



THE ENERGY COMMUNITY

LEGAL FRAMEWORK 2018 4th Edition

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4th Edition

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PREFACE	5
PART I TREATY ESTABLISHING THE ENERGY COMMUNITY	7
The Treaty.	10
Annexes.	38
Protocol on the Accession of Moldova to the Energy Community Treaty	42
Protocol on the Accession of Ukraine to the Energy Community Treaty	45
Protocol on the Accession of Georgia to the Energy Community Treaty	48
PART II ACQUIS COMMUNAUTAIRE	55
<i>ELECTRICITY</i>	55
Directive 2009/72/EC of 13 July 2009 concerning common rules for the internal market in electricity	57
Regulation (EC) 714/2009 of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity	113
<i>GAS</i>	139
Directive 2009/73/EC of 13 July 2009 concerning common rules for the internal market in natural gas	141
Regulation (EC) 715/2009 of 13 July 2009 on conditions for access to the natural gas transmission networks	201
<i>SECURITY OF SUPPLY</i>	233
Directive 2005/89/EC of 18 January 2006 concerning measures to safeguard security of electricity supply and infrastructure investment.	235
Directive 2004/67/EC of 26 April 2004 concerning measures to safeguard security of natural gas supply	245
<i>OIL</i>	255
Directive 2009/119/EC of 14 September 2009 imposing an obligation on Member States to maintain minimum stocks of crude oil and/or petroleum products	257
<i>INFRASTRUCTURE</i>	281
Regulation (EU) 347/2013 on guidelines for trans-European energy infrastructure.	283

ENVIRONMENT327

Directive 2011/92/EU of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment, as amended by Directive 2014/52/EU329

Directive (EU) 2016/802 of 11 May 2016 relating to a reduction in the sulphur content of certain liquid fuels357

Directive 2001/80/EC of 23 October 2001 on the limitation of emissions of certain pollutants into the air from large combustion plants.377

Directive 2010/75/EU of 24 November 2010 on industrial emissions (integrated pollution prevention and control)405

Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds431

Directive 2004/35/EC of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage, as amended by Directive 2006/21/EC, Directive 2003/31/EC and Directive 2013/30/EU.443

Directive 2001/42/EC of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment467

RENEWABLE ENERGY479

Directive 2009/28/EC of 23 April 2009 on the promotion of the use of energy from renewable sources481

ENERGY EFFICIENCY.547

Directive 2012/27/EU of 25 October 2012 on energy efficiency549

Directive 2010/31/EU of 19 May 2010 on the energy performance of buildings615

Directive 2010/30/EU of 19 May 2010 on the indication by labelling and standard product information of the consumption of energy and other resources by energy-related products . . .643

STATISTICS.659

Regulation (EC) 1099/2008 of 22 October 2008 on energy statistics661

Regulation (EU) 2016/1952 of 26 October 2016 on European statistics on natural gas and electricity prices731

PART III MEASURES AND PROCEDURAL ACTS BY ENERGY COMMUNITY INSTITUTIONS745

Rules of Procedure of 16 October 2015 of the Ministerial Council of the Energy Community . .747

Rules of Procedure of 16 October 2015 of the
Permanent High Level Group of the Energy Community.755

Rules of Procedure of 8 April 2015 of the Energy Community Regulatory Board.763

Rules of Procedure of 16 October 2015 on dispute settlement under the Treaty.773

Rules of 16 October 2015 on strengthening the role of civil society791

Rules of 16 October 2015 on establishment
of Energy Community parliamentary plenum meetings795

Rules of 11 December 2008 on establishment of a security of supply coordination group . . .799

Rules of 21 June 2012 governing the adoption
of guidelines and network codes in the Energy Community803

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PREFACE

The Energy Community as a dynamic organisation, both in terms of geographical scope and its legal framework, is developing over time. When the Treaty establishing the Energy Community entered into force in 2006, it explicitly referred to 11 legal acts that were to be transposed and implemented in the Contracting Parties. Following the development of EU law, the Energy Community legal framework was expanded and adapted by adoption of new *acquis*. Today the Energy Community body of law amounts to 61 Decisions and 38 Procedural Acts adopted by the Ministerial Council and the Permanent High Level Group.

In contrast to the third edition, this fourth edition puts the Second Energy Package behind and displays the Third Energy Package (implementation deadline 1 January 2015) only. It moreover constitutes a proof of the ‘greening’ of the Energy Community – both in the importance and scope of renewable energy, energy efficiency and environmental *acquis*. The Contracting Parties implement today the core energy efficiency *acquis* and have the same level of ambition as their EU counterparts. So far the environmental *acquis* was limited to improving the situation in relation to network energy (Article 2 of the Treaty). A paradigm shift followed in 2016, when the Ministerial Council took the first steps towards integrating climate issues in the context of the Energy Community. To push the agendas further, the 2017 Ministerial Council adopted three further Recommendations on environment and climate. In the absence of binding legal force, they are not being reproduced here.

Not only the scope of *acquis* has grown, but also the Energy Community institutional setting has expanded. The implementation of the Third Energy Package and the ongoing Treaty reforms are the driving force behind the changes. Whilst the Secretariat and the Permanent High Level Group have been equipped with greater competences, new meeting platforms for parliaments, civil society and legal scholars have been created. The revised Internal Rules of Procedure of the institutions are displayed in Part III.

In putting the applicable Energy Community legal framework under one cover, this fourth edition provides a working tool for all stakeholders involved in the process of consolidating and developing the Energy Community. In editorial terms, it is important to note that the legislation compiled in this edition consists of consolidations done by the editors for the sake of convenience only. In any circumstance, the versions adopted by the legislature in the European Union and the Energy Community and published in the Official Journal or the Energy Community website (LEGAL/acquis) respectively, shall prevail.



Janez Kopač
Director

PART I

TREATY ESTABLISHING THE ENERGY COMMUNITY

TREATY ESTABLISHING THE ENERGY COMMUNITY

PREAMBLE	12
TITLE I – PRINCIPLES	14
TITLE II – THE EXTENSION OF THE ACQUIS COMMUNAUTAIRE	16
Chapter I – Geographic Scope	16
Chapter II – The Acquis on Energy	16
Chapter III – The Acquis on Environment	16
Chapter IV – The Acquis on Competition	17
Chapter V – The Acquis for Renewables	18
Chapter VI – Compliance with Generally Applicable Standards of the European Community	18
Chapter VII – The Adaptation and Evolution of the Acquis	18
TITLE III – MECHANISM FOR OPERATION OF NETWORK ENERGY MARKETS	19
Chapter I – Geographic Scope	19
Chapter II – Mechanism for Long-Distance Transportation of Network Energy	19
Chapter III – Security of Supply	19
Chapter IV – Provision of Energy to Citizens	20
Chapter V – Harmonisation	20
Chapter VI – Renewable Energy Sources and Energy Efficiency	20
Chapter VII – Safeguard Measures	21
TITLE IV – THE CREATION OF A SINGLE ENERGY MARKET	21
Chapter I – Geographic Scope	21
Chapter II – Internal Energy Market	22
Chapter III – External Energy Trade Policy	22
Chapter IV – Mutual Assistance in the Event of Disruption	22
TITLE V – INSTITUTIONS OF THE ENERGY COMMUNITY	23
Chapter I – The Ministerial Council	23
Chapter II – The Permanent High Level Group	24
Chapter III – The Regulatory Board	25
Chapter IV – The Fora	26
Chapter V – The Secretariat	26
Chapter VI – Budget	27
TITLE VI – DECISION MAKING PROCESS	28
Chapter I – General Provisions	28
Chapter II – Measures under Title II	28
Chapter III – Measures under Title III	28
Chapter IV – Measures under Title IV	29
Chapter V – Procedural Acts	29

TITLE VII – IMPLEMENTATION OF DECISIONS AND DISPUTE SETTLEMENT	30
TITLE VIII – INTERPRETATION	31
TITLE IX – PARTICIPANTS AND OBSERVERS	31
TITLE X – DURATION	31
TITLE XI – REVISION AND ACCESSION	32
TITLE XII – FINAL AND TRANSITIONAL PROVISIONS	32
SIGNATURES BY CONTRACTING PARTIES	34
STATEMENT BY FORMER YUGOSLAV REPUBLIC OF MACEDONIA	36
STATEMENT BY COUNCIL OF THE EUROPEAN UNION	37
DECLARATION BY UNMIK	38
STATEMENT BY THE SERBIAN DELEGATION	39
ANNEX I: LIST OF ACTS INCLUDED IN THE “ACQUIS COMMUNAUTAIRE ON ENERGY”	40
ANNEX II: TIMETABLE FOR THE IMPLEMENTATION OF THE ACQUIS ON ENVIRONMENT	41
ANNEX III: EC COMPETITION RULES	42
PROTOCOL ON THE ACCESSION OF MOLDOVA TO THE ENERGY COMMUNITY TREATY	44
PROTOCOL ON THE ACCESSION OF UKRAINE TO THE ENERGY COMMUNITY TREATY	45
PROTOCOL ON THE ACCESSION OF GEORGIA TO THE ENERGY COMMUNITY TREATY	48

TREATY ESTABLISHING THE ENERGY COMMUNITY

The Parties, being:

The European Community on the one hand,

And

The following Contracting Parties on the other hand:

- The Republic of Albania, the Republic of Bulgaria, Bosnia and Herzegovina, the Republic of Croatia, the former Yugoslav Republic of Macedonia, the Republic of Montenegro, Romania, the Republic of Serbia (hereafter referred to as the Adhering Parties),

and

- The United Nations Interim Administration Mission in Kosovo pursuant to the United Nations Security Council Resolution 1244,

Consolidating on the Athens Process and the 2002 and 2003 Athens Memoranda of Understanding,

Noting that the Republic of Bulgaria, Romania and the Republic of Croatia are Candidate Countries for accession to the European Union, and that the former Yugoslav Republic of Macedonia has also applied for membership,

Noting that the European Council in Copenhagen in December 2002 confirmed the European perspective of the Republic of Albania, Bosnia and Herzegovina, and Serbia and Montenegro, as potential candidates for accession of the European Union, and underlined the determination to support their efforts to move closer to the European Union,

Recalling that the European Council in Thessaloniki in June 2003 endorsed “The Thessaloniki Agenda for the Western Balkans: moving towards European integration”, which aims to further strengthen the privileged relations between the European Union and the Western Balkans and in which the European Union encouraged the countries of the region to adopt a legally binding South-East Europe energy market agreement,

Recalling the Euro-Mediterranean Partnership Process and the European Neighbourhood Policy,

Recalling the contribution of the Stability Pact for South East Europe that has as its core the need to strengthen co-operation amongst the states and nations of South East Europe and to foster the conditions for peace, stability and economic growth,

Resolved to establish among the Parties an integrated market in natural gas and electricity, based on common interest and solidarity,

Considering that this integrated market may involve at a later stage other energy products and carriers, such as liquefied natural gas, petrol, hydrogen, or other essential network infrastructures,

Determined to create a stable regulatory and market framework capable of attracting investment in gas networks, power generation and transmission networks, so that all Parties have access to the stable and continuous gas and electricity supply that is essential for economic development and social stability,

Determined to create a single regulatory space for trade in gas and electricity that is necessary to match the geographic extent of the concerned product markets,

Recognising that the territories of the Republic of Austria, of the Hellenic Republic, of the Republic of Hungary, of the Italian Republic, and of the Republic of Slovenia are naturally integrated or directly affected by the functioning of the gas and electricity markets of the Contracting Parties,

Determined to promote high levels of gas and electricity provision to all citizens based on public service obligations, and to achieve economic and social progress and a high level of employment as well as a balanced and sustainable development through the creation of an area without internal frontiers for gas and electricity,

Desiring to enhance the security of supply of the single regulatory space by providing the stable regulatory framework necessary for the region in which connections to Caspian, North African and Middle East gas reserves can be developed and indigenous reserves of natural gas, coal and hydro-power can be exploited,

Committed to improving the environmental situation in relation to gas and electricity, related energy efficiency and renewable energy sources,

Determined to develop gas and electricity market competition on a broader scale and exploit economies of scale,

Considering that, to achieve these aims, a broad ranging and integrated market regulatory structure needs to be put in place supported by strong institutions and effective supervision, and with the adequate involvement of the private sector,

Considering that in order to reduce stress on the state level gas and electricity systems and contribute to resolving local gas and electricity shortages, specific rules should be put in place to facilitate gas and electricity trade; and that such rules are needed to create a single regulatory space for the geographic extent of the concerned product markets,

Have decided to create an Energy Community.

TITLE I – PRINCIPLES

Article 1

1. By this Treaty, the Parties establish among themselves an Energy Community.
2. Member States of the European Community may become Participants in the Energy Community pursuant to Article 95 of this Treaty.

Article 2

1. The task of the Energy Community shall be to organise the relations between the Parties and create a legal and economic framework in relation to Network Energy, as defined in paragraph 2, in order to:

- (a) create a stable regulatory and market framework capable of attracting investment in gas networks, power generation, and transmission and distribution networks, so that all Parties have access to the stable and continuous energy supply that is essential for economic development and social stability,
- (b) create a single regulatory space for trade in Network Energy that is necessary to match the geographic extent of the concerned product markets,
- (c) enhance the security of supply of the single regulatory space by providing a stable investment climate in which connections to Caspian, North African and Middle East gas reserves can be developed, and indigenous sources of energy such as natural gas, coal and hydropower can be exploited,
- (d) improve the environmental situation in relation to Network Energy and related energy efficiency, foster the use of renewable energy, and set out the conditions for energy trade in the single regulatory space,
- (e) develop Network Energy market competition on a broader geographic scale and exploit economies of scale.

2. "Network Energy" shall include the electricity and gas sectors falling within the scope of the European Community Directives 2003/54/EC and 2003/55/EC.¹

Article 3

For the purposes of Article 2, the activities of the Energy Community shall include:

- (a) the implementation by the Contracting Parties of the *acquis communautaire* on energy, environment, competition and renewables, as described in Title II below, adapted to both the institutional framework of the Energy Community and the specific situation of each of the Contracting Parties (hereinafter referred to as "the extension of the *acquis communautaire*"), as further described in Title II;
- (b) the setting up of a specific regulatory framework permitting the efficient operation of Network

¹ According to Article 1 of Decision 2008/03/MC-EnC of 1 December 2008 concerning the implementation to the oil sector of certain provisions of the Treaty and the creation of an Energy Community Oil Forum,

"1. The Treaty is extended to oil under the conditions set by this Article.

2. 'Network Energy' as mentioned in Article 2 paragraph 2 of the Treaty shall be understood as to include the oil sector, i.e. supply, trade, processing and transmission of crude oil and petroleum products falling within the scope of the Directive 2006/67/EC and the related pipelines, storage, refineries and import/export facilities <...>

4. Paragraphs 1 and 2 of this Article do not apply to Articles 21 to 23 and to Articles 43 to 46 of the Treaty."

Energy markets across the territories of the Contracting Parties and part of the territory of the European Community, and including the creation of a single mechanism for the cross-border transmission and/or transportation of Network Energy, and the supervision of unilateral safeguard measures (hereinafter referred to as “the mechanism for operation of Network Energy markets”), as further described in Title III;

(c) the creation for the Parties of a market in Network Energy without internal frontiers, including the coordination of mutual assistance in case of serious disturbance to the energy networks or external disruptions, and which may include the achievement of a common external energy trade policy (hereinafter referred to as “the creation of a single energy market”), as further described in Title IV.

