

I

(Acts whose publication is obligatory)

DIRECTIVE 98/30/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 22 June 1998
concerning common rules for the internal market in natural gas

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF
THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the Economic and Social
Committee ⁽²⁾,

Acting in accordance with the procedure laid down in
Article 189b of the Treaty ⁽³⁾,

- (1) Whereas, according to Article 7a of the Treaty, the internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured; whereas it is important to adopt measures to continue the completion of the internal market;
- (2) Whereas, under Article 7c of the Treaty, differences in development of certain economies have to be taken into account, but derogations must be of a temporary nature and cause the least possible disturbance to the functioning of the common market;
- (3) Whereas the establishment of a competitive natural gas market is an important element of the completion of the internal energy market;

⁽¹⁾ OJ C 65, 14.3.1992, p. 14, and OJ C 123, 4.5.1994, p. 26.

⁽²⁾ OJ C 73, 15.3.1993, p. 31, and OJ C 195, 18.7.1994, p. 82.

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

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

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

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

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

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

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

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

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

- regime which corresponds best to a particular situation, in particular with regard to authorisations and the supervision of supply contracts;
- (10) Whereas the external supply of natural gas is of particular importance for the purchase of natural gas in Member States highly dependent on gas imports;
- (11) Whereas, as a general rule, undertakings in the natural gas sector should be able to operate without being discriminated against;
- (12) Whereas for some Member States the imposition of public service obligations may be necessary to ensure security of supply and consumer and environmental protection, which, in their view, free competition, left to itself, cannot necessarily guarantee;
- (13) Whereas long-term planning may be one means of carrying out those public service obligations, taking into account the possibility of third parties seeking access to the system; whereas Member States may monitor take-or-pay contracts undertaken in order to keep up to date with the situation on supply;
- (14) Whereas Article 90(1) of the Treaty obliges the Member States to respect the rules on competition with regard to public undertakings and undertakings which have been granted special or exclusive rights;
- (15) Whereas Article 90(2) of the Treaty subjects undertakings entrusted with the operation of services of general economic interest to these rules under specific conditions; whereas the implementation of this Directive will have an impact on the activities of such undertakings; whereas, as referred to in Article 3(3), Member States need not apply Article 4, in particular, to their distribution infrastructure in order not to obstruct in law or in fact the fulfilment of obligations of general economic interest imposed on gas undertakings;
- (16) Whereas, when imposing public service obligations on undertakings of the natural gas sector, Member States must therefore respect the relevant rules of the Treaty as interpreted by the Court of Justice of the European Communities;
- (17) Whereas basic criteria and procedures should be laid down concerning the authorisations which Member States may grant for the construction or operation of relevant facilities under their national system; whereas these provisions should not affect the relevant rules of national legislation subjecting the construction or operation of relevant facilities to an authorisation requirement; whereas, however, such requirement should not have the effect of restricting competition among the undertakings of the sector;
- (18) Whereas Decision No 1254/96/EC of the European Parliament and of the Council of 5 June 1996 laying down a series of guidelines for trans-European energy networks ⁽¹⁾, contributes to the development of integrated infrastructures for the natural gas sector;
- (19) Whereas the technical rules for the operation of systems and direct lines must be transparent and must ensure interoperability of systems;
- (20) Whereas basic rules must be laid down with regard to transmission, storage and liquefied natural gas undertakings, as well as to distribution and supply undertakings;
- (21) Whereas it is necessary to provide for access by the competent authorities to the internal accounts of undertakings, with due regard for confidentiality;
- (22) Whereas the accounts of all integrated natural gas undertakings should provide for a high degree of transparency; whereas the accounts should be separate for different activities when this is necessary in order to avoid discrimination, cross-subsidisation and other distortions of competition, taking into account in relevant cases that transmission for accounting purposes includes re-gasification; whereas separate accounts should not be required for legal entities, such as stock or futures exchanges, which do not, other than in this trading capacity, perform any of the functions of a natural gas undertaking; whereas integrated accounts for hydrocarbon production and related activities may be produced as part of the requirement for accounts for non-gas activities required by this Directive; whereas the relevant information in Article 23(3) should include, where required, accounting information about upstream pipelines;
- (23) Whereas access to the system should be open in accordance with this Directive and should lead to a

