essential elements of this Regulation by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 28(2).

4 Consideration of proposed amendments under the procedure set out in Article 28(2) shall be limited to consideration of the aspects related to the proposed amendment. Those proposed amendments are without prejudice to other amendments which the Commission may propose.

Article 8

Tasks of the ENTSO for Gas

1 The ENTSO for Gas shall elaborate network codes in the areas referred to in paragraph 6 of this Article upon a request addressed to it by the Commission in accordance with Article 6(6).

2 The ENTSO for Gas may elaborate network codes in the areas set out in paragraph 6 with a view to achieving the objectives set out in Article 4 where those network codes do not relate to areas covered by a request addressed to it by the Commission. Those network codes shall be submitted to the Agency for an opinion. That opinion shall be duly taken into account by the ENTSO for Gas.

3 The ENTSO for Gas shall adopt:

- a common network operation tools to ensure coordination of network operation in normal and emergency conditions, including a common incidents classification scale, and research plans;

- b a non-binding Community-wide ten-year network development plan (Community-wide network development plan), including a European supply adequacy outlook, every two years;
- c recommendations relating to the coordination of technical cooperation between Community and third-country transmission system operators;
- d an annual work programme;
- e an annual report;
- f annual summer and winter supply outlooks.

4 The European supply adequacy outlook referred to in point (b) of paragraph 3 shall cover the overall adequacy of the gas system to supply current and projected demands for gas for the next five-year period as well as for the period between five and 10 years from the date of that outlook. The European supply adequacy outlook shall build on national supply outlooks prepared by each individual transmission system operator.

5 The annual work programme referred to in point (d) of paragraph 3 shall contain a list and description of the network codes to be prepared, a plan on coordination of operation of the network, and research and development activities, to be realised in that year, and an indicative calendar.

6 The network codes referred to in paragraphs 1 and 2 shall cover the following areas, taking into account, if appropriate, regional special characteristics:

- a network security and reliability rules;
- b network connection rules;
- c third-party access rules;
- d data exchange and settlement rules;
- e interoperability rules;
- f operational procedures in an emergency;
- g capacity-allocation and congestion-management rules;
- h rules for trading related to technical and operational provision of network access services and system balancing;
- i transparency rules;
- j balancing rules including network-related rules on nominations procedure, rules for imbalance charges and rules for operational balancing between transmission system operators' systems;
- k rules regarding harmonised transmission tariff structures; and
- l energy efficiency regarding gas networks.

7 The network codes shall be developed for cross-border network issues and market integration issues and shall be without prejudice to the Member States' right to establish national network codes which do not affect cross-border trade.

8 The ENTSO for Gas shall monitor and analyse the implementation of the network codes and the Guidelines adopted by the Commission in accordance with Article 6(11), and their effect on the harmonisation of applicable rules aimed at facilitating market integration. The ENTSO for Gas shall report its findings to the Agency and shall include the results of the analysis in the annual report referred to in point (e) of paragraph 3 of this Article.

9 The ENTSO for Gas shall make available all information required by the Agency to fulfil its tasks under Article 9(1).

10 The ENTSO for Gas shall adopt and publish a Community-wide network development plan referred to in point (b) of paragraph 3 every two years. The Community-wide network development plan shall include the modelling of the integrated network, scenario development, a European supply adequacy outlook and an assessment of the resilience of the system.

The Community-wide network development plan shall, in particular:

- a build on national investment plans, taking into account regional investment plans as referred to in Article 12(1), and, if appropriate, Community aspects of network planning, including the guidelines for trans-European energy networks in accordance with Decision No 1364/2006/EC of the European Parliament and of the Council⁽⁹⁾;
- b regarding cross-border interconnections, also build on the reasonable needs of different network users and integrate long-term commitments from investors referred to in Articles 14 and 22 of Directive 2009/73/EC; and
- c identify investment gaps, notably with respect to cross-border capacities.

In regard to point (c) of the second subparagraph, a review of barriers to the increase of cross-border capacity of the network arising from different approval procedures or practices may be annexed to the Community-wide network development plan.

11 The Agency shall review national ten-year network development plans to assess their consistency with the Community-wide network development plan. If the Agency identifies inconsistencies between a national ten-year network development plan and the Community-wide network development plan, it shall recommend amending the national ten-year network development plan or the Community-wide network development plan as appropriate. If such national ten-year network development plan is elaborated in accordance with Article 22 of Directive 2009/73/EC, the Agency shall recommend that the competent national regulatory authority amend the national ten-year network development plan in accordance with Article 22(7) of that Directive and inform the Commission thereof.