Article 4

The Commission of the European Communities (hereinafter referred to as “the European Commission”) shall act as co-ordinator of the three activities described in Article 3.

Article 5

The Energy Community shall follow the *acquis communautaire* described in Title II, adapted to both the institutional framework of this Treaty and the specific situation of each of the Contracting Parties, with a view to ensuring high levels of investment security and optimal investments.

Article 6

The Parties shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Treaty. The Parties shall facilitate the achievement of the Energy Community’s tasks. The Parties shall abstain from any measure which could jeopardise the attainment of the objectives of this Treaty.

Article 7

Any discrimination within the scope of this Treaty shall be prohibited.

Article 8

Nothing in this Treaty shall affect the rights of a Party to determine the conditions for exploiting its energy resources, its choice between different energy sources and the general structure of its energy supply.

TITLE II – THE EXTENSION OF THE ACQUIS COMMUNAUTAIRE

CHAPTER I – GEOGRAPHIC SCOPE

Article 9

The provisions of and the Measures taken under this Title shall apply to the territories of the Adhering Parties, and to the territory under the jurisdiction of the United Nations Interim Administration Mission in Kosovo.

CHAPTER II – THE ACQUIS ON ENERGY

Article 10

Each Contracting Party shall implement the *acquis communautaire* on energy in compliance with the timetable for the implementation of those measures set out in Annex I.

Article 11

The “*acquis communautaire* on energy”, for the purpose of this Treaty, shall mean the acts listed in Annex I of this Treaty.²

CHAPTER III – THE ACQUIS ON ENVIRONMENT

Article 12

Each Contracting Party shall implement the *acquis communautaire* on environment in compliance with the timetable for the implementation of those measures set out in Annex II.

Article 13

The Parties recognise the importance of the Kyoto Protocol. Each Contracting Party shall endeavour to accede to it.

Article 14

The Parties recognise the importance of the rules set out in Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control. Each Contracting Party shall endeavour to implement that Directive.

² Amended by Article 1 of Ministerial Council Decision 2011/02/MC-EnC of 6 October 2011 on the implementation of Directive 2009/72/EC, Directive 2009/73/EC, Regulation (EC) 714/2009 and Regulation (EC) 715/2009 and amending Articles 11 and 59 of the Energy Community Treaty.

Article 15

After the entry into force of this Treaty, the construction and operation of new generating plants shall comply with the *acquis communautaire* on environment.

Article 16

The “*acquis communautaire* on environment”, for the purpose of this Treaty, shall mean

- (i) Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment as amended by Directive 2014/52/EU,³
- (ii) Directive (EU) 2016/802 of the European Parliament and of the Council of 11 May 2016 relating to a reduction in the sulphur content of certain liquid fuels and Commission Implementing Decision (EU) 2015/253 of 16 February 2015 laying down the rules concerning the sampling and reporting under Council Directive 1999/32/EC as regards the sulphur content of marine fuels,⁴
- (iii) Directive 2001/80/EC of the European Parliament and of the Council of 23 October 2001 on the limitation of emissions of certain pollutants into the air from large combustion plants,⁵
- (iv) Article 4(2) of Directive 79/409/EEC of the Council of 2 April 1979 on the conservation of wild birds,
- (v) Chapter III, Annex V, and Article 72(3)-(4) of Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control),⁶
- (vi) Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage, as amended by Directive 2006/21/EC, Directive 2009/31/EC and Directive 2013/30/EU⁷, and,
- (vii) Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment.⁸

³ Amended by the Ministerial Council Decision 2016/12/MC-EnC of 14 October 2016 on amending the Treaty establishing the Energy Community and adapting and implementing Directive (EU) 2016/802 of the European Parliament and of the Council and Commission Implementing Decision (EU) 2015/253.

⁴ Amended by the Ministerial Council Decision 2016/15/MC-EnC of 14 October 2016 on amending the Treaty establishing the Energy Community and adapting and implementing Directive (EU) 2016/802 of the European Parliament and of the Council and Commission Implementing Decision (EU) 2015/253.

⁵ Amended by the Ministerial Council Decision 2013/05/MC-EnC of 24 October 2013 on the implementation of Directive 2001/80/EC of 23 October 2001 on the limitation of emissions of certain pollutants into the air from large combustion plants and Decision 2015/07/MC-EnC on amending 2013/05/MC on implementation of Directive 2001/80/(EC) on limitation of certain emissions.

⁶ Amended by the Ministerial Council Decision 2013/06/MC-EnC of 24 October 2013 on the implementation of Chapter III Annex V, and Article 72(3)-(4) of Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) and amending Article 16 and Annex II of the Energy Community Treaty.

⁷ Amended by the Ministerial Council Decision 2016/14/MC-EnC of 14 October 2016 on amending the Treaty establishing the Energy Community and adapting and implementing Directive 2004/35/EC of the European Parliament and of the Council.

⁸ Amended by the Ministerial Council Decision 2016/13/MC-EnC of 14 October 2016 on amending the Treaty establishing the Energy Community and adapting and implementing Directive 2001/42/EC of the European Parliament and of the Council.

Article 17

The provisions of and the Measures taken under this Chapter shall only apply to Network Energy.

CHAPTER IV – THE ACQUIS ON COMPETITION

Article 18

1. The following shall be incompatible with the proper functioning of the Treaty, insofar as they may affect trade of Network Energy between the Contracting Parties:

- (a) all agreements between undertakings, decisions by associations of undertakings and concerted practices which have as their object or effect the prevention, restriction or distortion of competition,
- (b) abuse by one or more undertakings of a dominant position in the market between the Contracting Parties as a whole or in a substantial part thereof,
- (c) any public aid which distorts or threatens to distort competition by favouring certain undertakings or certain energy resources.

2. Any practices contrary to this Article shall be assessed on the basis of criteria arising from the application of the rules of Articles 81, 82 and 87 of the Treaty establishing the European Community (attached in Annex III).

Article 19

With regard to public undertakings and undertakings to which special or exclusive rights have been granted, each Contracting Party shall ensure that as from 6 months following the date of entry force of this Treaty, the principles of the Treaty establishing the European Community, in particular Article 86 (1) and (2) thereof (attached in Annex III), are upheld.

CHAPTER V – THE ACQUIS FOR RENEWABLES

Article 20⁹

Each Contracting Party shall implement Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC.

CHAPTER VI – COMPLIANCE WITH GENERALLY APPLICABLE STANDARDS OF THE EUROPEAN COMMUNITY

Article 21

Within one year of the date of entry into force of this Treaty, the Secretariat shall draw up a list of the Generally Applicable Standards of the European Community, to be submitted to the Ministerial Council for adoption.

⁹ Amended by Ministerial Council Decision 2012/04/MC-EnC of 18 October 2012 on the implementation of Directive 2009/28/EC and amending Article 20 of the Energy Community Treaty.

Article 22

The Contracting Parties shall, within one year of the adoption of the list, adopt development plans to bring their Network Energy sectors into line with these Generally Applicable Standards of the European Community.

Article 23

“Generally Applicable Standards of the European Community” shall refer to any technical system standard that is applied within the European Community, and is necessary for operating network systems safely and efficiently, including aspects of transmission, cross-border connections, modulation and general technical system security standards issued where applicable via the European Committee for Standardization (CEN), the European Committee for Electrotechnical Standardization (CENELEC) and similar normation bodies or as issued by the Union for the Co-ordination of Transmission of Electricity (UCTE) and the European Association for the Streamlining of Energy Exchanges (Easeegas) for common rule setting and business practices.

CHAPTER VII – THE ADAPTATION AND EVOLUTION OF THE ACQUIS**Article 24**

For the implementation of this Title, the Energy Community shall adopt Measures adapting the *acquis communautaire* described in this Title, taking into account both the institutional framework of this Treaty and the specific situation of each of the Contracting Parties.

Article 25

The Energy Community may take Measures to implement amendments to the *acquis communautaire* described in this Title, in line with the evolution of European Community law.

TITLE III – MECHANISM FOR OPERATION OF NETWORK ENERGY MARKETS**CHAPTER I – GEOGRAPHIC SCOPE****Article 26**

The provisions of and the Measures taken under this Title shall apply to the territories of the Adhering Parties, to the territory under the jurisdiction of the United Nations Interim Administration Mission in Kosovo, and to the territories of the European Community referred to in Article 27.

Article 27

As regard the European Community, the provisions of and the Measures taken under this Title shall apply to the territories of the Hellenic Republic, of Hungary, of the Republic of Bulgaria, of the Republic of Croatia, of the Republic of Italy, of the Republic of Poland, of the Republic of Romania and of the Republic of Slovakia.¹⁰ Upon accession to the European Union of an Adhering Party, the provisions of and the Measures taken under this Title shall, without any further formalities, also apply to the territory of that new Member State.

CHAPTER II – MECHANISM FOR LONG-DISTANCE TRANSPORTATION OF NETWORK ENERGY

Article 28

The Energy Community shall take additional Measures establishing a single mechanism for the cross-border transmission and/or transportation of Network Energy.

CHAPTER III – SECURITY OF SUPPLY

Article 29

The Parties shall, within one year of the date of entry into force of this Treaty, adopt security of supply statements describing in particular diversity of supply, technological security, and geographic origin of imported fuels. The statements shall be communicated to the Secretariat, and shall be available to any Party to this Treaty. They shall be updated every two years. The Secretariat shall give guidance and assistance with respect to such statements.

Article 30

Article 29 does not imply a necessity to change energy policies or purchasing practices.

CHAPTER IV – PROVISION OF ENERGY TO CITIZENS

Article 31

The Energy Community shall promote high levels of provision of Network Energy to all its citizens within the limits of the public service obligations contained in the relevant *acquis communautaire* on energy.

Article 32

For this purpose, the Energy Community may take Measures to:

(a) allow for the universal provision of electricity;

¹⁰ Amended by Ministerial Council Decision 2015/09/MC-EnC on the implementation of Regulation (EU) 347/2013 of the European Parliament and the Council on guidelines for trans-European energy infrastructure.

- (b) foster effective demand management policies;
- (c) ensure fair competition.

Article 33

The Energy Community may also make Recommendations to support effective reform of the Network Energy sectors of the Parties, including *inter alia* to increase the level of payment for energy by all customers, and to foster the affordability of Network Energy prices to consumers.

CHAPTER V – HARMONISATION

Article 34

The Energy Community may take Measures concerning compatibility of market designs for the operation of Network Energy markets, as well as mutual recognition of licenses and Measures fostering free establishment of Network Energy companies.

CHAPTER VI – RENEWABLE ENERGY SOURCES AND ENERGY EFFICIENCY

Article 35

The Energy Community may adopt Measures to foster development in the areas of renewable energy sources and energy efficiency, taking account of their advantages for security of supply, environment protection, social cohesion and regional development.

CHAPTER VII – SAFEGUARD MEASURES

Article 36

In the event of a sudden crisis on the Network Energy market in the territory of an Adhering Party, the territory under the jurisdiction of the United Nations Interim Administration Mission in Kosovo, or a territory of the European Community referred to in Article 27, where the physical safety or security of persons, or Network Energy apparatus or installations or system integrity is threatened in this territory, the concerned Party may temporarily take necessary safeguard measures.

Article 37

Such safeguard measures shall cause the least possible disturbance in the functioning of the Network Energy market of the Parties, and not be wider in scope than is strictly necessary to remedy the sudden difficulties which have arisen. They shall not distort competition or adversely affect trade in a manner which is at variance with the common interest.

Article 38

The Party concerned shall without delay notify these safeguard measures to the Secretariat, which shall immediately inform the other Parties.

Article 39

The Energy Community may decide that the safeguard measures taken by the Party concerned do not comply with the provisions of this Chapter, and request that Party to put an end to, or modify, those safeguard measures.

TITLE IV – THE CREATION OF A SINGLE ENERGY MARKET

CHAPTER I – GEOGRAPHIC SCOPE

Article 40

The provisions of and the Measures taken under this Title shall apply to the territories to which the Treaty establishing the European Community applies under the conditions laid down in that Treaty, to the territories of the Adhering Parties and to the territory under the jurisdiction of the United Nations Interim Mission in Kosovo.

CHAPTER II – INTERNAL ENERGY MARKET

Article 41

1. Customs duties and quantitative restrictions on the import and export of Network Energy and all measures having equivalent effect, shall be prohibited between the Parties. This prohibition shall also apply to customs duties of a fiscal nature.
2. Paragraph 1 shall not preclude quantitative restrictions or measures having equivalent effect, justified on grounds of public policy or public security; the protection of health and life of humans, animals or plants, or the protection of industrial and commercial property. Such restrictions or measures shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between the Parties.

Article 42

1. The Energy Community may take Measures with the aim of creating a single market without internal frontiers for Network Energy.
2. Paragraph 1 shall not apply to fiscal measures, to those relating to the free movement of persons nor to those relating to the rights and interests of employed persons.

CHAPTER III – EXTERNAL ENERGY TRADE POLICY

Article 43

The Energy Community may take Measures necessary for the regulation of imports and exports of Network Energy to and from third countries with a view to ensuring equivalent access to and from third country markets in respect of basic environmental standards or to ensure the safe operation of the internal energy market.

CHAPTER IV – MUTUAL ASSISTANCE IN THE EVENT OF DISRUPTION

Article 44

In the event of disruption of Network Energy supply affecting a Party and involving another Party or a third country, the Parties shall seek an expeditious resolution in accordance with the provisions of this Chapter.

Article 45

Upon request of the Party directly affected by the disruption, the Ministerial Council shall meet. The Ministerial Council may take the necessary Measures in response to the disruption.

Article 46

Within one year of the date of entry into force of this Treaty, the Ministerial Council shall adopt a Procedural Act for the operation of the mutual assistance obligation under this Chapter, which may include the conferral of powers to take interim Measures to the Permanent High Level Group.

TITLE V – INSTITUTIONS OF THE ENERGY COMMUNITY

CHAPTER I - THE MINISTERIAL COUNCIL

Article 47

The Ministerial Council shall ensure that the objectives set out in this Treaty are attained. It shall:

- (a) provide general policy guidelines;
- (b) take Measures;
- (c) adopt Procedural Acts, which may include the conferral, under precise conditions, of specific tasks, powers and obligations to carry out the policy of the Energy Community on the Permanent High Level Group, the Regulatory Board or the Secretariat.

Article 48

The Ministerial Council shall consist of one representative of each Contracting Party and two representatives of the European Community. One non-voting representative of each Participant may participate in its meetings.

Article 49

The Ministerial Council shall adopt its internal rules of procedure by Procedural Act.

Article 50¹¹

The Presidency shall be held in turn by each Contracting Party for a term of one year in the order decided by a Procedural Act of the Ministerial Council. The Presidency shall convene the Ministerial Council in a place decided upon by the Presidency. The Ministerial Council shall meet at least once every year. The meetings shall be prepared by the Secretariat.

Article 51

The Presidency shall chair the Ministerial Council and be assisted by one representative of the European Community and one representative of the incoming Presidency as Vice-Presidents. The Presidency and the Vice-Presidents shall prepare the draft Agenda.

Article 52

The Ministerial Council shall submit an annual report on the activities of the Energy Community to the European Parliament and to the Parliaments of the Adhering Parties and of the Participants.

CHAPTER II - THE PERMANENT HIGH LEVEL GROUP

Article 53

The Permanent High Level Group shall:

- (a) prepare the work of the Ministerial Council;
- (b) give assent to technical assistance requests made by international donor organisations, international financial institutions and bilateral donors;
- (c) report to the Ministerial Council on progress made toward achievement of the objectives of this Treaty;
- (d) take Measures, if so empowered by the Ministerial Council;
- (e) adopt Procedural Acts, not involving the conferral of tasks, powers or obligations on other institutions of the Energy Community;
- (f) discuss the development of the *acquis communautaire* described in Title II on the basis of a report that the European Commission shall submit on a regular basis.