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

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

- (24) Whereas, owing to the diversity of structures and the special characteristics of systems in Member States, there should be different procedures for system access operating in accordance with objective, transparent and non-discriminatory criteria;
- (25) Whereas, in order to achieve a competitive market in natural gas, provision should be made for access to upstream pipeline networks; whereas separate treatment is required as respects such access to upstream pipeline networks, having regard, in particular, to the special economic, technical and operational characteristics relating to such networks; whereas the provisions of this Directive do not in any event affect national taxation rules;
- (26) Whereas provision should be made regarding authorisation, construction and use of direct lines;
- (27) Whereas provision should be made for safeguards and dispute settlement procedures;
- (28) Whereas any abuse of a dominant position or any predatory behaviour should be avoided;
- (29) Whereas, as some Member States are liable to experience special difficulties in adjusting their systems, provision should be made for temporary derogations;
- (30) Whereas long-term take-or-pay contracts are a market reality for securing Member States' gas supply; whereas, in particular, provision should be made for derogations from certain provisions of this Directive in the case of a natural gas undertaking which is or would be in serious economic difficulties because of its take-or-pay obligations; whereas these derogations should not undermine the purpose of this Directive to liberalise the internal market in natural gas; whereas any take-or-pay contracts entered into or renewed after the entry into force of this Directive should be concluded prudently in order not to hamper a significant opening of the market; whereas, therefore, such derogations should be

limited in time and scope and granted in a transparent manner, under the supervision of the Commission;

- (31) Whereas specific provisions are needed for markets and investments in other areas which have not yet reached a developed stage; whereas derogations for such markets and areas should be limited in time and scope; whereas, for the sake of transparency and uniformity, the Commission should have a significant role in the granting of these derogations;
- (32) Whereas this Directive constitutes a further phase of liberalisation; whereas, once it has been put into effect, some obstacles to trade in natural gas between Member States will nevertheless remain in place; whereas proposals for improving the operation of the internal market in natural gas should be made in the light of experience; whereas the Commission should therefore report to the European Parliament and the Council on the application of this Directive,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

SCOPE AND DEFINITIONS

Article 1

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

Article 2

For the purposes of this Directive:

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

2. 'upstream pipeline network' means any pipeline or network of pipelines operated and/or constructed as part of an oil or gas production project, or used to convey natural gas from one or more such projects to a processing plant or terminal or final coastal landing terminal;
3. 'transmission' means the transport of natural gas through a high pressure pipeline network other than an upstream pipeline network with a view to its delivery to customers;
4. 'transmission undertaking' means any natural or legal person who carries out the function of transmission;
5. 'distribution' means the transport of natural gas through local or regional pipeline networks with a view to its delivery to customers;
6. 'distribution undertaking' means any natural or legal person who carries out the function of distribution;
7. 'supply' means the delivery and/or sale of natural gas, including LNG, to customers;
8. 'supply undertaking' means any natural or legal person who carries out the function of supply;
9. 'storage facility' means a facility used for the stocking of natural gas and owned and/or operated by a natural gas undertaking, excluding the portion used for production operations;
10. 'storage undertaking' means any natural or legal person who carries out the function of storage;
11. 'LNG facility' means a terminal which is used for the liquefaction of natural gas or the offloading, storage and re-gasification of LNG;
12. 'system' means any transmission networks and/or distribution networks and/or LNG facilities owned and/or operated by a natural gas undertaking, including its facilities supplying ancillary services and those of related undertakings necessary for providing access to transmission and distribution;
13. 'interconnected system' means a number of systems which are linked with each other;
14. 'direct line' means a natural gas pipeline complementary to the interconnected system;
15. 'integrated natural gas undertaking' means a vertically or horizontally integrated undertaking;
16. 'vertically integrated undertaking' means a natural gas undertaking performing two or more of the tasks of production, transmission, distribution, supply or storage of natural gas;
17. 'horizontally integrated undertaking' means an undertaking performing at least one of the functions of production, transmission, distribution, supply or storage of natural gas, and a non-gas activity;
18. 'related undertaking' means affiliated undertakings, within the meaning of Article 41 of the Seventh Council Directive, 83/349/EEC, of 13 June 1983 based on Article 54(3)(g) of the Treaty on consolidated accounts⁽¹⁾, and/or associated undertakings, within the meaning of Article 33(1) thereof, and/or undertakings which belong to the same shareholders;
19. 'system user' means any natural or legal person supplying to, or being supplied by, the system;
20. 'customers' means wholesale or final customers of natural gas and natural gas undertakings which purchase natural gas;
21. 'final customer' means a consumer purchasing natural gas for his own use;
22. 'wholesale customers', where Member States recognise their existence, means any natural or legal persons who purchase and sell natural gas and who do not carry out transmission or distribution functions inside or outside the system where they are established;
23. 'long-term planning' means the planning of supply and transportation capacity of natural gas undertakings on a long-term basis with a view to meeting the demand for natural gas of the system, diversification of sources and securing supplies to customers;
24. 'emergent market' means a Member State in which the first commercial supply of its first long-term natural gas supply contract was made not more than 10 years earlier;
25. 'security' means both security of supply and provision, and technical safety.

⁽¹⁾ OJ L 193, 18.7.1983, p. 1. Directive as last amended by the 1994 Act of Accession.

CHAPTER II

GENERAL RULES FOR THE ORGANISATION OF THE SECTOR

Article 3

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

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

3. Member States may decide not to apply the provisions of Article 4 with respect to distribution insofar as the application of these provisions would obstruct, in law or in fact, the performance of the obligations imposed on natural gas undertakings in the general economic interest and insofar as the development of trade would not be affected to such an extent as would be contrary to the interests of the Community. The interests of the Community include, *inter alia*, competition with regard to eligible customers in accordance with this Directive and Article 90 of the Treaty.

Article 4

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

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

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

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

Article 5

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

CHAPTER III

TRANSMISSION, STORAGE AND LNG

Article 6

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

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

Article 7

1. Each transmission, storage and/or LNG undertaking shall operate, maintain and develop under economic conditions secure, reliable and efficient transmission, storage and/or LNG facilities, with due regard to the environment.
2. In any event, the transmission, storage and/or LNG undertaking shall not discriminate between system users or classes of system users, particularly in favour of its related undertakings.
3. Each transmission, storage and/or LNG undertaking shall provide any other transmission undertaking, any other storage undertaking and/or any distribution undertaking with 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.

Article 8

1. Without prejudice to Article 12 or any other legal duty to disclose information, each transmission, storage and/or LNG undertaking shall preserve the confidentiality of commercially sensitive information obtained in the course of carrying out its business.
2. Transmission undertakings shall not, in the context of sales or purchases of natural gas by the transmission undertakings or related undertakings, abuse commercially sensitive information obtained from third parties in the context of providing or negotiating access to the system.

CHAPTER IV

DISTRIBUTION AND SUPPLY

Article 9

1. Member States shall ensure that distribution undertakings act in accordance with Articles 10 and 11.
2. Member States may impose on distribution undertakings and/or supply undertakings, an obligation to deliver to customers located in a given area or of a certain class or both. The tariff for such deliveries may be regulated, for instance to ensure equal treatment of the customers concerned.