12 Upon request of the Commission, the ENTSO for Gas shall give its views to the Commission on the adoption of the Guidelines as laid down in Article 23.

Article 9

Monitoring by the Agency

1 The Agency shall monitor the execution of the tasks referred to in Article 8(1), (2) and (3) of the ENTSO for Gas and report to the Commission.

The Agency shall monitor the implementation by the ENTSO for Gas of network codes elaborated under Article 8(2) and network codes which have been developed in accordance with Article 6(1) to (10) but which have not been adopted by the Commission under Article 6(11). Where the ENTSO for Gas has failed to implement such network codes, the Agency shall request the ENTSO for Gas to provide a duly reasoned explanation as to why it has failed to do so. The Agency shall inform the Commission of that explanation and provide its opinion thereon.

The Agency shall monitor and analyse the implementation of the network codes and the Guidelines adopted by the Commission as laid down in Article 6(11), and their effect on the harmonisation of applicable rules aimed at facilitating market integration as well as on non-discrimination, effective competition and the efficient functioning of the market, and report to the Commission.

2 The ENTSO for Gas shall submit the draft Community-wide network development plan, the draft annual work programme, including the information regarding the consultation process and the other documents referred to in Article 8(3), to the Agency for its opinion.

Within two months from the day of receipt, the Agency shall provide a duly reasoned opinion as well as recommendations to the ENTSO for Gas and to the Commission where it considers that the draft annual work programme or the draft Community-wide network development plan submitted by the ENTSO for Gas do not contribute to non-discrimination, effective competition, the efficient functioning of the market or a sufficient level of cross-border interconnection open to third-party access.

Article 10

Consultations

1 While preparing the network codes, the draft Community-wide network development plan and the annual work programme referred to in Article 8(1), (2) and (3), the ENTSO for Gas shall conduct an extensive consultation process, at an early stage and in an open and transparent manner, involving all relevant market participants, and, in particular, the organisations representing all stakeholders, in accordance with the rules of procedure referred to in Article 5(1). That consultation shall also involve national regulatory authorities and other national authorities, supply and production undertakings, network users including customers, distribution system operators, including relevant industry associations, technical bodies and stakeholder platforms. It shall aim at identifying the views and proposals of all relevant parties during the decision-making process.

2 All documents and minutes of meetings related to the consultations referred to in paragraph 1 shall be made public.

3 Before adopting the annual work programme and the network codes referred to in Article 8(1), (2) and (3), the ENTSO for Gas shall indicate how the observations received during the consultation have been taken into consideration. It shall provide reasons where observations have not been taken into account.

Article 11

Costs

The costs related with the activities of the ENTSO for Gas referred to in Articles 4 to 12 shall be borne by the transmission system operators and shall be taken into account in the calculation of tariffs. Regulatory authorities shall approve those costs only if they are reasonable and proportionate.

Article 12

Regional cooperation of transmission system operators

1 Transmission system operators shall establish regional cooperation within the ENTSO for Gas to contribute to the tasks referred to in Article 8(1), (2) and (3). In particular, they shall publish a regional investment plan every two years, and may take investment decisions based on that regional investment plan.

2 Transmission system operators shall promote operational arrangements in order to ensure the optimum management of the 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 mechanisms.

3 For the purposes of achieving the goals set in paragraphs 1 and 2, the geographical area covered by each regional cooperation structure may be defined by the Commission, taking into account existing regional cooperation structures. Each Member State shall be allowed to promote cooperation in more than one geographical area. The measure referred to in the first sentence, designed to amend non-essential elements of this Regulation by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 28(2).

For that purpose, the Commission shall consult the Agency and the ENTSO for Gas.

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.

Member States may decide that tariffs may also be determined through market-based arrangements, such as auctions, provided that such arrangements and the revenues arising therefrom 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 Member States shall ensure that, after a transitional period, network charges shall not be calculated on the basis of contract paths.

2 Tariffs for network access shall neither restrict market liquidity nor distort trade across borders of different transmission systems. Where differences in tariff structures or balancing mechanisms would hamper trade across transmission systems, and notwithstanding Article 41(6) of Directive 2009/73/EC, transmission system operators shall, in close cooperation with the relevant national authorities, actively pursue convergence of tariff structures and charging principles, including in relation to balancing.