¹¹ Amended by Ministerial Council Decision 2009/02/MC-EnC of 18 December 2009 amending the Treaty establishing the Energy Community with regard to the frequency of Ministerial Council meetings.

Article 54

The Permanent High Level Group shall consist of one representative of each Contracting Party and two representatives of the European Community. One non-voting representative of each Participant may participate in its meetings.

Article 55

The Permanent High Level Group shall adopt its internal rules of procedure as a Procedural Act.

Article 56

The Presidency shall convene the Permanent High Level Group at a place to be determined by the Presidency. The meetings shall be prepared by the Secretariat.

Article 57

The Presidency shall chair the Permanent High Level Group and be assisted by one representative of the European Community and one representative of the incoming Presidency as Vice-Presidents. The Presidency and the Vice-Presidents shall prepare the draft Agenda.

CHAPTER III – THE REGULATORY BOARD**Article 58**

The Regulatory Board shall:

- (a) advise the Ministerial Council or the Permanent High Level Group on the details of statutory, technical and regulatory rules;
- (b) issue Recommendations on cross-border disputes involving two or more Regulators, upon request of any of them;
- (c) take Measures, if so empowered by the Ministerial Council;
- (d) adopt Procedural Acts.

Article 59¹²

The Regulatory Board shall be composed of one representative of the energy regulator of each Contracting Party, pursuant to the relevant parts of the *acquis communautaire* on energy. The European Union shall be represented by the European Commission, assisted by one regulator of each Participant, and one representative of the Agency for the Cooperation of Energy Regulators.

¹² Amended by Ministerial Council Decision 2011/02/MC-EnC of 6 October 2011 on the implementation of Directive 2009/72/EC, Directive 2009/73/EC, Regulation (EC) 714/2009 and Regulation (EC) 715/2009 and amending Articles 11 and 59 of the Energy Community Treaty.

Article 60

The Regulatory Board shall adopt its internal rules of procedure by Procedural Act.

Article 61

The Regulatory Board shall elect a President for a term determined by the Regulatory Board. The European Commission shall act as Vice-President. The President and the Vice-President shall prepare the draft Agenda.

Article 62

The Regulatory Board shall meet in Athens.

CHAPTER IV - THE FORA

Article 63

Two Fora, composed of representatives of all interested stakeholders, including industry, regulators, industry representative groups and consumers, shall advise the Energy Community.¹³

Article 64

The Fora shall be chaired by a representative of the European Community.

Article 65

The conclusions of the Fora shall be adopted by consensus. They shall be forwarded to the Permanent High Level Group.

Article 66

The Electricity Forum shall meet in Athens. The Gas Forum shall meet at a place to be determined by a Procedural Act of the Ministerial Council.¹⁴

¹³ Pursuant to Decision 2008/03/MC-EnC of 18 December 2008 concerning the implementation to the oil sector of certain provisions of the Treaty and the creation of an Energy Community Oil Forum, the Ministerial Council established the Oil Forum.

¹⁴ According to Article 1 of Procedural Act 2007/03/2/PHLG-EnC of 17 October 2007 on the seat of the Gas Forum, the Gas Forum is to be set up in cooperation with the competent Slovenian authorities. According to Article 2 of the Decision 2008/03/MC-EnC of 18 December 2008 Oil Forum shall meet in Belgrade, Serbia.

CHAPTER V - THE SECRETARIAT

Article 67

The Secretariat shall:

- (a) provide administrative support to the Ministerial Council, the Permanent High Level Group, the Regulatory Board and the Fora;
- (b) review the proper implementation by the Parties of their obligations under this Treaty, and submit yearly progress reports to the Ministerial Council;
- (c) review and assist in the coordination by the European Commission of the donors' activity in the territories of the Adhering Parties and the territory under the jurisdiction of the United Nations Interim Administration Mission in Kosovo, and provide administrative support to the donors;
- (d) carry out other tasks conferred on it under this Treaty or by a Procedural Act of the Ministerial Council, excluding the power to take Measures; and
- (e) adopt Procedural Acts.

Article 68

The Secretariat shall comprise a Director and such staff as the Energy Community may require.

Article 69

The Director of the Secretariat shall be appointed by a Procedural Act of the Ministerial Council. The Ministerial Council shall lay down, by Procedural Act, rules for the recruitment, working conditions and geographic equilibrium of the Secretariat's staff. The Director shall select and appoint the staff.

Article 70

In the performance of their duties the Director and the staff shall not seek or receive instructions from any Party to this Treaty. They shall act impartially and promote the interests of the Energy Community.

Article 71

The Director of the Secretariat or a nominated alternate shall assist at the Ministerial Council, the Permanent High Level Group, the Regulatory Board and the Fora.

Article 72

The seat of the Secretariat shall be in Vienna.

CHAPTER VI – BUDGET

Article 73

Each Party shall contribute to the budget of the Energy Community as set out in Annex IV. The level of contributions may be reviewed every five years, on request of any Party, by a Procedural Act of the Ministerial Council.

Article 74

The Ministerial Council shall adopt the budget of the Energy Community by Procedural Act every two years. The budget shall cover the operational expenses of the Energy Community necessary for the functioning of its institutions. The expenditure of each institution shall be set out in a different part of the budget. The Ministerial Council shall adopt a Procedural Act specifying the procedure for the implementation of the budget, and for presenting and auditing accounts and inspection.

Article 75

The Director of the Secretariat shall implement the budget in accordance with the Procedural Act adopted pursuant to Article 74, and shall report annually to the Ministerial Council on the execution of the budget. The Ministerial Council may decide by Procedural Act, if appropriate, to entrust independent auditors with verifying the proper execution of the budget.

TITLE VI – DECISION MAKING PROCESS

CHAPTER I – GENERAL PROVISIONS

Article 76

Measures may take the form of a Decision or a Recommendation.

A Decision is legally binding in its entirety upon those to whom it is addressed.

A Recommendation has no binding force. Parties shall use their best endeavours to carry out Recommendations.

Article 77

Save as provided in Article 80, each Party shall have one vote.

Article 78

The Ministerial Council, the Permanent High Level Group or the Regulatory Board may act only if two third of the Parties are represented. Abstentions in a vote from Parties present shall not count as votes cast.

CHAPTER II – MEASURES UNDER TITLE II

Article 79

The Ministerial Council, the Permanent High Level Group or the Regulatory Board shall take Measures under Title II on a proposal from the European Commission. The European Commission may alter or withdraw its proposal at any time during the procedure leading to adoption of the Measures.

Article 80

Each Contracting Party shall have one vote.

Article 81

The Ministerial Council, the Permanent High Level Group or the Regulatory Board shall act by a majority of the votes cast.

CHAPTER III – MEASURES UNDER TITLE III

Article 82

The Ministerial Council, the Permanent High Level Group or the Regulatory Board shall take Measures under Title III on a proposal from a Party or the Secretariat.

Article 83

The Ministerial Council, the Permanent High Level Group or the Regulatory Board shall act by a two third majority of the votes cast, including a positive vote of the European Community.

CHAPTER IV – MEASURES UNDER TITLE IV

Article 84

The Ministerial Council, the Permanent High Level Group or the Regulatory Board shall take Measures under Title IV on a proposal from a Party.

Article 85

The Ministerial Council, the Permanent High Level Group or the Regulatory Board shall take Measures by unanimity.

CHAPTER V – PROCEDURAL ACTS

Article 86

A Procedural Act shall regulate organizational, budgetary and transparency issues of the Energy Community, including the delegation of power from the Ministerial Council to the Permanent High Level Group, the Regulatory Board or the Secretariat, and shall have binding force on the institutions of the Energy Community, and, if the Procedural Act so provides, on the Parties.

Article 87

Save as provided in Article 88, Procedural Acts shall be adopted in compliance with the Decision Making Process set out in Chapter III of this Title.

Article 88

The Procedural Act appointing the Director of the Secretariat provided for in Article 69 shall be adopted by simple majority on a proposal from the European Commission. The Procedural Acts on budgetary matters provided for in Articles 73 and 74 shall be adopted by unanimity on a proposal from the European Commission. The Procedural Acts conferring powers on the Regulatory Board provided for in Article 47(c) shall be taken by unanimity on a proposal from a Party or the Secretariat.

TITLE VII - IMPLEMENTATION OF DECISIONS AND DISPUTE SETTLEMENT

Article 89

The Parties shall implement Decisions addressed to them in their domestic legal system within the period specified in the Decision.

Article 90

1. Failure by a Party to comply with a Treaty obligation or to implement a Decision addressed to it within the required period may be brought to the attention of the Ministerial Council by a reasoned request of any Party, the Secretariat or the Regulatory Board. Private bodies may approach the Secretariat with complaints.
2. The Party concerned may make observations in response to the request or complaint.

Article 91

1. The Ministerial Council may determine the existence of a breach by a Party of its obligations. The Ministerial Council shall decide:

- (a) by a simple majority, if the breach relates to Title II;
- (b) by a two-third majority, if the breach relates to Title III;
- (c) by unanimity, if the breach relates to Title IV.

2. The Ministerial Council may subsequently decide by simple majority to revoke any decisions adopted under this Article.

Article 92

1. At the request of a Party, the Secretariat or the Regulatory Board, the Ministerial Council, acting by unanimity, may determine the existence of a serious and persistent breach by a Party of its obligations under this Treaty and may suspend certain of the rights deriving from application of this Treaty to the Party concerned, including the suspension of voting rights and exclusion from meetings or mechanisms provided for in this Treaty.

2. The Ministerial Council may subsequently decide by simple majority to revoke any decisions taken under this Article.

Article 93

When adopting the decisions referred to in Articles 91 and 92, the Ministerial Council shall act without taking into account the vote of the representative of the Party concerned.

TITLE VIII - INTERPRETATION

Article 94

The institutions shall interpret any term or other concept used in this Treaty that is derived from European Community law in conformity with the case law of the Court of Justice or the Court of First Instance of the European Communities. Where no interpretation from those Courts is available, the Ministerial Council shall give guidance in interpreting this Treaty. It may delegate that task to the Permanent High Level Group. Such guidance shall not prejudice any interpretation of the *acquis communautaire* by the Court of Justice or the Court of First Instance at a later stage.

TITLE IX – PARTICIPANTS AND OBSERVERS

Article 95

Upon a request to the Ministerial Council, any Member State of the European Community may be represented in the Ministerial Council, the Permanent High Level Group and the Regulatory Board under the conditions laid down in Articles 48, 54 and 59 as a Participant, and shall be permitted to

participate in the discussions of the Ministerial Council, the Permanent High Level Group, the Regulatory Board and the Fora.

Article 96

1. Upon a reasoned request of a neighbouring third country, the Ministerial Council may, by unanimity, accept that country as an Observer. Upon a request presented to the Ministerial Council within six months of the date of entry into force of this Treaty, Moldova shall be accepted as an Observer.
2. Observers may attend the meetings of the Ministerial Council, the Permanent High Level Group, the Regulatory Board and the Fora, without participating in the discussions.

TITLE X - DURATION

Article 97

This Treaty is concluded for a period of 10 years from the date of entry into force¹⁵. The Ministerial Council, acting by unanimity, may decide to extend its duration. If no such decision is taken, the Treaty may continue to apply between those Parties who voted in favour of extension, provided that their number amounted to at least two thirds of the Parties to the Energy Community.

Article 98

Any party may withdraw from this Treaty by giving six months notice, addressed to the Secretariat.

Article 99

Upon accession to the European Community of an Adhering Party, that party shall become a Participant as provided for in Article 95.

TITLE XI – REVISION AND ACCESSION

Article 100

The Ministerial Council may, by unanimity of its Members:

- (i) amend the provisions of Title I to VII;
- (ii) decide to implement other parts of the *acquis communautaire* related to Network Energy;
- (iii) extend this Treaty to other energy products and carriers or other essential network infrastructures;
- (iv) agree on the accession to the Energy Community of a new Party.

¹⁵ According to Ministerial Council Decision 2013/03/MC-EnC on extending the duration of the Energy Community Treaty, the duration of the Treaty is extended for a period of 10 years.

TITLE XII - FINAL AND TRANSITIONAL PROVISIONS

Article 101

Without prejudice to Articles 102 and 103, the rights and obligations arising from agreements concluded by a Contracting Party before the signature of this Treaty shall not be affected by the provisions of this Treaty. To the extent that such agreements are not compatible with this Treaty, the Contracting Party concerned shall take all appropriate measures to eliminate the incompatibilities established, no later than one year after the date of entry into force of this Treaty.

Article 102

All obligations under this Treaty are without prejudice to existing legal obligations of the Parties under the Treaty establishing the World Trade Organisation.

Article 103

Any obligations under an agreement between the European Community and its Member States on the one hand, and a Contracting Party on the other hand shall not be affected by this Treaty. Any commitment taken in the context of negotiations for accession to the European Union shall not be affected by this Treaty.

Article 104

Until the adoption of the Procedural Act referred to in Article 50, the 2003 Athens Memorandum of Understanding¹⁶ shall define the order for holding the Presidency.¹⁷

Article 105

This Treaty shall be approved by the Parties in accordance with their internal procedures. This Treaty shall enter into force on the first day of the month following the date on which the European Community and six Contracting Parties have notified the completion of the procedures necessary for this purpose. Notification shall be sent to the Secretary-General of the Council of the European Union who shall be the depositary for this Treaty.

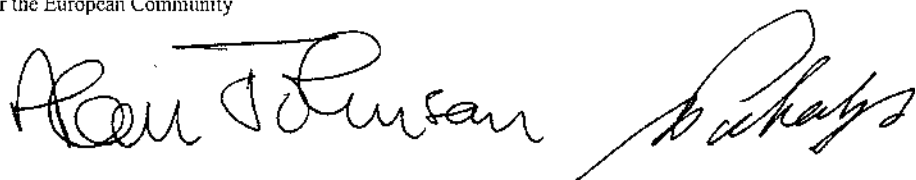
In witness thereof the duly authorised representatives have signed this Treaty.

¹⁶ Memorandum of Understanding on the Regional Energy Market in South East Europe and its Integration into the European Community Internal Energy Market, signed in Athens on 8 December 2003.

¹⁷ According to Annex point III(1) of Procedural Act 2006/01/MC-EnC of 17 November 2006 on adoption of Internal Rules of Procedures of Ministerial Council of Energy Community, the Presidency of the Council shall be held in turn by each Contracting Party in alphabetical order, following the names of the Parties as indicated in the Treaty.

Done at Athens, on the twenty-fifth day of October in the year two thousand and five.

For the European Community

A handwritten signature in black ink, appearing to read "Ben Tonian".

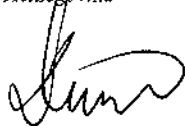
For the Republic of Albania

A handwritten signature in black ink, appearing to read "Gene Ruben".

For the Republic of Bulgaria

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For Bosnia and Herzegovina

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For the Republic of Croatia

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For the former Yugoslav Republic of Macedonia

For the Republic of Montenegro



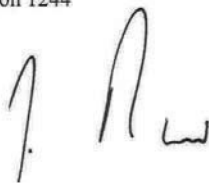
For Romania



For the Republic of Serbia



For the United Nations Interim Administration Mission in Kosovo pursuant to the United Nations Security Council Resolution 1244





Republic of Macedonia
– Office of the Deputy Prime Minister –
Minčo Jordanov

Athens, 25 October 2005

Your Excellency,

Hereby I declare that the text of the Treaty establishing the Energy Community is acceptable for the Government of the Republic of Macedonia.