Article 10

1. Each distribution undertaking shall operate, maintain and develop under economic conditions a secure, reliable and efficient system, with due regard to the environment.
2. In any event, the distribution undertaking must not discriminate between system users or classes of system users, particularly in favour of its related undertakings.
3. Each distribution undertaking shall provide any other distribution undertaking, and/or any transmission and/or storage undertaking with sufficient information to ensure that the transport of gas may take place in a manner compatible with the secure and efficient operation of the interconnected system.

Article 11

1. Without prejudice to Article 12 or any other legal duty to disclose information, each distribution undertaking shall preserve the confidentiality of commercially sensitive information obtained in the course of carrying out its business.
2. Distribution undertakings shall not, in the context of sales or purchases of natural gas by the distribution undertakings or related undertakings, abuse commercially sensitive information obtained from third parties in the context of providing or negotiating access to the system.

CHAPTER V

UNBUNDLING AND TRANSPARENCY OF ACCOUNTS

Article 12

Member States or any competent authority they designate, including the dispute settlement authorities referred to in Article 21(2) and Article 23(3), shall have right of access to the accounts of natural gas undertakings as set out in Article 13 which they need to consult in carrying out their functions. Member States and any designated competent authority, including the dispute settlement authorities, shall preserve the confidentiality of commercially sensitive information. Member States may introduce exceptions to the principle of confidentiality where this is necessary in order for the competent authorities to carry out their functions.

Article 13

1. Member States 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.

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 adopted pursuant to the Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies ⁽¹⁾.

Undertakings which are not legally obliged to publish their annual accounts shall keep a copy of these at the disposal of the public at their head office.

3. Integrated natural gas undertakings shall, in their internal accounting, keep separate accounts for their natural gas transmission, distribution and storage activities, and, where appropriate, consolidated accounts for non-gas 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. These internal accounts shall include a balance sheet and a profit and loss account for each activity.

Where Article 16 applies and access to the system is on the basis of a single charge for both transmission and distribution, the accounts for transmission and distribution activities may be combined.

4. 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. These rules may be amended only in exceptional cases. Such amendments shall be mentioned and duly substantiated.

5. The annual accounts shall indicate in notes any transaction of a certain size conducted with related undertakings.

CHAPTER VI

ACCESS TO THE SYSTEM

Article 14

For the organisation of access to the system, Member States may choose either or both procedures referred to in Article 15 and in Article 16. These procedures shall operate in accordance with objective, transparent and non-discriminatory criteria.

Article 15

1. In the case of negotiated access, Member States 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 the system so as to conclude supply contracts with each other on the basis of voluntary commercial agreements. The parties shall be obliged to negotiate access to the system in good faith.

2. The contracts for access to the system shall be negotiated with the relevant natural gas undertakings. Member States shall require natural gas undertakings to publish their main commercial conditions for the use of the system within the first year following implementation of this Directive and on an annual basis every year thereafter.

Article 16

Member States opting for a procedure of regulated access 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 of access to the system, on the basis of published tariffs and/or other terms and obligations for use of that system. This 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 17

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 25 and the alternative chosen by the Member State according to paragraph 1 of that Article.

⁽¹⁾ OJ L 222, 14.8.1978, p. 11. Directive as last amended by Directive 94/8/EC (OJ L 82, 25.3.1994, p. 33).

Duly substantiated reasons shall be given for such a refusal.

2. Member States 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 shall make the necessary enhancements as far as it is economical to do so or when a potential customer is willing to pay for them. In circumstances where Member States apply Article 4(4), Member States shall take such measures.

Article 18

1. Member States shall specify eligible customers, meaning those customers inside their territory which have the legal capacity to contract for, or to be sold, natural gas in accordance with Articles 15 and 16, given that all customers mentioned in paragraph 2 of this Article must be included.