Article 14

Third-party access services concerning transmission system operators

- 1 Transmission system operators shall:
 - a ensure that they offer services on a non-discriminatory basis to all network users;
 - b provide both firm and interruptible third-party access services. The price of interruptible capacity shall reflect the probability of interruption;
 - c offer to network users both long and short-term services.

In regard to point (a) of the first subparagraph, where a transmission system operator offers the same service to different customers, it shall do so under equivalent contractual terms and conditions, either using harmonised transport contracts or a common network code approved by the competent authority in accordance with the procedure laid down in Article 41 of Directive 2009/73/EC.

- 2 Transport contracts signed with non-standard start dates or with a shorter duration than a standard annual transport contract shall not result in arbitrarily higher or lower tariffs that do not reflect the market value of the service, in accordance with the principles laid down in Article 13(1).

- 3 Where appropriate, third-party access services may be granted subject to appropriate guarantees from network users with respect to the creditworthiness of such users. Such guarantees shall not constitute undue market-entry barriers and shall be non-discriminatory, transparent and proportionate.

Article 15

Third-party access services concerning storage and LNG facilities

- 1 LNG and storage system operators shall:
 - a offer services on a non-discriminatory basis to all network users that accommodate market demand; in particular, where an LNG or storage system operator offers the same service to different customers, it shall do so under equivalent contractual terms and conditions;
 - b offer services that are compatible with the use of the interconnected gas transport systems and facilitate access through cooperation with the transmission system operator; and
 - c make relevant information public, in particular data on the use and availability of services, in a time-frame compatible with the LNG or storage facility users' reasonable commercial needs, subject to the monitoring of such publication by the national regulatory authority.
- 2 Each storage system operator shall:
 - a provide both firm and interruptible third-party access services; the price of interruptible capacity shall reflect the probability of interruption;
 - b offer to storage facility users both long and short-term services; and
 - c offer to storage facility users both bundled and unbundled services of storage space, injectability and deliverability.

3 LNG and storage facility contracts shall not result in arbitrarily higher tariffs in cases in which they are signed:

- a outside a natural gas year with non-standard start dates; or
- b with a shorter duration than a standard LNG and storage facility contract on an annual basis.

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.

5 Contractual limits on the required minimum size of LNG facility capacity and storage capacity shall be justified on the basis of technical constraints and shall permit smaller storage users to gain access to storage services.

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 Member States.

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 Member State 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 the Commission, 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-subsidisation between network users and shall not hamper the entry of new market entrants.

Any calculation methodology for imbalance charges as well as the final tariffs shall be made public by the competent authorities or the transmission system operator, as appropriate.

4 Member States 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

1 Where appropriate, Guidelines providing the minimum degree of harmonisation required to achieve the aims of this Regulation shall specify:

- a details of third-party access services, including the character, duration and other requirements of those services, in accordance with Articles 14 and 15;
- b details of the principles underlying capacity-allocation mechanisms and on the application of congestion-management procedures in the event of contractual congestion, in accordance with Articles 16 and 17;
- c details of the provision of information, definition of the technical information necessary for network users to gain effective access to the system and the definition of all relevant points for transparency requirements, including the information to be published at all relevant points and the time schedule for the publication of that information, in accordance with Articles 18 and 19;
- d details of tariff methodology related to cross-border trade of natural gas, in accordance with Article 13;
- e details relating to the areas listed in Article 8(6).

For that purpose, the Commission shall consult the Agency and the ENTSO for Gas.

2 Guidelines on the issues listed in points (a), (b) and (c) of paragraph 1 are laid down in Annex I with respect to transmission system operators.

The Commission may adopt Guidelines on the issues listed in paragraph 1 of this Article and amend the Guidelines referred to in points (a), (b) and (c) thereof. Those measures, designed to amend non-essential elements of this Regulation, inter alia by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 28(2).

3 The application and amendment of Guidelines adopted pursuant to this Regulation shall reflect differences between national gas systems, and shall, therefore, not require uniform detailed terms and conditions of third-party access at Community level. They may, however, set minimum requirements to be met to achieve non-discriminatory and transparent network access conditions necessary for an internal market in natural gas, which may then be applied in the light of differences between national gas systems.

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 23.

Where appropriate, they shall cooperate with each other, with the Commission and the Agency in compliance with Chapter VIII of Directive 2009/73/EC.