With this letter, the Government of the Republic of Macedonia considers itself as signatory of the Treaty establishing the Energy Community.

However, I declare that the Republic of Macedonia does not accept the denomination used for my country in the above-mentioned documents having in view that the constitutional name of my country is the Republic of Macedonia.

Please accept, Your Excellency, the assurances of my highest consideration.

Minčo Jordanov

THE EUROPEAN COMMUNITY

Brussels



COUNCIL OF
THE EUROPEAN UNION
The Presidency

Athens, 25 October 2005

Mr. Minco Jordanov,
Vice-President of the Government
of the former Yugoslav Republic of Macedonia.

Sir,

The European Community takes note of your letter of today's date and confirms that your letter and this reply shall together take the place of the signature of the Treaty establishing the Energy Community by the former Yugoslav Republic of Macedonia. However, this cannot be construed as acceptance or recognition by the European Community, in whatever form or content of a denomination other than "former Yugoslav Republic of Macedonia".

Please accept, Sir, the assurance of my highest consideration.

On behalf of
the European Community

A handwritten signature in black ink, appearing to read "Ben Johnson".

UNITED NATIONS
United Nations Interim
Administration Mission in
Kosovo



NATIONS UNIES
Mission d'Administration
Intérimaire des Nations Unies
au Kosovo

DECLARATION

I, Søren Jessen-Petersen, Special Representative of the Secretary General and Head of the United Nations Interim Administration Mission in Kosovo (UNMIK),

HEREBY DECLARE that the United Nations Interim Administration Mission in Kosovo (UNMIK) is signing the Treaty establishing the Energy Community on 25 October 2005, subject to the following terms:

- (i) The United Nations Interim Administration Mission in Kosovo (UNMIK) established by Security Council resolution 1244 (1999) of 10 June 1999 signs the Treaty on behalf of Kosovo;
- (ii) The Treaty is valid in respect of Kosovo for the duration of UNMIK administration under resolution 1244 (1999), and its continued validity beyond that would depend on the future administration of Kosovo; and
- (iii) The conclusion of the Treaty on the part of UNMIK is without prejudice to the future status of Kosovo.

Furthermore, the Treaty does not engage the responsibility of the United Nations, nor does it create for the Organization any legal, financial or other obligations.

I request that this Declaration be duly recorded and form part of the official records of the Treaty.

IN WITNESS WHEREOF, I have hereto set my hand and seal.



Done at Pristina on 21 October 2005.

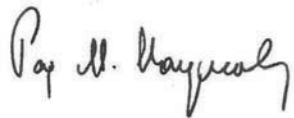
Søren Jessen-Petersen
Special Representative of the Secretary General

STATEMENT

Of the Serbian Delegation at the Ceremony of the signing of the Treaty establishing the Energy Community

"The Government of the Republic of Serbia would like to state that the signing of the Treaty establishing the Energy Community on behalf of the Special Representative of the Secretary General United Nations Interim Administration Mission in Kosovo shall in no way prejudice the final status of Kosovo and Metohija. The Government of the Republic of Serbia recalls the UN Security Council Resolution 1244 reaffirming the commitment of all Member States to the sovereignty and territorial integrity of the Serbia and Montenegro."

Athens, October 25, 2005

A handwritten signature in black ink, appearing to read "Pop M. Haywood". The signature is written in a cursive, flowing style.

ANNEX I

LIST OF ACTS INCLUDED IN THE “ACQUIS COMMUNAUTAIRE ON ENERGY”

(1) Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity, as adopted by Ministerial Council Decision 2011/02/MC-EnC of 6 October 2011.

(2) 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, as adopted by Ministerial Council Decision 2011/02/MC-EnC of 6 October 2011.

(3) Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity, as adopted by Ministerial Council Decision 2011/02/MC-EnC of 6 October 2011.

(4) 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, as amended by Commission Decision 2010/685/EU of 10 November 2010, as adopted by Ministerial Council Decision 2011/02/MC-EnC of 6 October 2011.

(5) Directive 2005/89/ of the European Parliament and of the Council of 18 January 2006 concerning measures to safeguard security of electricity supply and infrastructure investment, as adopted by Ministerial Council Decision 2007/06/MC-EnC of 18 December 2007.

(6) Directive 2004/67/EC of 26 April 2004 concerning measures to safeguard security of natural gas supply, as adopted by Ministerial Council Decision 2007/06/MC-EnC of 18 December 2007.

(7) Regulation (EU) No 347/2013 of the European Parliament and of the Council of 17 April 2013 on guidelines for trans-European energy infrastructure, as adopted by Ministerial Council Decision 2015/09/MC-EnC of 16 October 2015.

ANNEX II

TIMETABLE FOR THE IMPLEMENTATION OF THE ACQUIS ON ENVIRONMENT

1. Each Contracting Party shall implement Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment by 14 October 2016. Each Contracting Party shall implement Directive 2014/52/EU by 1 January 2019, with the exception of the provisions referring to Directives not covered by Article 16 of this Treaty.
2. Each Contracting Party shall implement Council Directive 1999/32/EC of 26 April 1999 relating to a reduction in the sulphur content of certain liquid fuels and amending Directive 93/12/EEC by 31 December 2011.
- 2a. Each Contracting Party shall implement Directive (EU) 2016/802 of the European Parliament and of the Council of 11 May 2016 relating to a reduction in the sulphur content of certain liquid fuels and Commission Implementing Decision (EU) 2015/253 of 16 February 2015 laying down the rules concerning the sampling and reporting under Council Directive 1999/32/EC as regards the sulphur content of marine fuels by 30 June 2018.
3. Each Contracting Party shall implement Directive 2001/80/EC of the European Parliament and of the Council of 23 October 2001 on the limitation of emissions of certain pollutants into the air from large combustion plants by 31 December 2017.
4. Each Contracting Party shall implement Article 4(2) of Directive 79/409/EEC of the Council of 2 April 1979 on the conservation of wild birds on the entry into force of this Treaty.
5. Each Contracting Party shall implement Chapter III, Annex V, and Article 72(3)-(4) of Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) from 1 January 2018 for new plants. For existing plants, Contracting Parties shall implement those provisions by 1 January 2028 at the latest. Prior to that date, they shall endeavour to implement the provisions of Chapter III and Annex V within the shortest possible timeframe, in particular in the cases of retrofitting existing plants. Ukraine shall implement those provisions by 1 January 2029 at the latest for SO₂ and dust and by 1 January 2034 at the latest for NO_x.
6. Each Contracting Party shall implement Directive 2004/35/EU of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage, as amended by Directive 2006/21/EC, Directive 2009/31/EC and Directive 2013/30/EU by 1 January 2019.
7. Each Contracting Party shall transpose Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment by 1 January 2018 and implement those provisions by 31 March 2018.

ANNEX III

EC COMPETITION RULES

Article 81 of the EC Treaty

1. The following shall be prohibited as incompatible with the common market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market, and in particular those which:

- (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
- (b) limit or control production, markets, technical development, or investment;
- (c) share markets or sources of supply;
- (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

2. Any agreements or decisions prohibited pursuant to this article shall be automatically void.

3. The provisions of paragraph 1 may, however, be declared inapplicable in the case of:

- any agreement or category of agreements between undertakings,
- any decision or category of decisions by associations of undertakings,
- any concerted practice or category of concerted practices,

which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:

- (a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;
- (b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

Article 82 of the EC Treaty

Any abuse by one or more undertakings of a dominant position within the common market or in a substantial part of it shall be prohibited as incompatible with the common market in so far as it may affect trade between Member States.

Such abuse may, in particular, consist in:

- (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
- (b) limiting production, markets or technical development to the prejudice of consumers;
- (c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

Article 86(1) and (2) of the EC Treaty

1. In the case of public undertakings and undertakings to which Member States grant special or exclusive rights, Member States shall neither enact nor maintain in force any measure contrary to the rules contained in this Treaty, in particular to those rules provided for in Article 12 and Articles 81 to 89.
2. Undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules contained in this Treaty, in particular to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the interests of the Community.

Article 87 of the EC Treaty

1. Save as otherwise provided in this Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market.
2. The following shall be compatible with the common market:
 - (a) aid having a social character, granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned;
 - (b) aid to make good the damage caused by natural disasters or exceptional occurrences;
 - (c) aid granted to the economy of certain areas of the Federal Republic of Germany affected by the division of Germany, in so far as such aid is required in order to compensate for the economic disadvantages caused by that division.
3. The following may be considered to be compatible with the common market:
 - (a) aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment;
 - (b) aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State;
 - (c) aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest;
 - (d) aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the Community to an extent that is contrary to the common interest;
 - (e) such other categories of aid as may be specified by decision of the Council acting by a qualified majority on a proposal from the Commission.

PROTOCOL CONCERNING THE ACCESSION OF THE REPUBLIC OF MOLDOVA TO THE TREATY ESTABLISHING THE ENERGY COMMUNITY

The Energy Community, in accordance with the Treaty establishing the Energy Community (hereinafter - the Treaty) on the one hand,

and the Republic of Moldova on the other hand,

Taking note of the outcome of negotiations on the Republic of Moldova's accession to the Energy Community,

Having regard to the Decision of the Ministerial Council of the Energy Community of 18 December 2009 approving the accession of the Republic of Moldova to the Energy Community on the conditions set out herein (Decision 2009/03/MC-EnC),

AGREED ON THE FOLLOWING:

Article 1

1. The Republic of Moldova accedes to the Energy Community as a Contracting Party under the terms and conditions set out in the Decision of the Ministerial Council of the Energy Community of 18 December 2009 on the accession of the Republic of Moldova to the Energy Community (Decision 2009/03/MC-EnC), as laid down in this Protocol.

2. Unless specified otherwise in this Protocol, by date of accession, the Republic of Moldova is entitled to all rights granted to Contracting Parties and is subject to all obligations imposed on Contracting Parties by the Treaty and by all Decisions and Procedural Acts adopted in application of the Treaty since its entry into force.

Article 2

1. For the purpose of compliance with Title II of the Treaty establishing the Energy Community and its related Annexes, the timetable for implementation by the Republic of Moldova of the *acquis communautaire* is defined as follows:

Directive 2003/55/EC concerning common rules for the internal market in natural gas	By 31 December 2009
Regulation 1775/2005 on conditions for access to the natural gas transmission networks	By 31 December 2010
Directive 2004/67/EC concerning measures to safeguard security of natural gas supply	By 31 December 2010
Directive 2003/54/EC concerning common rules for the internal market in electricity	By 31 December 2009
Regulation 1228/2003 on conditions for access to the network for cross-border exchanges in electricity	By 31 December 2010
Commission Decision 2006/770/EC amending the Annex to Regulation No 1228/2003 on conditions for access to the network for cross-border exchanges in electricity	By 31 December 2010
Directive 2005/89/EC concerning measures to safeguard security of electricity supply and infrastructure investment	By 31 December 2010
Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment, as amended by Directive 97/11/EC and Directive 2003/35/EC	By 31 December 2010
Directive 1999/32/EC relating to a reduction in the sulphur content of certain liquid fuels	By 31 December 2014
Directive 2001/80/EC on the limitation of emissions of certain pollutants into the air from large combustion plants	By 31 December 2017
Directive 79/409/EC, Article 4(2), on the conservation of wild birds	By 31 December 2010
Plan for the implementation of Directive 2001/77/EEC on the promotion of electricity produced from renewable energy sources in the internal electricity market	By 31 December 2010
Plan for the implementation of Directive 2003/30/EC on the promotion of the use of biofuels or other renewable fuels for transport	By 31 December 2010

2. The Republic of Moldova must ensure that the eligible customers within the meaning of EC Directives 2003/54/EC and 2003/55/EC are:

- From 1 January 2013, all non-household customers; and
- From 1 January 2015, all customers.

3. In Article 19 of the Treaty, the reference “as from six months following the date of entry into force of this Treaty” shall be understood as meaning “as from six months following the date of accession of the Republic of Moldova”. In Article 22 of the Treaty, the reference “within one year of the adoption of the list” shall be understood as meaning “within one year of the date of accession of the Republic of Moldova”. In Article 29 of the Treaty, the reference “within one year of the date of entry into force of this Treaty” shall be understood as meaning “within one year of the date of accession of the Republic of Moldova”.

4. Article 15 of the Treaty shall apply to the Republic of Moldova as from one year following the date of accession of the Republic of Moldova.

Article 3

1. The contribution of the Republic of Moldova and of the other Parties to the budget of the Energy Community shall be set out in a Procedural Act to be adopted pursuant to Article 73 of the Treaty. The methodology to be applied shall be based on a pro-rata calculated in relation to GDP and Total Primary Energy Supply.

2. The first contribution of the Republic of Moldova shall be due for the first full budgetary year following accession.

Article 4

1. After adoption by the Ministerial Council of the Energy Community of its Decision on the Republic of Moldova's accession to the Energy Community, the Republic of Moldova shall initiate its internal procedures required for entry into force of its accession to the Energy Community.

2. The accession to the Energy Community shall enter into force on the first day of the second month following the month of completion of the procedures provided in the first paragraph of this article.

Done at Vienna, this seventeenth day of March in the year two thousand and ten.

For the Energy Community

For the Republic of Moldova

PROTOCOL CONCERNING THE ACCESSION OF UKRAINE TO THE TREATY ESTABLISHING THE ENERGY COMMUNITY

The Energy Community, in accordance with the Treaty establishing the Energy Community (hereinafter - the Treaty) on the one hand,

And Ukraine on the other hand,

Taking note of the outcome of negotiations on Ukraine's accession to the Energy Community Treaty,

Having regard to the Decision of the Ministerial Council of the Energy Community of 18 December 2009 approving the accession of Ukraine to the Energy Community Treaty on the conditions set out herein (Decision 2009/04/MC-EnC),

AGREED ON THE FOLLOWING:

Article 1

1. Ukraine accedes to the Treaty establishing the Energy Community as a Contracting Party under the terms and conditions set out in the Decision of the Ministerial Council of the Energy Community of 18 December 2009 on the accession of Ukraine to the Energy Community Treaty (Decision 2009/04/MC-EnC), as laid down in this Protocol.

2. Unless specified otherwise in this Protocol, by date of accession, Ukraine is entitled to all rights granted to Contracting Parties and is subject to all obligations imposed on Contracting Parties by the Treaty and by all Decisions and Procedural Acts adopted in application of the Treaty since its entry into force.

Article 2

1. For the purposes of compliance with Title II of the Treaty establishing the Energy Community and its related Annexes, the timetable for implementation of the *acquis communautaire* is defined as follows:

Directive 2003/55/EC concerning common rules for the internal market in natural gas	By 1st January 2012
Regulation 1775/2005 on conditions for access to the natural gas transmission networks	By 1st January 2012
Directive 2004/67/EC concerning measures to safeguard security of natural gas supply	By 1st January 2012
Directive 2003/54/EC concerning common rules for the internal market in electricity	By 1st January 2012

Regulation 1228/2003 on conditions for access to the network for cross-border exchanges in electricity	By 1st January 2012
Commission Decision 2006/770/EC amending the Annex to Regulation 1228/2003 on conditions for access to the network for cross-border exchanges in electricity	By 1st January 2012
Directive 2005/89/EC concerning measures to safeguard security of electricity supply and infrastructure investment	By 1st January 2012
Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment, as amended by Directive 97/11/EC and Directive 2003/35/EC.	By 1st January 2013
Directive 1999/32/EC relating to a reduction in the sulphur content of certain liquid fuels	By 1st January 2012
Directive 2001/80/EC on the limitation of emissions of certain pollutants into the air from large combustion plants	By 1st January 2018
Directive 79/409/EC, Article 4(2), on the conservation of wild birds	By 1st January 2015
Plan for the implementation of Directive 2001/77/EEC on the promotion of electricity produced from renewable energy sources in the internal electricity market	By 1st July 2011
Plan for the implementation of Directive 2003/30/EC on the promotion of the use of biofuels or other renewable fuels for transport	By 1st July 2011

2. Ukraine must ensure that the eligible customers within the meaning of EC Directives 2003/54/EC and 2003/55/EC are:

- From 1 January 2012, all non-household customers; and
- From 1 January 2015, all customers.