2. Member States shall take the necessary measures to ensure that at least the following customers are designated as eligible customers:

- gas-fired power generators, irrespective of their annual consumption level; however, and in order to safeguard the balance of their electricity market, the Member States may introduce a threshold, which may not exceed the level envisaged for other final customers, for the eligibility of combined heat and power producers. Such thresholds shall be notified to the Commission,
- other final customers consuming more than 25 million cubic metres of gas per year on a consumption-site basis.

3. Member States shall ensure that the definition of eligible customers referred to in paragraph 1 will result in an opening of the market equal to at least 20 % of the total annual gas consumption of the national gas market.

4. The percentage mentioned in paragraph 3 shall increase to 28 % of the total annual gas consumption of the national gas market five years after the entry into force of this Directive, and to 33 % thereof 20 years after the entry into force of this Directive.

5. If the definition of eligible customers as referred to in paragraph 1 results in a market opening of more than 30 % of the total annual gas consumption of the national gas market, the Member State concerned may modify the definition of eligible customers to the extent that the opening of the market is reduced to no lower than 30 % of such consumption. Member States shall modify

the definition of eligible customers in a balanced manner, not creating specific disadvantages for certain types or classes of eligible customers, but taking into account existing market structures.

6. Member States shall take the following measures to ensure that the opening of their natural gas market is increased over a period of 10 years:

- the threshold set in the second indent of paragraph 2 for eligible customers other than gas-fired power generators, shall be reduced to 15 million cubic metres per year on a consumption-site basis five years after the entry into force of this Directive, and to 5 million cubic metres per year on such basis 10 years after the entry into force of this Directive,
- the percentage mentioned in paragraph 5 shall increase to 38 % of the total annual gas consumption of the national gas market five years after the entry into force of this Directive, and to 43 % of such consumption 10 years after the entry into force of this Directive.

7. In respect of emergent markets, the gradual market opening provided for by this Article shall start to apply from the expiry of the derogation referred to in Article 26(2).

8. Distribution undertakings, if not already specified as eligible customers under paragraph 1, shall have the legal capacity to contract for natural gas in accordance with Articles 15 and 16 for the volume of natural gas being consumed by their customers designated as eligible within their distribution system, in order to supply those customers.

9. Member States shall publish by 31 January of each year the criteria for the definition of eligible customers referred to in paragraph 1. This information, together with all other appropriate information to justify the fulfilment of market opening under this Article, shall be sent to the Commission to be published in the *Official Journal of the European Communities*. The Commission may request a Member State to modify its specifications if they create obstacles to the correct application of this Directive as regards the smooth functioning of the internal market in natural gas. If the Member State concerned does not comply with this request within a period of three months, a final decision shall be taken in accordance with procedure I of Article 2 of Council Decision 87/373/EEC of 13 July 1987 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽¹⁾.

⁽¹⁾ OJ L 197, 18.7.1987, p. 33.

Article 19

1. To avoid imbalance in the opening of gas markets during the period referred to in Article 28:

(a) contracts for the supply of gas under the provisions of Articles 15, 16 and 17 with an eligible customer in the system of another Member State shall not be prohibited if the customer is considered as eligible in both systems involved;

(b) in cases where transactions as described in subparagraph (a) are refused because the customer is eligible in only one of the two systems, the Commission may oblige, taking into account the situation in the market and the common interest, the refusing party to execute the requested gas supply, at the request of the Member State where the eligible customer is located.

2. In parallel with the procedure and the timetable provided for in Article 28, and not later than after half of the period provided for in that Article, the Commission shall review the application of paragraph 1(b) of this Article on the basis of market developments taking into account the common interest. In the light of experience, the Commission shall evaluate this situation and report on any possible imbalance in the opening of gas markets with regard to paragraph 1(b).

Article 20

1. Member States shall take the necessary measures to enable:

- natural gas undertakings established within their territory to supply the customers described in Article 18 of this Directive through a direct line,
- any such eligible customer with their territory to be supplied through a direct line by natural gas undertakings.