Article 25

Provision of information

Member States and the regulatory authorities shall, on request, provide to the Commission all information necessary for the purposes of Article 23.

The Commission 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 Member States to provide for more detailed measures

This Regulation shall be without prejudice to the rights of Member States to maintain or introduce measures that contain more detailed provisions than those set out herein or in the Guidelines referred to in Article 23.

Article 27

Penalties

1 The Member States 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. The Member States shall notify the Commission by 1 July 2006 of those rules corresponding to the provisions laid down in Regulation (EC) No 1775/2005 and shall notify the Commission without delay of any subsequent amendment affecting them. They shall notify the Commission of those rules not corresponding to the provisions laid down in Regulation (EC) No 1775/2005 by 3 September 2009 and shall notify the Commission 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

1 The Commission shall be assisted by the committee set up by Article 51 of Directive 2009/73/EC.

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

Article 29

Commission report

The Commission shall monitor the implementation of this Regulation. In its report under Article 52(6) of Directive 2009/73/EC, the Commission shall also report on the experience gained in the application of this Regulation. In particular, the report shall examine to what extent this Regulation has been successful in ensuring non-discriminatory and cost-reflective network access conditions for gas transmission networks in order to contribute to customer choice in a well-functioning internal market and to long-term security of supply. If necessary, the report shall be accompanied by appropriate proposals and/or recommendations.

Article 30

Derogations and exemptions

This Regulation shall not apply to:

- (a) natural gas transmission systems situated in Member States for the duration of derogations granted under Article 49 of Directive 2009/73/EC;
- (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.

As regards point (a) of the first subparagraph, Member States that have been granted derogations under Article 49 of Directive 2009/73/EC may apply to the Commission for a temporary derogation from the application of this Regulation, for a period of up to two years from the date on which the derogation referred to in that point expires.

Article 31

Repeal

Regulation (EC) No 1775/2005 shall be repealed from 3 March 2011. References made to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex II.

Article 32

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 3 September 2009.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 13 July 2009.

For the European Parliament

The President

H.-G. PÖTTERING

For the Council

The President

E. ERLANDSSON

ANNEX I

GUIDELINES ON

1. Third-party access services concerning transmission system operators
1. Transmission system operators shall offer firm and interruptible services down to a minimum period of one day.
2. Harmonised transport contracts and common network codes shall be designed in a manner that facilitates trading and re-utilisation of capacity contracted by network users without hampering capacity release.
3. Transmission system operators shall develop network codes and harmonised contracts following proper consultation with network users.
4. Transmission system operators shall implement standardised nomination and re-nomination 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 July 2006 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.
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
 1. In the event that contracted capacity goes unused, transmission system operators shall make that capacity available on the primary market on an interruptible basis via contracts of differing duration, as long as that capacity is not offered by the relevant network user on the secondary market at a reasonable price.
 2. Revenues from released interruptible capacity shall be split according to rules laid down or approved by the relevant regulatory authority. Those rules shall be compatible with the requirement of an effective and efficient use of the system.
 3. A reasonable price for released interruptible capacity may be determined by the relevant regulatory authorities taking into account the specific circumstances prevailing.
 4. Where appropriate, transmission system operators shall make reasonable endeavours to offer at least parts of the unused capacity to the market as firm capacity.
 3. Definition of the technical information necessary for network users to gain effective access to the system, the definition of all relevant points for transparency requirements and the information to be published at all relevant points and the time schedule according to which that information shall be published

3.1. Definition of the technical information necessary for network users to gain effective access to the system

Transmission system operators shall publish at least the following information about their systems and services:

- (a) a detailed and comprehensive description of the different services offered and their charges;
- (b) the different types of transport contracts available for those services and, as applicable, the network code and/or the standard conditions outlining the rights and responsibilities of all network users including harmonised transport contracts and other relevant documents;
- (c) the harmonised procedures applied when using the transmission system, including the definition of key terms;
- (d) provisions on capacity allocation, congestion management, and anti-hoarding and re-utilisation procedures;
- (e) the rules applicable to capacity trade on the secondary market as regards the transmission system operator;
- (f) if applicable, the flexibility and tolerance levels included in transport and other services without separate charge, as well as any flexibility offered in addition thereto and the corresponding charges;
- (g) a detailed description of the gas system of the transmission system operator indicating all relevant points interconnecting its system with that of other transmission system operators and/or gas infrastructure such as liquefied natural gas (LNG) and infrastructure necessary for providing ancillary services as defined by Article 2 point 14 of Directive 2009/73/EC;
- (h) information on gas quality and pressure requirements;
- (i) the rules applicable for connection to the system operated by the transmission system operator;
- (j) any information, in a timely manner, as regards proposed and/or actual changes to the services or conditions, including the items listed in points (a) to (i).

