

Internal market in natural gas. Third energy package

2007/0196(COD) - 13/07/2009 - Final act

PURPOSE: to establish a fully operational internal market in natural gas (third package of legislative measures concerning the internal energy market).

LEGISLATIVE ACT: Directive 2009/73/EC of the European Parliament and of the Council concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC.

CONTENT: the Council unanimously adopted the package of legislative measures concerning the internal energy market, approving all of the European Parliament's second-reading amendments. The legislative package also includes: (i) a [Directive](#) concerning common rules for the internal market in electricity; (ii) a [Regulation](#) on conditions for access to the network for cross-border exchanges in electricity; (iii) a [Regulation](#) establishing an Agency for the Cooperation of Energy Regulators; and (iv) a [Regulation](#) on conditions for access to the natural gas transmission networks.

The third package of legislative measures on the internal energy market aims to:

- supplement the existing rules so as to ensure that the internal market operates smoothly for all consumers and to enable the EU to achieve a more secure, competitive and sustainable energy supply;
- give energy consumers more protection and the benefit of the lowest possible energy prices;
- promote sustainability by stimulating energy efficiency and guaranteeing that small companies, too, in particular those investing in renewable energy, will have access to the energy market;
- ensure fair competition between EU companies and third country companies.

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

The gas directive specifies the same three models as the electricity directive for ensuring the separation of transmission activities from production and supply activities. It also provides for public service obligations and the rights of gas consumers and clarifies competition requirements. The directive reinforces regional cooperation among regulatory authorities and among transmission system operators and lays down in great detail the objectives, duties and powers of regulatory authorities so as to ensure a more consistent internal gas market.

The rules established by this Directive for natural gas, including LNG, shall also apply in a non-discriminatory way to biogas and gas from biomass or other types of gas in so far as such gases can technically and safely be injected into, and transported through, the natural gas system.

The main provisions of the Directive are as follows:

Separation of transmission from supply and generation activities: the Directive specifies several models for achieving the separation of transmission from supply and generation activities. It gives Member States the possibility to choose between three options for separating supply and production activities from network operations for the gas market:

- full ownership unbundling;
- independent system operator (ISO);
- independent transmission operator (ITO).

Any system for unbundling should be effective in removing any conflict of interests between producers, suppliers and transmission system operators, in order to create incentives for the necessary investments and guarantee the access of new market entrants under a transparent and efficient regulatory regime and should not create an overly onerous regulatory regime for national regulatory authorities.

Strengthening consumer rights: the Directive lays down universal service obligations and the rights of gas consumers and clarifies competition requirements. Member States shall, in particular:

- ensure that all customers connected to the gas network are entitled to have their gas provided by a supplier, subject to the supplier's agreement, regardless of the Member State in which the supplier is registered, as long as the supplier follows the applicable trading and balancing rules and subject to security of supply requirements. In this regard, Member States shall take all measures necessary to ensure that administrative procedures do not discriminate against supply undertakings already registered in another Member State;
- ensure that: (i) where a customer, while respecting the contractual conditions, wishes to **change supplier**, the change is effected by the operator(s) concerned within three weeks; (ii) customers are entitled to receive all relevant consumption data. Customers have a right to a contract with their gas service provider that specifies information relating to consumer rights, including on the complaint handling and all of the information referred to in this point, **clearly communicated through billing** or the natural gas undertaking's web site;
- ensure: (i) the provision of **single points of contact** to provide consumers with all necessary information concerning their rights, current legislation and the means of dispute settlement available to them in the event of a dispute; (ii) that an **independent mechanism** such as an energy ombudsman or a consumer body is in place in order to ensure efficient treatment of complaints and out-of-court dispute settlements;
- ensure that there are adequate safeguards to protect **vulnerable customers**: each Member State shall define the concept of vulnerable customers which may refer to energy poverty and, inter alia, to the prohibition of disconnection of electricity to such customers in critical times;
- take appropriate measures, such as formulating national energy action plans, providing benefits in social security systems to ensure the necessary gas supply to vulnerable customers, or providing for support for energy efficiency improvements, to **address energy poverty** where identified;
- recommend that natural gas undertakings **optimise the use of gas**, for example by providing energy management services, developing innovative pricing formulas or introducing intelligent metering systems or smart grids where appropriate;
- ensure the **implementation of intelligent metering systems** that shall assist the active participation of consumers in the gas supply market.