2. In circumstances where an authorisation (e. g. licence, permission, concession, consent or approval) is required for the construction or operation of direct lines, the Member States 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. These criteria shall be objective, transparent and non-discriminatory.

3. Member States may make authorisations to construct a direct line subject either to the refusal of system access on the basis of Article 17 or to the opening of a dispute settlement procedure under Article 21.

Article 21

1. Member States shall ensure that the parties negotiate access to the system in good faith and that none of them abuses its negotiating position to prevent the successful outcome of such negotiations.

2. Member States shall designate a competent authority, which must be independent of the parties, to settle expeditiously disputes relating to the negotiations in question. In particular, this authority shall settle disputes concerning negotiations and refusal of access within the scope of this Directive. The competent authority shall present its conclusions without delay or if possible within 12 weeks of the introduction of the dispute. Recourse to this authority shall be without prejudice to the exercise of rights of appeal under Community law.

3. In the event of cross-border disputes, the dispute settlement authority shall be the dispute settlement authority covering the system of the natural gas undertaking which refuses use of, or access to, the system. Where, in cross-border disputes, more than one such authority covers the system concerned, the authorities shall consult with a view to ensuring that the provisions of this Directive are applied consistently.

Article 22

Member States 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. These mechanisms shall take account of the provisions of the Treaty, and in particular Article 86 thereof.

Article 23

1. Member States shall take the necessary measures to ensure that natural gas undertakings and customers required to be eligible under Article 18, 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 Commission in accordance with the provisions of Article 29.

2. The access referred to in paragraph 1 shall be provided in a manner determined by the Member State in accordance with the relevant legal instruments. Member States 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 may be taken into account:

- (a) the need to refuse access where there is an incompatibility of technical specifications which cannot be reasonably overcome;
- (b) the need to avoid difficulties which cannot be reasonably 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 Community law, for the grant of authorisation for production or upstream development.

3. Member States 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 Member State having jurisdiction over the upstream pipeline network which refuses access shall be applied. Where, in cross-border disputes, more than one Member State covers the network concerned, the Member State concerned shall consult with a view to ensuring that the provisions of this Directive are applied consistently.

CHAPTER VII

FINAL PROVISIONS

Article 24

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 Member State may temporarily take the necessary safeguard measures.

2. Such measures shall cause the least possible disturbance to the functioning of the internal market and shall not be wider in scope than is strictly necessary to remedy the sudden difficulties which have arisen.

3. The Member State concerned shall without delay notify these measures to the other Member States, and to the Commission, which may decide that the Member State concerned must amend or abolish such measures, insofar as they distort competition and adversely affect trade in a manner which is at variance with the common interest.

Article 25

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, an application for a temporary derogation from Article 15 and/or Article 16 may be sent to the Member State concerned or the designated competent authority. Applications shall, according to the choice of Member States, be presented on a case-by-case basis either before or after refusal of access to the system. Member States may also give the natural gas undertaking the choice to present 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 gas undertaking to solve the problem.

If alternative solutions are not reasonably available, and taking into account the provisions of paragraph 3, the Member State or the designated competent authority may decide to grant a derogation.

2. The Member State, or the designated competent authority, shall notify the Commission without delay of its decision to grant a derogation, together with all the relevant information with respect to the derogation. This information may be submitted to the Commission in an aggregated form, enabling the Commission to reach a well-founded decision. Within four weeks of its receipt of this notification, the Commission may request that the Member State or the designated competent authority concerned amend or withdraw the decision to grant a derogation. If the Member State or the designated competent authority concerned does not comply with this

request within a period of four weeks, a final decision shall be taken expeditiously in accordance with procedure I of Article 2 of Decision 87/373/EEC.

The Commission shall preserve the confidentiality of commercially sensitive information.

3. When deciding on the derogations referred to in paragraph 1, the Member State, or the designated competent authority, and the Commission shall take into account, in particular, the following criteria:

- (a) the objective to achieve a competitive gas market;
- (b) the need to fulfil 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 this 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 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 these 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 natural gas market.