3.2. Definition of all relevant points for transparency requirements

Relevant points shall include at least:

- (a) all entry points to a network operated by a transmission system operator;
- (b) the most important exit points and exit zones covering at least 50 % of total exit capacity of the network of a given transmission system operator, including all exit points or exit zones covering more than 2 % of total exit capacity of the network;
- (c) all points connecting different networks of transmission system operators;
- (d) all points connecting the network of a transmission system operator with an LNG terminal;

- (e) all essential points within the network of a given transmission system operator including points connecting to gas hubs. All points are considered essential which, based on experience, are likely to experience physical congestion;
- (f) all points connecting the network of a given transmission system operator to infrastructure necessary for providing ancillary services as defined by Article 2, point 14 of Directive 2009/73/EC.
- 3.3. Information to be published at all relevant points and the time schedule according to which that information should be published
1. At all relevant points, transmission system operators shall publish the following information about the capacity situation down to daily periods on the Internet on a regular/rolling basis and in a user-friendly standardised manner:
 - (a) the maximum technical capacity for flows in both directions;
 - (b) the total contracted and interruptible capacity; and
 - (c) the available capacity.
 2. For all relevant points, transmission system operators shall publish available capacities for a period of at least 18 months ahead and shall update that information at least every month or more frequently, if new information becomes available.
 3. Transmission system operators shall publish daily updates of availability of short-term services (day-ahead and week-ahead) based, inter alia, on nominations, prevailing contractual commitments and regular long-term forecasts of available capacities on an annual basis for up to ten years for all relevant points.
 4. Transmission system operators shall publish historical maximum and minimum monthly capacity utilisation rates and annual average flows at all relevant points for the past three years on a rolling basis.
 5. Transmission system operators shall keep a daily log of actual aggregated flows for at least three months.
 6. Transmission system operators shall keep effective records of all capacity contracts and all other relevant information in relation to calculating and providing access to available capacities, to which relevant national authorities shall have access to fulfil their duties.
 7. Transmission system operators shall provide user-friendly instruments for calculating tariffs for the services available and for verifying on-line the capacity available.
 8. Where transmission system operators are unable to publish information in accordance with points 1, 3 and 7, they shall consult their relevant national authorities and set up an action plan for implementation as soon as possible, but no later than 31 December 2006.

ANNEX II

CORRELATION TABLE

Regulation (EC) No 1775/2005	This Regulation
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Status: This is the original version (as it was originally adopted).

Article 1	Article 1
Article 2	Article 2
—	Article 3
—	Article 4
—	Article 5
—	Article 6
—	Article 7
—	Article 8
—	Article 9
—	Article 10
—	Article 11
—	Article 12
Article 3	Article 13
Article 4	Article 14
—	Article 15
Article 5	Article 16
—	Article 17
Article 6	Article 18
—	Article 19
—	Article 20
Article 7	Article 21
Article 8	Article 22
Article 9	Article 23
Article 10	Article 24
Article 11	Article 25
Article 12	Article 26
Article 13	Article 27
Article 14	Article 28
Article 15	Article 29
Article 16	Article 30
—	Article 31
Article 17	Article 32
Annex	Annex I

Status: This is the original version (as it was originally adopted).

- (1) [OJ C 211, 19.8.2008, p. 23.](#)
- (2) [OJ C 172, 5.7.2008, p. 55.](#)
- (3) Opinion of the European Parliament of 9 July 2008 (not yet published in the Official Journal), Council Common Position of 9 January 2009 ([OJ C 75 E, 31.3.2009, p. 38](#)) and Position of the European Parliament of 22 April 2009 (not yet published in the Official Journal). Council Decision of 25 June 2009.
- (4) [OJ L 176, 15.7.2003, p. 57.](#)
- (5) [OJ L 289, 3.11.2005, p. 1.](#)
- (6) See page 94 of this Official Journal.
- (7) See page 1 of this Official Journal.
- (8) [OJ L 184, 17.7.1999, p. 23.](#)
- (9) [OJ L 262, 22.9.2006, p. 1.](#)