3. In Article 19 of the Treaty, the reference “as from six months following the date of entry into force of this Treaty” shall be understood as meaning “as from six months following the date of accession of Ukraine”. In Article 22 of the Treaty, the reference “within one year of the adoption of the list” shall be understood as meaning “within one year of the date of accession of Ukraine”. In Article 29 of the Treaty, the reference “within one year of the date of entry into force of this Treaty” shall be understood as meaning “within one year of the date of accession of Ukraine”.

4. Article 15 of the Treaty shall apply to Ukraine as from two years following the date of accession of Ukraine.

Article 3

1. The contribution of Ukraine and of the other Parties to the budget of the Energy Community shall be set out in a Procedural Act to be adopted pursuant to Article 73 of the Treaty. The methodology to be applied shall be based on a pro-rata calculated in relation to GDP and Total Primary Energy Supply.
2. The first contribution of Ukraine shall be due for the first full budgetary year following accession.

Article 4

1. After adoption by the Ministerial Council of the Energy Community of its Decision on Ukraine's accession to the Energy Community, Ukraine shall initiate its internal procedures required for entry into force of its accession to the Energy Community.
2. The accession to the Energy Community shall enter into force on the first day of the second month following the month of completion of the procedures provided in the first paragraph of this article.

Done at Skopje, this twenty fourth day of September in the year two thousand and ten.

For the Energy Community For Ukraine

**PROTOCOL
CONCERNING THE ACCESSION OF GEORGIA
TO THE TREATY ESTABLISHING THE ENERGY COMMUNITY**

The Energy Community, in accordance with the Treaty establishing the Energy Community (hereinafter - the Treaty), on the one hand,

and Georgia, on the other hand,

Taking note of the outcome of negotiations on Georgia's accession to the Energy Community,

Having regard to the Decision of the Ministerial Council of the Energy Community of 14th October 2016 approving the accession of Georgia to the Energy Community (Decision 2016/18/MC-EnC),

Considering that Georgia is not directly interconnected to the energy network of any Contracting Party or any Member State of the European Union and that specific solutions need to be found as regards key gas transmission infrastructures mainly used for the shipment of gas through Georgia,

Considering that Georgia became an observer to the Energy Community in 2007, after the negotiation of the conditions ruling these gas transmission infrastructures,

AGREED ON THE FOLLOWING:

Article 1

1. Georgia hereby accedes to the Treaty establishing the Energy Community as a Contracting Party under the terms and conditions set out in the present Protocol.
2. Unless specified otherwise in this Protocol, by date of accession, Georgia is entitled to all rights granted to Contracting Parties and is subject to all obligations imposed on Contracting Parties by the Treaty and by all Decisions and Procedural Acts adopted in application of the Treaty since its entry into force.

Article 2

1. For the purpose of compliance with Title II of the Treaty establishing the Energy Community and its related Annexes, the timetable for implementation of the *acquis communautaire* is defined as follows:

Directive 2009/73/EC concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC	By 31 December 2020
Regulation (EC) No 715/2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005	By 31 December 2020

Directive 2004/67/EC concerning measures to safeguard security of natural gas supply	By 31 December 2020
Directive 2009/72/EC concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC	By 31 December 2018
Regulation (EC) No 714/2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003	By 31 December 2018
Directive 2005/89/EC concerning measures to safeguard security of electricity supply and infrastructure investment	By 31 December 2019
Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment, as amended by Directive 97/11/EC and Directive 2003/35/EC	Without prejudice to commitments under EU-Georgia Association Agreement the entire Directive should be fully implemented by 1 September 2017.
Directive 1999/32/EC relating to a reduction in the sulphur content of certain liquid fuels	Without prejudice to commitments under EU-Georgia Association Agreement the entire Directive should be fully implemented by 1 September 2021.
Directive 2001/80/EC on the limitation of emissions of certain pollutants into the air from large combustion plants	By 31 December 2018
Chapter III, Annex V and Article 72(3)-(4) of Directive 2010/75/EU on industrial emissions (integrated pollution prevention and control) – for new plants	By 1 September 2018
Chapter III, Annex V and Article 72(3)-(4) of Directive 2010/75/EU on industrial emissions (integrated pollution prevention and control) – for existing plants	By 1 September 2026
Directive 79/409/EC, Article 4(2), on the conservation of wild birds	By 1 September 2019
Directive 2009/28/EC on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC	By 31 December 2018
Directive 2012/27/EU on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC.	By 31 December 2018
Directive 2010/30/EU on the indication by labelling and standard product information of the consumption of energy and other resources by energy-related products (recast)	By 31 December 2018
Directive 2010/31/EU on the energy performance of buildings (recast)	By 30 June 2019

Directive 2009/119/EC imposing an obligation on Member States to maintain minimum stocks of crude oil and/or petroleum products	By 1 January 2023
Directive 2008/92/EC concerning a Community procedure to improve the transparency of gas and electricity prices charged to industrial end-users (recast)	By 31 December 2017
Regulation (EC) No 1099/2008 on energy statistics	By 31 December 2017

2. Georgia must ensure that the eligible customers within the meaning of EC Directives 2009/72/EC and 2009/73/EC are:

- From 31 December 2018, all non-household customers; and
- From 31 December 2019, all customers.

3. In Article 19 of the Treaty, the reference “as from 6 months following the date of entry into force of this Treaty” shall be understood as meaning “as from one year following the date of accession of Georgia”. In Article 22 of the Treaty, the reference “within one year of the adoption of the list” shall be understood as meaning “within one year of the date of accession of Georgia”. In Article 29 of the Treaty, the reference “within one year of the date of entry into force of this Treaty” shall be understood as meaning “within one year of the date of accession of Georgia”.

4. Article 15 of the Treaty shall apply to Georgia as from one year following the date of accession of Georgia.

5. The South Caucasus Pipeline¹ and the North South Gas Pipeline² are exempted from the implementation of Directive 2009/73/EC and Regulation (EC) No 715/2009 until 31 August 2026, the date of expiration of the Energy Community Treaty.

6. The present protocol of accession shall not affect the Intergovernmental Agreement between Georgia and the Azerbaijan Republic relating to the transit, transportation and sale of natural gas in and beyond the territories of Georgia and the Azerbaijan Republic through the South Caucasus Pipeline System.

7. As regards implementation of the provisions of Article 2(5) and 2(6) of this Protocol it is confirmed that Georgia is exempted from the application of the Treaty in relation to legal and/or regulatory regime and/or terms and conditions of cross-border transmission (transit) of natural gas, as well as to the terms and conditions of the existing agreements concluded to implement the Intergovernmental Agreement between Georgia and the Azerbaijan Republic relating to the transit, transportation and sale of natural gas in and beyond the territories of Georgia and the Azerbaijan Republic through the South Caucasus Pipeline System.

¹ The South Caucasus Pipeline means SCP Project within the meaning ascribed to this term in the Intergovernmental Agreement between Georgia and the Azerbaijan Republic.

² The North-South Gas Pipeline is a part of the Georgian Main Gas Pipelines System consisting of 1200/1000 mm diameter gas pipeline sections (as may be renewed, repaired, modified, refurbished, reconstructed and/or replaced) primarily assigned for transportation of natural gas from Russian Federation to the Republic of Armenia.

8. Should the Energy Community Treaty be extended beyond the date referred to in point 5, the provisions under points 5 and 6 of the present article shall be reviewed.

Article 3

1. The contribution of Georgia and of the other Parties to the budget of the Energy Community shall be set out in a Procedural Act to be adopted pursuant to Article 73 of the Treaty. The methodology to be applied shall be based on a pro-rata calculated in relation to GDP and Total Primary Energy Supply.

2. The first contribution of Georgia shall be due for the first full budgetary year following accession.

Article 4

1. After adoption by the Ministerial Council of the Energy Community of its Decision on Georgia's accession to the Treaty establishing the Energy Community, Georgia shall initiate its internal procedures required for entry into force of its accession to the Energy Community.

2. The accession to the Energy Community shall enter into force on the first day of the second month following the month of completion of the procedures provided in the first paragraph of this article. Notification thereof shall be sent to the Secretary General of the Council of the European Union, who shall be the depositary for this Protocol.

Done in Sarajevo, 14th October 2016

For the Energy Community For Georgia

ANNEX

COMMON UNDERSTANDING CONCERNING THE IMPLEMENTATION OF THE PROTOCOL

1. As regards the provisions included in the *acquis communautaire* listed under articles 2(1) and 2(2) of the protocol concerning energy cross-border exchanges with a Contracting Party or a Member State of the European Union, it shall be taken into account that Georgia is not directly interconnected to the energy network of any Contracting Party or Member State of the European Union. Georgia will start applying these rules and principles with respect to any Contracting Party or Member State of the European Union whenever it is physically interconnected to the energy network of any Contracting Party or Member State of the European Union. Rules and principles governing trade with countries which are not a Contracting Party of the Energy Community or a Member State of the European Union remains a national competence.

2. Any application of the provisions of the Chapter IV in Title II the Treaty (the *acquis* on competition) shall take into account that Georgia is currently an isolated market not having direct interconnections to the energy network of any Party. Georgia will promote and apply these provisions insofar as trade between the Contracting Parties may be affected.

3. For the implementation of Directive 2009/72/EC concerning common rules for the internal market in electricity, to be completed by 31 December 2018 and Directive 2005/89/EC concerning measures to safeguard security of electricity supply and infrastructure investment, to be completed by 31 December 2019, it is understood that a subsequent period of one year will be necessary for testing and adjusting the relevant implementing provisions and market instruments.

4. For the setting and level of electricity distribution tariffs, it is understood that Georgia may continue to observe its commitments with investors resulting from contracts concluded before the signature of this Protocol. It will engage in discussions with the Secretariat aimed at eliminating potential incompatibilities with the Treaty, no later than Article 2(1) and 2(2) become applicable.

5. Within the scope of Directive 2009/28/EC on the promotion of the use of energy from renewable sources, the applicability and, if appropriate, the calculation of the 2020 renewable energy target for Georgia will be established after the completion of the study appositely carried out under the responsibility of the Energy Community Secretariat.

6. With regard to Directives 2001/80/EC, 2012/27/EU, 2009/28/EC, 2010/30/EU, and 2010/31/EU, a number of specific deadlines differing from the overall Directives deadlines have been adapted by the Ministerial Council Decisions 2015/08/MC-EnC, 2013/05/MC-EnC, 2012/04/MC-EnC, 2014/02/MC-EnC and 2010/02/MC-EnC. In these specific cases, Georgia shall be granted the same adapted timeframe for implementation following the logic of the adaptations made for the existing Contracting Parties plus an additional period of 12 months. Within one month after signature of this Protocol, the Secretariat shall compile the deadlines applicable to Georgia under these Directives in a table for clarification.

PART II

ACQUIS COMMUNAUTAIRE

ELECTRICITY

DIRECTIVE 2009/72/EC of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC

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

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

Whereas:

(1) The internal market in electricity, which has been progressively implemented throughout the Community since 1999, aims to deliver real choice for all consumers of the European Union, 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 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity has made a significant contribution towards the creation of such an internal market in electricity.

(3) The freedoms which the Treaty guarantees the citizens of the Union - *inter alia*, the free movement of goods, the freedom of establishment and the freedom to provide services - are achievable only in a fully open market, which enables all consumers freely to choose their suppliers and all suppliers freely to deliver to their customers.

(4) However, at present, there are obstacles to the sale of electricity on equal terms and without discrimination or disadvantages in the Community. In particular, non-discriminatory network access and an equally effective level of regulatory supervision in each Member State do not yet exist.

(5) A secure supply of electricity is of vital importance for the development of European society, the implementation of a sustainable climate change policy, and the fostering of competitiveness within the internal market. To that end, cross-border interconnections should be further developed in order to secure the supply of all energy sources at the most competitive prices to consumers and industry within the Community.

(6) A well-functioning internal market in electricity should provide producers with the appropriate incentives for investing in new power generation, including in electricity from renewable energy sources, paying special attention to the most isolated countries and regions in the Community's energy market. A well-functioning market should also provide consumers with adequate measures to promote the more efficient use of energy for which a secure supply of energy is a precondition.

(7) The Communication of the Commission of 10 January 2007 entitled "An Energy Policy for Europe" highlighted the importance of completing the internal market in electricity and of creating a level playing field for all electricity undertakings established 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)" showed that the present rules and measures do not provide the necessary framework for achieving the objective of a well-functioning internal market.

(8) In order to secure competition and the supply of electricity at the most competitive price, Member States and national regulatory authorities should facilitate cross-border access for new suppliers of electricity from different energy sources as well as for new providers of power generation.

(9) Without effective separation of networks from activities of generation and supply (effective unbundling), there is an inherent risk of discrimination not only in the operation of the network but also in the incentives for vertically integrated undertakings to invest adequately in their networks.

(10) The rules on legal and functional unbundling as provided for in Directive 2003/54/EC have not, however, led to effective unbundling of the transmission system operators. At its meeting on 8 and 9 March 2007, the European Council therefore invited the Commission to develop legislative proposals for the “effective separation of supply and generation activities from network operations”.

(11) Only the removal of the incentive for vertically integrated undertakings to discriminate against competitors as regards network access and investment can ensure effective unbundling. Ownership unbundling, which implies the appointment of the network owner as the system operator and its independence from any supply and production interests, is clearly an effective and stable way to solve the inherent conflict of interests and to ensure security of supply. For that reason, the European Parliament, in its resolution of 10 July 2007 on prospects for the internal gas and electricity market referred to ownership unbundling at transmission level as the most effective tool by which to promote investments in infrastructure in a non-discriminatory way, fair access to the network for new entrants and transparency in the market. Under ownership unbundling, Member States should therefore be required to ensure that the same person or persons are not entitled to exercise control over a generation or supply undertaking and, at the same time, exercise control or any right over a transmission system operator or transmission system. Conversely, control over a transmission system or transmission system operator should preclude the possibility of exercising control or any right over a generation or supply undertaking. Within those limits, a generation or supply undertaking should be able to have a minority shareholding in a transmission system operator or transmission system.

(12) 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.

(13) The definition of the term “control” is taken from Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation).

(14) Since ownership unbundling requires, in some instances, the restructuring of undertakings, Member States that decide to implement ownership unbundling should be granted additional time to apply the relevant provisions. In view of the vertical links between the electricity and gas sectors, the unbundling provisions should apply across the two sectors.

(15) Under ownership unbundling, to ensure full independence of network operation from supply and generation interests and to prevent exchanges of any confidential information, the same person should not be a member of the managing boards of both a transmission system operator or a transmission system and an undertaking performing any of the functions of generation or supply. For the same reason, the same person should not be entitled to appoint members of the managing boards of a transmission system operator or a transmission system and to exercise control or any right over a generation or supply undertaking.