A decision on a request for a derogation concerning take-or-pay contracts concluded before the entry into force of this Directive 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 shall not refuse, or shall no longer refuse, access to the system because of take-or-pay commitments accepted in a gas purchase contract. Member States shall ensure that the relevant provisions of Chapter VI are complied with.

5. Any derogation granted under the above provisions shall be duly substantiated. The Commission shall publish the decision in the *Official Journal of the European Communities*.

6. The Commission shall, within five years of the entry into force of this Directive, submit a review report on the experience gained from the application of this Article, so as to allow the European Parliament and the Council to consider, in due course, the need to adjust it.

Article 26

1. Member States not directly connected to the interconnected system of any other Member State and having only one main external supplier may derogate from Article 4, Article 18(1), (2), (3), (4) and (6) and/or Article 20 of this Directive. A supplier having a market share of more than 75 % shall be considered to be a main supplier. This derogation shall automatically expire from the moment when at least one of these conditions no longer applies. Any such derogation shall be notified to the Commission.

2. A Member State, qualifying as an emergent market, which because of the implementation of this Directive would experience substantial problems, not associated with the contractual take-or-pay commitments referred to in Article 25, may derogate from Article 4, Article 18(1), (2), (3), (4) and (6) and/or Article 20 of this Directive. This derogation shall automatically expire from the moment when the Member State no longer qualifies as an emergent market. Any such derogation shall be notified to the Commission.

3. Where implementation of this Directive would cause substantial problems in a geographically limited area of a Member State, in particular concerning the development of the transmission infrastructure, and with a view to encouraging investments, the Member State may apply to the Commission for a temporary derogation from Article 4, Article 18(1), (2), (3), (4) and (6) and/or Article 20 for developments within this area.

4. The Commission may grant the derogation referred to in paragraph 3, taking into account, in particular, the following criteria:

- the need for infrastructure investments, which would not be economical to operate in a competitive market environment,
- the level and pay-back prospects of investments required,
- the size and maturity of the gas system in the area concerned,
- the prospects for the gas market concerned,
- the geographical size and characteristics of the area or region concerned, and
- socio-economic and demographic factors.

A derogation may be granted only if no gas infrastructure has been established in this area, or has been so established for less than 10 years. The temporary derogation may not exceed 10 years from the time gas is first supplied in the area.

5. The Commission shall inform the Member States of applications made under paragraphs 3 prior to taking a decision pursuant to paragraph 4, taking into account respect for confidentiality. This decision, as well as the derogations referred to in paragraphs 1 and 2, shall be published in the *Official Journal of the European Communities*.

Article 27

1. Before the end of the first year following the entry into force of this Directive, the Commission shall submit a report to the European Parliament and the Council on harmonisation requirements which are not linked to the provisions of this Directive. If necessary, the Commission shall attach to the report any harmonisation proposals necessary for the effective operation of the internal natural gas market.

2. The European Parliament and the Council shall give their views on such proposals within two years of their submission.

Article 28

The Commission shall review the application of this Directive and submit a report on the experience gained on the functioning of the internal market in natural gas and the implementation of the general rules mentioned in Article 3 in order to allow the European Parliament and the Council, in the light of experience gained, to consider, in due time, the possibility of provisions for further improving the internal market in natural gas, which would be effective 10 years after the entry into force of the Directive.

Article 29

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive no later than two years from the date specified in Article 30. They shall forthwith inform the Commission thereof.

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

Article 30

This Directive shall enter into force on the 20th day following that of its publication in the *Official Journal of the European Communities*.

Article 31

This Directive is addressed to the Member States.

Done at Luxembourg, 22 June 1998.

For the European Parliament

The President

J. M. GIL-ROBLES

For the Council

The President

J. CUNNINGHAM