The Commission should establish, after consulting relevant stakeholders, an accessible, user-friendly energy consumer checklist providing consumers with practical information about their rights.

Promotion of regional cooperation: the Directive strengthens regional cooperation among regulatory authorities and among transmission system operators. Member States as well as the regulatory authorities shall cooperate among themselves for the purpose of integrating their national markets at one or more regional levels, as a first step towards a fully liberalised internal market. They shall also facilitate integration of the isolated systems forming gas islands that persist in the Community.

Tasks of transmission, storage and/or LNG system operators: the Directive provides that each transmission, storage and/or LNG system operator shall operate, maintain and develop under economic conditions secure, reliable and efficient transmission, storage and/or LNG facilities to secure an open market, with due regard to the environment, ensure adequate means to meet service obligations.

Each transmission system operator shall build sufficient cross-border capacity to integrate European transmission infrastructure accommodating all economically reasonable and technically feasible demands for capacity and taking into account security of gas supply.

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

Closed distribution systems: the Directive provides that where a closed distribution system is used or a closed distribution system is maintained primarily for the use of the owner of the system, it shall be possible to exempt the distribution system operator, under certain conditions, from obligations which would constitute an unnecessary administrative burden because of the particular nature of the relationship between the distribution system operator and the users of the system.

Industrial, commercial or shared services sites such as train station buildings, airports, hospitals, large camping sites with integrated facilities or chemical industry sites can include closed distribution systems because of the specialised nature of their operations.

Congestion management: the regulatory authorities shall monitor congestion management of national gas systems including interconnectors, and the implementation of congestion management rules. To that effect, transmission system operators or market operators shall submit their congestion management rules, including capacity allocation, to the national regulatory authorities. National regulatory authorities may request amendments to these rules.

Third-party access: Member States shall ensure the implementation of a system of third party access to the transmission and distribution systems, applicable to all eligible customers. The transmission or distribution system operator may refuse access where it lacks the necessary capacity. Duly substantiated reasons must be given for such refusal and based on objective, technically and economically justified criteria. The regulatory authorities where Member States have so provided, or Member States, shall ensure that those criteria are consistently applied and that the system user who has been refused access can make use of a dispute settlement procedure.

Regulatory authorities: the Directive strengthens the **independence and powers** of the national regulators. It sets out in great detail the objectives, duties and powers of regulatory authorities so as to improve consistency.

Each Member State shall designate a single national regulatory authority at national level. The regulatory authority shall have the following **duties**: (i) fixing or approving, in accordance with transparent criteria, regulated transmission or distribution tariffs or their methodologies; (ii) cooperating in regard to cross-border issues with the regulatory authority or authorities of the Member States concerned and with the Agency; (iii) monitoring investment plans of the transmission system operators; (iv) monitoring compliance with network security and reliability rules; (v) monitoring the level of transparency and ensuring compliance of gas undertakings with transparency obligations; (vi) monitoring the level and effectiveness of market opening and competition at wholesale and retail levels; (vii) monitoring the

occurrence of restrictive contractual practices, including exclusivity clauses; (viii) monitoring the time taken by transmission and distribution system operators to make connections and repairs; (ix) helping to ensure that the consumer protection measures are effective and enforced.

The regulatory authority may: (i) issue **binding decisions** on gas undertakings; (ii) carry out **investigations** into the functioning of the gas markets, and to decide upon and impose any necessary and proportionate measures to promote effective competition and ensure the proper functioning of the market; (iii) require any information from gas undertakings relevant for the fulfilment of its tasks, including the justification for any refusal to grant third-party access; (iv) impose effective, proportionate and dissuasive **penalties** on gas undertakings not complying with their obligations under this Directive. This shall include the power to impose or propose the imposition of penalties of up to 10% of the annual turnover of the transmission system operator or vertically integrated undertaking.

Reporting: the Commission shall monitor and review the application of this Directive and submit an annual overall progress report. The Commission shall, by 3 March 2013, submit, as part of the general review, to the European Parliament and the Council, a detailed specific report outlining the extent to which the unbundling requirements under the Directive have been successful in ensuring full and effective independence of transmission system operators.

ENTRY INTO FORCE: 03/09/2009.

TRANSPOSITION: 03/03/2011.

APPLICATION: from 03/03/2011, with the exception of Article 11 (certification in relation to third countries), which shall apply from 03/03/2013.