(16) The setting up of a system operator or a transmission operator that is independent from supply and generation interests should enable a vertically integrated undertaking to maintain its ownership of network assets whilst ensuring effective separation of interests, provided that such independent system operator or such independent transmission operator performs all the functions of a system operator and detailed regulation and extensive regulatory control mechanisms are put in place.

(17) Where, on 3 September 2009, an undertaking owning a transmission system is part of a vertically integrated undertaking, Member States should therefore be given a choice between ownership unbundling and setting up a system operator or transmission operator which is independent from supply and generation interests.

(18) To preserve fully the interests of the shareholders of vertically integrated undertakings, Member States should have the choice of implementing ownership unbundling either by direct divestiture or by splitting the shares of the integrated undertaking into shares of the network undertaking and shares of the remaining supply and generation undertaking, provided that the requirements resulting from ownership unbundling are complied with.

(19) The full effectiveness of the independent system operator or independent transmission operator solutions should be ensured by way of specific additional rules. The rules on the independent transmission operator provide an appropriate regulatory framework to guarantee fair competition, sufficient investment, access for new market entrants and the integration of electricity markets. Effective unbundling through the independent transmission operator provisions should be based on a pillar of organisational measures and measures relating to the governance of transmission system operators and on a pillar of measures relating to investment, connecting new production capacities to the network and market integration through regional cooperation. The independence of the transmission operator should also, *inter alia*, be ensured through certain “cooling-off” periods during which no management or other relevant activity giving access to the same information as could have been obtained in a managerial position is exercised in the vertically integrated undertaking. The independent transmission operator model of effective unbundling is in line with the requirements laid down by the European Council at its meeting on 8 and 9 March 2007.

(20) In order to develop competition in the internal market in electricity, large non-household customers should be able to choose their suppliers and enter into contracts with several suppliers to secure their electricity requirements. Such customers should be protected against exclusivity clauses the effect of which is to exclude competing or complementary offers.

(21) A Member State has the right to opt for full ownership unbundling in its territory. Where a Member State has exercised that right, an undertaking does not have the right to set up an independent system operator or an independent transmission operator. Furthermore, an undertaking performing any of the functions of generation or supply cannot directly or indirectly exercise control or any right over a transmission system operator from a Member State that has opted for full ownership unbundling.

(22) Under this Directive different types of market organisation will exist in the internal market in electricity. The measures that Member States could take in order to ensure a level playing field should be based on overriding requirements of general interest. The Commission should be consulted on the compatibility of the measures with the Treaty and Community law.

(23) The implementation of effective unbundling should respect the principle of non-discrimination between the public and private sectors. To that end, the same person should not be able to exercise

control or any right, in violation of the rules of ownership unbundling or the independent system operator option, solely or jointly, over the composition, voting or decision of the bodies of both the transmission system operators or the transmission systems and the generation or supply undertakings. With regard to ownership unbundling and the independent system operator solution, provided that the Member State in question is able to demonstrate that the requirement is complied with, two separate public bodies should be able to control generation and supply activities on the one hand and transmission activities on the other.

(24) Fully effective separation of network activities from supply and generation activities should apply throughout the Community to both Community and non-Community undertakings. To ensure that network activities and supply and generation activities throughout the Community remain independent from each other, regulatory authorities should be empowered to refuse certification to transmission system operators that do not comply with the unbundling rules. To ensure the consistent application of those rules across the Community, the regulatory authorities should take utmost account of the Commission's opinion when the former take decisions on certification. To ensure, in addition, respect for the international obligations of the Community, and solidarity and energy security within the Community, the Commission should have the right to give an opinion on certification in relation to a transmission system owner or a transmission system operator which is controlled by a person or persons from a third country or third countries.

(25) The security of energy supply is an essential element of public security and is therefore inherently connected to the efficient functioning of the internal market in electricity and the integration of the isolated electricity markets of Member States. Electricity can reach the citizens of the Union only through the network. Functioning electricity markets and, in particular, the networks and other assets associated with electricity supply are essential for public security, for the competitiveness of the economy and for the well-being of the citizens of the Union. Persons from third countries should therefore be allowed to control a transmission system or a transmission system operator only if they comply with the requirements of effective separation that apply inside the Community. Without prejudice to the international obligations of the Community, the Community considers that the electricity transmission system sector is of high importance to the Community and therefore additional safeguards are necessary regarding the preservation of the security of supply of energy to the Community to avoid any threats to public order and public security in the Community and the welfare of the citizens of the Union. The security of supply of energy to the Community requires, in particular, an assessment of the independence of network operation, the level of the Community's and individual Member States' dependence on energy supply from third countries, and the treatment of both domestic and foreign trade and investment in energy in a particular third country. Security of supply should therefore be assessed in the light of the factual circumstances of each case as well as the rights and obligations arising under international law, in particular the international agreements between the Community and the third country concerned. Where appropriate the Commission is encouraged to submit recommendations to negotiate relevant agreements with third countries addressing the security of supply of energy to the Community or to include the necessary issues in other negotiations with those third countries.

(26) Non-discriminatory access to the distribution network determines downstream access to customers at retail level. The scope for discrimination as regards third-party access and investment, however, is less significant at distribution level than at transmission level where congestion and the influence of generation or supply interests are generally greater than at distribution level. Moreover,

legal and functional unbundling of distribution system operators was required, pursuant to Directive 2003/54/EC, only from 1 July 2007 and its effects on the internal market in electricity still need to be evaluated. The rules on legal and functional unbundling currently in place can lead to effective unbundling provided they are more clearly defined, properly implemented and closely monitored. To create a level playing field at retail level, the activities of distribution system operators should therefore be monitored so that they are prevented from taking advantage of their vertical integration as regards their competitive position on the market, in particular in relation to household and small non-household customers.

(27) Member States should encourage the modernisation of distribution networks, such as through the introduction of smart grids, which should be built in a way that encourages decentralised generation and energy efficiency.

(28) In the case of small systems it may be necessary that the provision of ancillary services is ensured by transmission system operators interconnected with small systems.

(29) To avoid imposing a disproportionate financial and administrative burden on small distribution system operators, Member States should be able, where necessary, to exempt the undertakings concerned from the legal distribution unbundling requirements.

(30) Where a closed distribution system is used to ensure the optimal efficiency of an integrated energy supply requiring specific operational standards, or a closed distribution system is maintained primarily for the use of the owner of the system, it should be possible to exempt the distribution system operator 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.

(31) Authorisation procedures should not lead to an administrative burden disproportionate to the size and potential impact of electricity producers. Unduly lengthy authorisation procedures may constitute a barrier to access for new market entrants.

(32) Further measures should be taken in order to ensure transparent and non-discriminatory tariffs for access to networks. Those tariffs should be applicable to all system users on a non-discriminatory basis.

(33) Directive 2003/54/EC introduced a requirement for Member States to establish regulators with specific competences. However, experience shows that the effectiveness of regulation is frequently hampered through a lack of independence of regulators from government, and insufficient powers and discretion. For that reason, at its meeting on 8 and 9 March 2007, the European Council invited the Commission to develop legislative proposals providing for further harmonisation of the powers and strengthening of the independence of national energy regulators. It should be possible for those national regulatory authorities to cover both the electricity and the gas sectors.

(34) Energy regulators need to be able to take decisions in relation to all relevant regulatory issues if the internal market in electricity is to function properly, and to be fully independent from any other public or private interests. This precludes neither judicial review nor parliamentary supervision in accordance with the constitutional laws of the Member States. In addition, approval of the budget of the regulator by the national legislator does not constitute an obstacle to budgetary autonomy. The provisions relating to the autonomy in the implementation of the allocated budget of the regulatory

authority should be implemented in the framework defined by national budgetary law and rules. While contributing to the independence of the national regulatory authority from any political or economic interest through an appropriate rotation scheme, it should be possible for Member States to take due account of the availability of human resources and of the size of the board.

(35) In order to ensure effective market access for all market players, including new entrants, non-discriminatory and cost-reflective balancing mechanisms are necessary. As soon as the electricity market is sufficiently liquid, this should be achieved through the setting up of transparent market-based mechanisms for the supply and purchase of electricity, needed in the framework of balancing requirements. In the absence of such a liquid market, national regulatory authorities should play an active role to ensure that balancing tariffs are non-discriminatory and cost-reflective. At the same time, appropriate incentives should be provided to balance the in-put and off-take of electricity and not to endanger the system. Transmission system operators should facilitate participation of final customers and final customers' aggregators in reserve and balancing markets.

(36) National regulatory authorities should be able to fix or approve tariffs, or the methodologies underlying the calculation of the tariffs, on the basis of a proposal by the transmission system operator or distribution system operator(s), or on the basis of a proposal agreed between those operator(s) and the users of the network. In carrying out those tasks, national regulatory authorities should ensure that transmission and distribution tariffs are non-discriminatory and cost-reflective, and should take account of the long-term, marginal, avoided network costs from distributed generation and demand-side management measures.

(37) Energy regulators should have the power to issue binding decisions in relation to electricity undertakings and to impose effective, proportionate and dissuasive penalties on electricity undertakings which fail to comply with their obligations or to propose that a competent court impose such penalties on them. Energy regulators should also be granted the power to decide, irrespective of the application of competition rules, on appropriate measures ensuring customer benefits through the promotion of effective competition necessary for the proper functioning of the internal market in electricity. The establishment of virtual power plants - electricity release programmes whereby electricity undertakings are obliged to sell or to make available a certain volume of electricity or to grant access to part of their generation capacity to interested suppliers for a certain period of time - is one of the possible measures that can be used to promote effective competition and ensure the proper functioning of the market. Energy regulators should also be granted the power to contribute to ensuring high standards of universal and public service in compliance with market opening, to the protection of vulnerable customers, and to the full effectiveness of consumer protection measures. Those provisions should be without prejudice to both the Commission's powers concerning the application of competition rules including the examination of mergers with a Community dimension, and the rules on the internal market such as the free movement of capital. The independent body to which a party affected by the decision of a national regulator has a right to appeal could be a court or other tribunal empowered to conduct a judicial review.

(38) Any harmonisation of the powers of national regulatory authorities should include the powers to provide incentives to electricity undertakings, and to impose effective, proportionate and dissuasive penalties on electricity undertakings or to propose that a competent court impose such penalties. Moreover, regulatory authorities should have the power to request relevant information from electricity undertakings, make appropriate and sufficient investigations and settle disputes.

(39) The internal market in electricity suffers from a lack of liquidity and transparency hindering

the efficient allocation of resources, risk hedging and new entry. There is a need for enhancement of competition and security of supply through facilitated integration of new power plants into the electricity network in all Member States, in particular encouraging new market entrants. Trust in the market, its liquidity and the number of market participants needs to increase, and, therefore, regulatory oversight of undertakings active in the supply of electricity needs to be increased. Such requirements should be without prejudice to, and compatible with, existing Community law in relation to the financial markets. Energy regulators and financial market regulators need to cooperate in order to enable each other to have an overview over the markets concerned.

(40) Prior to the adoption by the Commission of Guidelines defining further the record-keeping requirements, 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 (the “Agency”), and the Committee of European Securities Regulators (the “CESR”), established by Commission Decision 2009/77/EC, should confer and advise the Commission in regard to their content. The Agency and the CESR should also cooperate to investigate further and advise on whether transactions in electricity supply contracts and electricity derivatives should be subject to pre- or post-trade transparency requirements and, if so, what the content of those requirements should be.

(41) Member States or, where a Member State has so provided, the regulatory authority, should encourage the development of interruptible supply contracts.

(42) All Community industry and commerce, including small and medium-sized enterprises, and all citizens of the Union that enjoy the economic benefits of the internal market should also be able to enjoy high levels of consumer protection, and in particular household customers and, where Member States deem it appropriate, small enterprises should also be able to enjoy public service guarantees, in particular with regard to security of supply and reasonable tariffs, for reasons of fairness, competitiveness and, indirectly, to create employment. Those customers should also have access to choice, fairness, representation and dispute settlement mechanisms.

(43) Nearly all Member States have chosen to ensure competition in the electricity generation market through a transparent authorisation procedure. However, Member States should ensure the possibility to contribute to security of supply through the launching of a tendering procedure or an equivalent procedure in the event that sufficient electricity generation capacity is not built on the basis of the authorisation procedure. Member States should have the possibility, in the interests of environmental protection and the promotion of new infant technologies, of tendering for new capacity on the basis of published criteria. Such new capacity includes, *inter alia*, electricity from renewable energy sources and combined heat and power.

(44) In the interests of security of supply, the balance between supply and demand in individual Member States should be monitored, and such monitoring should be followed by a report on the situation at Community level, taking account of interconnection capacity between areas. Such monitoring should be carried out sufficiently early to enable appropriate measures to be taken if security of supply is compromised. The construction and maintenance of the necessary network infrastructure, including interconnection capacity, should contribute to ensuring a stable electricity supply. The maintenance and construction of the necessary network infrastructure, including interconnection capacity and decentralised electricity generation, are important elements in ensuring a stable electricity supply.

(45) Member States should ensure that household customers and, where Member States deem it appropriate, small enterprises, enjoy the right to be supplied with electricity of a specified quality at clearly comparable, transparent and reasonable prices. In order to ensure the maintenance of the high standards of public service in the Community, all measures taken by Member States to achieve the objective of this Directive should be regularly notified to the Commission. The Commission should regularly publish a report analysing measures taken at national level to achieve public service objectives and comparing their effectiveness, with a view to making recommendations as regards measures to be taken at national level to achieve high public service standards. Member States should take the necessary measures to protect vulnerable customers in the context of the internal market in electricity. Such measures may differ according to the particular circumstances in the Member States in question and may include specific measures relating to the payment of electricity bills, or more general measures taken in the social security system. Where universal service is also provided to small enterprises, measures to ensure that such universal service is provided may differ according to whether they are aimed at household customers or small enterprises.

(46) Respect for the public service requirements is a fundamental requirement of this Directive, and it is important that common minimum standards, respected by all Member States, are specified in this Directive, which take into account the objectives of consumer protection, security of supply, environmental protection and equivalent levels of competition in all Member States. It is important that the public service requirements can be interpreted on a national basis, taking into account national circumstances and subject to the respect of Community law.

(47) It should be possible for Member States to appoint a supplier of last resort. That supplier may be the sales division of a vertically integrated undertaking, which also performs the functions of distribution, provided that it meets the unbundling requirements of this Directive.

(48) It should be possible for measures implemented by Member States to achieve the objectives of social and economic cohesion to include, in particular, the provision of adequate economic incentives, using, where appropriate, all existing national and Community tools. Such tools may include liability mechanisms to guarantee the necessary investment.

(49) To the extent to which measures taken by Member States to fulfil public service obligations constitute State aid under Article 87(1) of the Treaty, there is an obligation under Article 88(3) of the Treaty to notify them to the Commission.

(50) The public service requirements, including as regards the universal service, and the common minimum standards that follow from them need to be further strengthened to make sure that all consumers, especially vulnerable ones, are able to benefit from competition and fair prices. The public service requirements should be defined at national level, taking into account national circumstances; Community law should, however, be respected by the Member States. The citizens of the Union and, where Member States deem it appropriate, small enterprises, should be able to enjoy public service obligations, in particular with regard to security of supply, and reasonable prices. A key aspect of supplying customers is access to objective and transparent consumption data. Thus, consumers should have access to their consumption data and associated prices and services costs so that they can invite competitors to make an offer based on those data. Consumers should also have the right to be properly informed about their energy consumption. Prepayments should reflect the likely consumption of electricity and different payment systems should be non-discriminatory. Information on energy costs provided to consumers frequently enough will create incentives for energy savings because it will give customers direct feedback on the effects of investment in energy efficiency and

change of behaviour. In this respect, full implementation of Directive 2006/32/EC of the European Parliament and of the Council of 5 April 2006 on energy end-use efficiency and energy services will help consumers to reduce their energy costs.

(51) Consumer interests should be at the heart of this Directive and quality of service should be a central responsibility of electricity undertakings. Existing rights of consumers need to be strengthened and guaranteed, and should include greater transparency. Consumer protection should ensure that all consumers in the wider remit of the Community benefit from a competitive market. Consumer rights should be enforced by Member States or, where a Member State has so provided, the regulatory authorities.

(52) Clear and comprehensible information should be made available to consumers concerning their rights in relation to the energy sector. The Commission should establish, after consulting relevant stakeholders including Member States, national regulatory authorities, consumer organisations and electricity undertakings, an accessible, user-friendly energy consumer checklist providing consumers with practical information about their rights. That checklist should be provided to all consumers and should be made publicly available.

(53) Energy poverty is a growing problem in the Community. Member States which are affected and which have not yet done so should therefore develop national action plans or other appropriate frameworks to tackle energy poverty, aiming at decreasing the number of people suffering such situation. In any event, Member States should ensure the necessary energy supply for vulnerable customers. In doing so, an integrated approach, such as in the framework of social policy, could be used and measures could include social policies or energy efficiency improvements for housing. At the very least, this Directive should allow national policies in favour of vulnerable customers.

(54) Greater consumer protection is guaranteed by the availability of effective means of dispute settlement for all consumers. Member States should introduce speedy and effective complaint handling procedures.

(55) It should be possible to base the introduction of intelligent metering systems on an economic assessment. Should that assessment conclude that the introduction of such metering systems is economically reasonable and cost-effective only for consumers with a certain amount of electricity consumption, Member States should be able to take this into account when implementing intelligent metering systems.

(56) Market prices should give the right incentives for the development of the network and for investing in new electricity generation.

(57) Promoting fair competition and easy access for different suppliers and fostering capacity for new electricity generation should be of the utmost importance for Member States in order to allow consumers to take full advantage of the opportunities of a liberalised internal market in electricity.

(58) With a view to creating an internal market in electricity, Member States should foster the integration of their national markets and the cooperation of system operators at Community and regional level, also incorporating isolated systems forming electricity islands that persist in the Community.

(59) The development of a true internal market in electricity, through a network connected across the Community, should be one of the main goals of this Directive and regulatory issues on cross-border interconnections and regional markets should, therefore, be one of the main tasks of the regulatory authorities, in close cooperation with the Agency where relevant.

(60) Securing common rules for a true internal market and a broad supply of electricity accessible to all should also be one of the main goals of this Directive. To that end, undistorted market prices would provide an incentive for cross-border interconnections and for investments in new power generation while leading, in the long term, to price convergence.

(61) Regulatory authorities should also provide information on the market to permit the Commission to exercise its role of observing and monitoring the internal market in electricity and its short, medium and long-term evolution, including aspects such as generation capacity, different sources of electricity generation, transmission and distribution infrastructure, quality of service, cross-border trade, congestion management, investments, wholesale and consumer prices, market liquidity and environmental and efficiency improvements. National regulatory authorities should report to the competition authorities and the Commission those Member States in which prices impair competition and proper functioning of the market.

(62) Since the objective of this Directive, namely the creation of a fully operational internal electricity market, 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 Directive does not go beyond what is necessary in order to achieve that objective.

(63) Under Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity, the Commission may adopt Guidelines to achieve the necessary degree of harmonisation. Such Guidelines, which constitute binding implementing measures, are, also with regard to certain provisions of this Directive, a useful tool which can be adapted quickly where necessary.

(64) The measures necessary for the implementation of this Directive 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.

(65) In particular, the Commission should be empowered to adopt the Guidelines necessary for providing the minimum degree of harmonisation required to achieve the aim of this Directive. Since those measures are of general scope and are designed to amend non-essential elements of this Directive, 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.

(66) In accordance with point 34 of the Interinstitutional Agreement on better law-making, Member States are encouraged to draw up, for themselves and in the interest of the Community, their own tables, illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public.

(67) Given the scope of the amendments made to Directive 2003/54/EC herein, 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 Directive.

(68) This Directive respects the fundamental rights, and observes the principles, recognised in particular by the Charter of Fundamental Rights of the European Union.

CHAPTER I

SUBJECT MATTER, SCOPE AND DEFINITIONS

Article 1

Subject matter and scope

This Directive establishes common rules for the generation, transmission, distribution and supply of electricity, of electricity, together with consumer protection provisions, with a view to improving and integrating competitive electricity markets in the **Energy Community**. It lays down the rules relating to the organization and functioning of the electricity sector, open access to the market, the criteria and procedures applicable to calls for tenders and the granting of authorizations and the operation of systems. It also lays down universal service obligations and the rights of electricity consumers and clarifies competition requirements.

Article 2

Definitions

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

1. "generation" means the production of electricity;
2. "producer" means a natural or legal person generating electricity;
3. "transmission" means the transport of electricity on the extra high-voltage and high-voltage interconnected system with a view to its delivery to final customers or to distributors, but does not include supply;
4. "transmission system operator" means a natural or legal person responsible for operating, ensuring the maintenance of and, if necessary, developing the transmission system in a given area and, where applicable, its interconnections with other systems, and for ensuring the long-term ability of the system to meet reasonable demands for the transmission of electricity;
5. "distribution" means the transport of electricity on high-voltage, medium-voltage and low-voltage distribution systems with a view to its delivery to customers, but does not include supply;
6. "distribution system operator" means a natural or legal person responsible for operating, ensuring the maintenance of and, if necessary, developing the distribution system in a given area and, where applicable, its interconnections with other systems and for ensuring the long-term ability of the system to meet reasonable demands for the distribution of electricity;
7. "customer" means a wholesale or final customer of electricity;
8. "wholesale customer" means a natural or legal person purchasing electricity for the purpose of resale inside or outside the system where he is established;
9. "final customer" means a customer purchasing electricity for his own use;
10. "household customer" means a customer purchasing electricity for his own household consumption, excluding commercial or professional activities;

11. "non-household customer" means a natural or legal persons purchasing electricity which is not for their own household use and includes producers and wholesale customers;
12. "eligible customer" means a customer who is free to purchase electricity from the supplier of his choice within the meaning of Article 33;
13. "interconnector" means equipment used to link electricity systems;
14. "interconnected system" means a number of transmission and distribution systems linked together by means of one or more interconnectors;
15. "direct line" means either an electricity line linking an isolated generation site with an isolated customer or an electricity line linking an electricity producer and an electricity supply undertaking to supply directly their own premises, subsidiaries and eligible customers;
16. "economic precedence" means the ranking of sources of electricity supply in accordance with economic criteria;
17. "ancillary service" means a service necessary for the operation of a transmission or distribution system;
18. "system user" means a natural or legal person supplying to, or being supplied by, a transmission or distribution system;
19. "supply" means the sale, including resale, of electricity to customers;
20. "integrated electricity undertaking" means a vertically or horizontally integrated undertaking;
21. "vertically integrated undertaking" means an electricity undertaking or a group of electricity undertakings where the same person or the same persons are entitled, directly or indirectly, to exercise control, and where the undertaking or group of undertakings perform at least one of the functions of transmission or distribution, and at least one of the functions of generation or supply of electricity;
22. "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 44(2)(g) of the Treaty on consolidated accounts, and/or associated undertakings, within the meaning of Article 33(1) of that Directive, and/or undertakings which belong to the same shareholders;
23. "horizontally integrated undertaking" means an undertaking performing at least one of the functions of generation for sale, or transmission, or distribution, or supply of electricity, and another non-electricity activity;
24. "tendering procedure" means the procedure through which planned additional requirements and replacement capacity are covered by supplies from new or existing generating capacity;
25. "long-term planning" means the planning of the need for investment in generation and transmission and distribution capacity on a long-term basis, with a view to meeting the demand of the system for electricity and securing supplies to customers;
26. "small isolated system" means any system with consumption of less than 3000 GWh in the year **2006**, where less than 5% of annual consumption is obtained through interconnection with other systems;
27. "micro isolated system" means any system with consumption less than 500 GWh in the year **2006**, where there is no connection with other systems;
28. "security" means both security of supply and provision of electricity, and technical safety;
29. "energy efficiency/demand-side management" means a global or integrated approach aimed

at influencing the amount and timing of electricity consumption in order to reduce primary energy consumption and peak loads by giving precedence to investments in energy efficiency measures, or other measures, such as interruptible supply contracts, over investments to increase generation capacity, if the former are the most effective and economical option, taking into account the positive environmental impact of reduced energy consumption and the security of supply and distribution cost aspects related to it;

30. “renewable energy sources” means renewable non-fossil energy sources (wind, solar, geothermal, wave, tidal, hydropower, biomass, landfill gas, sewage treatment plant gas and biogases);

31. “distributed generation” means generation plants connected to the distribution system;

32. “electricity supply contract” means a contract for the supply of electricity, but does not include an electricity derivative;

33. “electricity derivative” means a financial instrument specified in points 5, 6 or 7 of Section C of Annex I to Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments, where that instrument relates to electricity;

34. “control” means rights, contracts or any other means which, either separately or in combination and having regard to the considerations of fact or law involved, confer the possibility of exercising decisive influence on an undertaking, in particular by:

(a) ownership or the right to use all or part of the assets of an undertaking;

(b) rights or contracts which confer decisive influence on the composition, voting or decisions of the organs of an undertaking;

35. “electricity undertaking” means any natural or legal person carrying out at least one of the following functions: generation, transmission, distribution, supply, or purchase of electricity, which is responsible for the commercial, technical or maintenance tasks related to those functions, but does not include final customers.

CHAPTER II

GENERAL RULES FOR THE ORGANISATION OF THE SECTOR

Article 3

Public service obligations and customer protection

1. **Contracting Parties** shall ensure, on the basis of their institutional organisation and with due regard to the principle of subsidiarity, that, without prejudice to paragraph 2, electricity undertakings are operated in accordance with the principles of this Directive with a view to achieving a competitive, secure and environmentally sustainable market in electricity, and shall not discriminate between those undertakings as regards either rights or obligations.

2. Having full regard to the relevant provisions of the **Energy Community Treaty, in particular Annex III thereof, Contracting Parties** may impose on undertakings operating in the electricity sector, in the general economic interest, public service obligations which may relate to security, including security of supply, regularity, quality and price of supplies and environmental protection, including energy efficiency, energy from renewable sources and climate protection. Such obligations

shall be clearly defined, transparent, non-discriminatory, verifiable and shall guarantee equality of access for electricity undertakings of the **Energy Community** to national consumers. In relation to security of supply, energy efficiency/demand-side management and for the fulfilment of environmental goals and goals for energy from renewable sources, as referred to in this paragraph, **Contracting Parties** may introduce the implementation of long-term planning, taking into account the possibility of third parties seeking access to the system.

3. **Contracting Parties** shall ensure that all household customers, and, where **Contracting Parties** deem it appropriate, small enterprises (namely enterprises with fewer than 50 occupied persons and an annual turnover or balance sheet not exceeding EUR 10 million), enjoy universal service, that is the right to be supplied with electricity of a specified quality within their territory at reasonable, easily and clearly comparable, transparent and non-discriminatory prices. To ensure the provision of universal service, **Contracting Parties** may appoint a supplier of last resort. **Contracting Parties** shall impose on distribution companies an obligation to connect customers to their network under terms, conditions and tariffs set in accordance with the procedure laid down in Article 37(6). Nothing in this Directive shall prevent **Contracting Parties** from strengthening the market position of the household, small and medium-sized consumers by promoting the possibilities of voluntary aggregation of representation for that class of consumers.

The first subparagraph shall be implemented in a transparent and non-discriminatory way and shall not impede the opening of the market provided for in Article 33.

4. **Contracting Parties** shall ensure that all customers are entitled to have their electricity provided by a supplier, subject to the supplier's agreement, regardless of the **Contracting Party** in which the supplier is registered, as long as the supplier follows the applicable trading and balancing rules. In this regard, **Contracting Parties** shall take all measures necessary to ensure that administrative procedures do not discriminate against supply undertakings already registered in another **Contracting Party**.

5. **Contracting Parties** shall ensure that:

- (a) where a customer, while respecting contractual conditions, wishes to change supplier, the change is effected by the operator(s) concerned within three weeks; and
- (b) customers are entitled to receive all relevant consumption data.

Contracting Parties shall ensure that the rights referred to in points (a) and (b) are granted to customers in a non-discriminatory manner as regards cost, effort or time.

6. Where financial compensation, other forms of compensation and exclusive rights which a **Contracting Party** grants for the fulfilment of the obligations set out in paragraphs 2 and 3 are provided, this shall be done in a non-discriminatory and transparent way.

7. **Contracting Parties** shall take appropriate measures to protect final customers, and shall, in particular, ensure that there are adequate safeguards to protect vulnerable customers. In this context, each **Contracting Party** shall define the concept of vulnerable customers which may refer to energy poverty and, *inter alia*, to the prohibition of disconnection of electricity to such customers in critical times. **Contracting Parties** shall ensure that rights and obligations linked to vulnerable customers are applied. In particular, they shall take measures to protect final customers in remote areas. They shall ensure high levels of consumer protection, particularly with respect to transparency regarding contractual terms and conditions, general information and dispute settlement mechanisms. **Contracting Parties** shall ensure that the eligible customer is in fact able easily to switch to a new sup-

plier. As regards at least household customers, those measures shall include those set out in Annex I.

8. **Contracting Parties** shall take appropriate measures, such as formulating national energy action plans, providing benefits in social security systems to ensure the necessary electricity supply to vulnerable customers, or providing for support for energy efficiency improvements, to address energy poverty where identified, including in the broader context of poverty. Such measures shall not impede the effective opening of the market set out in Article 33 or market functioning and shall be notified **to the Energy Community Secretariat**, where relevant, in accordance with the provisions of paragraph 15 of this Article. Such notification may also include measures taken within the general social security system.

9. **Contracting Parties** shall ensure that electricity suppliers specify in or with the bills and in promotional materials made available to final customers:

(a) the contribution of each energy source to the overall fuel mix of the supplier over the preceding year in a comprehensible and, at a national level, clearly comparable manner;

(b) at least the reference to existing reference sources, such as web pages, where information on the environmental impact, in terms of at least CO₂ emissions and the radioactive waste resulting from the electricity produced by the overall fuel mix of the supplier over the preceding year is publicly available;

(c) information concerning their rights as regards the means of dispute settlement available to them in the event of a dispute.

As regards points (a) and (b) of the first subparagraph with respect to electricity obtained via an electricity exchange or imported from an undertaking situated outside the **Energy Community**, aggregate figures provided by the exchange or the undertaking in question over the preceding year may be used.

The regulatory authority or another competent national authority shall take the necessary steps to ensure that the information provided by suppliers to their customers pursuant to this Article is reliable and is provided, at a national level, in a clearly comparable manner.

10. **Contracting Parties** shall implement measures to achieve the objectives of social and economic cohesion and environmental protection, which shall include energy efficiency/demand-side management measures and means to combat climate change, and security of supply, where appropriate. Such measures may include, in particular, the provision of adequate economic incentives, using, where appropriate, all existing national and **Energy Community** tools, for the maintenance and construction of the necessary network infrastructure, including interconnection capacity.

11. In order to promote energy efficiency, **Contracting Parties** or, where a **Contracting Party** has so provided, the regulatory authority shall strongly recommend that electricity undertakings optimize the use of electricity, for example by providing energy management services, developing innovative pricing formulas, or introducing intelligent metering systems or smart grids, where appropriate.

12. **Contracting Parties** shall ensure the provision of single points of contact to provide consumers with all necessary information concerning their rights, current legislation and the means of dispute settlement available to them in the event of a dispute. Such contact points may be part of general consumer information points.

13. **Contracting Parties** shall ensure that an independent mechanism such as an energy ombudsman or a consumer body is in place in order to ensure efficient treatment of complaints and out-of-

court dispute settlements.

14. **Contracting Parties** may decide not to apply the provisions of Articles 7, 8, 32 and/or 34 insofar as their application would obstruct the performance, in law or in fact, of the obligations imposed on electricity undertakings in the general economic interest and insofar as the development of trade would not be affected to such an extent as would be contrary to the interests of the **Energy Community**. The interests of the **Energy Community** include, *inter alia*, competition with regard to eligible customers in accordance with this Directive and **Annex III of the Energy Community Treaty**.

15. **Contracting Parties** shall, upon implementation of this Directive, inform the **Energy Community Secretariat** of all measures adopted to fulfil universal service and public service obligations, including consumer protection and environmental protection, and their possible effect on national and international competition, whether or not such measures require a derogation from this Directive. They shall inform the **Energy Community Secretariat** subsequently every two years of any changes to such measures, whether or not they require a derogation from this Directive.

16.¹ **Contracting Parties shall ensure that electricity <...> suppliers or distribution system operators, in cooperation with the regulatory authority, take the necessary steps to provide their consumers with a copy of the energy consumer checklists established by the European Commission <...>.**

The checklists shall be adopted by the Permanent High Level Group, following the procedure laid down in Article 79 of the Treaty.

Article 4

Monitoring of security of supply

Contracting Parties shall ensure the monitoring of security of supply issues. Where **Contracting Parties** consider it appropriate, they may delegate that task to the regulatory authorities referred to in Article 35. Such monitoring shall, in particular, cover the balance of supply and demand on the national market, the level of expected future demand and envisaged additional capacity being planned or under construction, and the quality and level of maintenance of the networks, as well as measures to cover peak demand and to deal with shortfalls of one or more suppliers. The competent authorities shall publish every two years, by 31 July, a report outlining the findings resulting from the monitoring of those issues, as well as any measures taken or envisaged to address them and shall forward that report to the **Energy Community Secretariat** forthwith.

¹ Replaced by Article 6 of Decision 2011/02/MC-EnC.

Article 5

Technical rules

The regulatory authorities where **Contracting Parties** have so provided or **Contracting Parties** shall ensure that technical safety criteria are defined and that technical rules establishing the minimum technical design and operational requirements for the connection to the system of generating installations, distribution systems, directly connected consumers' equipment, interconnector circuits and direct lines are developed and made public. Those technical rules shall ensure the interoperability of systems and shall be objective and non-discriminatory. <...>

Article 6²

Promotion of regional cooperation

1. **Contracting Parties** as well as the regulatory authorities shall cooperate with each other for the purpose of integrating their national markets at regional levels, as a first step towards the creation of a fully liberalized internal market. In particular, the regulatory authorities where **Contracting Parties** have so provided or **Contracting Parties** shall promote and facilitate the cooperation of transmission system operators at a regional level, including on cross-border issues, with the aim of creating a competitive internal market in electricity, foster the consistency of their legal, regulatory and technical framework and facilitate integration of the isolated systems forming electricity islands that persist in the **Energy Community**. **Such regional cooperation shall concern cooperation in the geographical area defined under Title III of the Treaty establishing the Energy Community. It may cover other geographical areas.**

2. The **Energy Community Regulatory Board** shall cooperate with national regulatory authorities and transmission system operators to ensure the compatibility of regulatory frameworks with other European regions with the aim of creating a competitive internal market in electricity that can be fully integrated with the EU internal market.

3. **Contracting Parties** shall ensure, through the implementation of this Directive, that transmission system operators have one or more integrated system(s) at regional level covering two or more **Contracting Parties** for capacity allocation and for checking the security of the network.

4. Where vertically integrated transmission system operators participate in a joint undertaking established for implementing such cooperation, the joint undertaking shall establish and implement a compliance program which sets out the measures to be taken to ensure that discriminatory and anticompetitive conduct is excluded. That compliance programme shall set out the specific obligations of employees to meet the objective of excluding discriminatory and anticompetitive conduct. It shall be notified to the **Energy Community Regulatory Board**. Compliance with the programme shall be independently monitored by the compliance officers of the vertically integrated transmission system operators.

² In addition, Article 25 of Decision 2011/02/MC-EnC reads: 'Transmission system operators shall promote operational arrangements in order to ensure the optimum management of the Energy Community network and shall promote the development of energy exchanges, the coordinated allocation of cross-border capacity through non-discriminatory market-based solutions, paying due attention to the specific merits of implicit auctions for short-term allocations, and the integration of balancing and reserve power mechanisms.'

CHAPTER III

GENERATION

Article 7

Authorisation procedure for new capacity

1. For the construction of new generating capacity, **Contracting Parties** shall adopt an authorisation procedure, which shall be conducted in accordance with objective, transparent and non-discriminatory criteria.

2. **Contracting Parties** shall lay down the criteria for the grant of authorisations for the construction of generating capacity in their territory. In determining appropriate criteria, **Contracting Parties** shall consider:

- (a) the safety and security of the electricity system, installations and associated equipment;
- (b) the protection of public health and safety;
- (c) the protection of the environment;
- (d) land use and siting;
- (e) the use of public ground;
- (f) energy efficiency;
- (g) the nature of the primary sources;
- (h) the characteristics particular to the applicant, such as technical, economic and financial capabilities;
- (i) compliance with measures adopted pursuant to Article 3;
- (j) the contribution of the generating capacity to meeting the overall Energy Community target of at least a 20% share of energy from renewable sources in the Energy Community's gross final consumption of energy in 2020 referred to in Article 3(1) of Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources;³ and
- (k) the contribution of generating capacity to reducing emissions.

3. **Contracting Parties** shall ensure that specific authorisation procedures exist for small decentralised and/or distributed generation, which take into account their limited size and potential impact.

Contracting Parties may set guidelines for that specific authorisation procedure. National regulatory authorities or other competent national authorities including planning authorities shall review those guidelines and may recommend amendments thereto.

Where **Contracting Parties** have established particular land use permit procedures applying to major new infrastructure projects in generation capacity, **Contracting Parties** shall, where appropriate, include the construction of new generation capacity within the scope of those procedures and shall

³ Directive 2009/28/EC was incorporated to the Energy Community *acquis* and adapted by Decision 2012/04/MC-EnC of 18 October 2012. According to Article 4(1) of that Decision, the second sentence of Article 3(1) of Directive 2009/28/EC shall not be applicable in the Energy Community.

implement them in a non-discriminatory manner and within an appropriate time-frame.

4. The authorisation procedures and criteria shall be made public. Applicants shall be informed of the reasons for any refusal to grant an authorisation. Those reasons shall be objective, non-discriminatory, well-founded and duly substantiated. Appeal procedures shall be made available to the applicant.

Article 8

Tendering for new capacity

1. **Contracting Parties** shall ensure the possibility, in the interests of security of supply, of providing for new capacity or energy efficiency/demand-side management measures through a tendering procedure or any procedure equivalent in terms of transparency and non-discrimination, on the basis of published criteria. Those procedures may, however, be launched only where, on the basis of the authorisation procedure, the generating capacity to be built or the energy efficiency/demand-side management measures to be taken are insufficient to ensure security of supply.

2. **Contracting Parties** may ensure the possibility, in the interests of environmental protection and the promotion of infant new technologies, of tendering for new capacity on the basis of published criteria. Such tendering may relate to new capacity or to energy efficiency/demand-side management measures. A tendering procedure may, however, be launched only where, on the basis of the authorisation procedure the generating capacity to be built or the measures to be taken, are insufficient to achieve those objectives.

3. Details of the tendering procedure for means of generating capacity and energy efficiency/demand-side management measures shall be published **in a dedicated section of the web site of the Energy Community** at least six months prior to the closing date for tenders.

The tender specifications shall be made available to any interested undertaking established in the territory of a **Contracting Party** so that it has sufficient time in which to submit a tender.

With a view to ensuring transparency and non-discrimination, the tender specifications shall contain a detailed description of the contract specifications and of the procedure to be followed by all tenderers and an exhaustive list of criteria governing the selection of tenderers and the award of the contract, including incentives, such as subsidies, which are covered by the tender. Those specifications may also relate to the fields referred to in Article 7(2).

4. In invitations to tender for the requisite generating capacity, consideration must also be given to electricity supply offers with long-term guarantees from existing generating units, provided that additional requirements can be met in this way.

5. **Contracting Parties** shall designate an authority or a public or private body independent from electricity generation, transmission, distribution and supply activities, which may be a regulatory authority referred to in Article 35(1), to be responsible for the organisation, monitoring and control of the tendering procedure referred to in paragraphs 1 to 4 of this Article. Where a transmission system operator is fully independent from other activities not relating to the transmission system in ownership terms, the transmission system operator may be designated as the body responsible for organising, monitoring and controlling the tendering procedure. That authority or body shall take all necessary steps to ensure confidentiality of the information contained in the tenders.

CHAPTER IV

TRANSMISSION SYSTEM OPERATION

Article 9

Unbundling of transmission systems and transmission system operators

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

- (a) each undertaking which owns a transmission system acts as a transmission system operator;
- (b) the same person or persons are entitled neither:
 - (i) directly or indirectly to exercise control over an undertaking performing any of the functions of generation or supply, and directly or indirectly to exercise control or exercise any right over a transmission system operator or over a transmission system; nor
 - (ii) directly or indirectly to exercise control over a transmission system operator or over a transmission system, and directly or indirectly to exercise control or exercise any right over an undertaking performing any of the functions of generation or supply;
- (c) the same person or persons are not entitled to appoint members of the supervisory board, the administrative board or bodies legally representing the undertaking, of a transmission system operator or a transmission system, and directly or indirectly to exercise control or exercise any right over an undertaking performing any of the functions of generation or supply; and
- (d) the same person is not entitled to be a member of the supervisory board, the administrative board or bodies legally representing the undertaking, of both an undertaking performing any of the functions of generation or supply and a transmission system operator or a transmission system.

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

- (a) the power to exercise voting rights;
- (b) the power to appoint members of the supervisory board, the administrative board or bodies legally representing the undertaking; or
- (c) the holding of a majority share.

3. For the purpose of paragraph 1(b), the notion "undertaking performing any of the functions of generation or supply" shall include "undertaking performing any of the functions of production and supply" within the meaning of Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas, and the terms "transmission system operator" and "transmission system" shall include "transmission system operator" and "transmission system" within the meaning of that Directive.

4. **Contracting Parties** may allow for derogations from points (b) and (c) of paragraph 1 until **1 June 2017**, provided that transmission system operators are not part of a vertically integrated undertaking.

5. The obligation set out in paragraph 1(a) shall be deemed to be fulfilled in a situation where two or more undertakings which own transmission systems have created a joint venture which acts as a transmission system operator in two or more **Contracting Parties** for the transmission systems concerned. No other undertaking may be part of the joint venture, unless it has been approved under

Article 13 as an independent system operator or as an independent transmission operator for the purposes of Chapter V.

6. For the implementation of this Article, where the person referred to in points (b), (c) and (d) of paragraph 1 is the **Contracting Party** or another public body, two separate public bodies exercising control over a transmission system operator or over a transmission system on the one hand, and over an undertaking performing any of the functions of generation or supply on the other, shall be deemed not to be the same person or persons.

7. **Contracting Parties** shall ensure that neither commercially sensitive information referred to in Article 16 held by a transmission system operator which was part of a vertically integrated undertaking, nor the staff of such a transmission system operator, is transferred to undertakings performing any of the functions of generation and supply.

8. Where on **6 October 2011**, the transmission system belongs to a vertically integrated undertaking a **Contracting Party** may decide not to apply paragraph 1.

In such case, the **Contracting Party** concerned shall either:

(a) designate an independent system operator in accordance with Article 13; or

(b) comply with the provisions of Chapter V.

9. Where, on **6 October 2011**, the transmission system belongs to a vertically integrated undertaking and there are arrangements in place which guarantee more effective independence of the transmission system operator than the provisions of Chapter V, a Contracting Party may decide not to apply paragraph 1.

10. Before an undertaking is approved and designated as a transmission system operator under paragraph 9 of this Article, it shall be certified according to the procedures laid down in Article 10(4), (5) and (6) of this Directive and in Article 3 of Regulation (EC) No 714/2009, pursuant to which the **Energy Community Secretariat**, shall verify that the arrangements in place clearly guarantee more effective independence of the transmission system operator than the provisions of Chapter V.

11. Vertically integrated undertakings which own a transmission system shall not in any event be prevented from taking steps to comply with paragraph 1.

12. Undertakings performing any of the functions of generation or supply shall not in any event be able to directly or indirectly take control over or exercise any right over unbundled transmission system operators in **Contracting Parties** which apply paragraph 1.

Article 10

Designation and certification of transmission system operators

1. Before an undertaking is approved and designated as transmission system operator, it shall be certified according to the procedures laid down in paragraphs 4, 5 and 6 of this Article and in Article 3 of Regulation (EC) No 714/2009.

2. Undertakings which own a transmission system and which have been certified by the national regulatory authority as having complied with the requirements of Article 9, pursuant to the certification procedure below, shall be approved and designated as transmission system operators by the **Contracting Parties**. The designation of transmission system operators shall be notified to the

Energy Community Secretariat and published in **a dedicated section of the website of the Energy Community**.

3. Transmission system operators shall notify to the regulatory authority any planned transaction which may require a reassessment of their compliance with the requirements of Article 9.

4. Regulatory authorities shall monitor the continuing compliance of transmission system operators with the requirements of Article 9. They shall open a certification procedure to ensure such compliance:

- (a) upon notification by the transmission system operator pursuant to paragraph 3;
- (b) on their own initiative where they have knowledge that a planned change in rights or influence over transmission system owners or transmission system operators may lead to an infringement of Article 9, or where they have reason to believe that such an infringement may have occurred; or
- (c) upon a reasoned request from the **Energy Community Secretariat**.

5. The regulatory authorities shall adopt a decision on the certification of a transmission system operator within a period of four months from the date of the notification by the transmission system operator or from the date of the **Energy Community Secretariat's** request. After expiry of that period, the certification shall be deemed to be granted. The explicit or tacit decision of the regulatory authority shall become effective only after the conclusion of the procedure set out in paragraph 6.

6. The explicit or tacit decision on the certification of a transmission system operator shall be notified without delay to the **Energy Community Secretariat** by the regulatory authority, together with all the relevant information with respect to that decision. The **Energy Community Secretariat** shall act in accordance with the procedure laid down in Article 3 of Regulation (EC) No 714/2009.

7. The regulatory authorities and the **Energy Community Secretariat** may request from transmission system operators and undertakings performing any of the functions of generation or supply any information relevant for the fulfilment of their tasks under this Article.

8. Regulatory authorities and the **Energy Community Secretariat** shall preserve the confidentiality of commercially sensitive information.

Article 11

Certification in relation to third countries

1. Where certification is requested by a transmission system owner or a transmission system operator which is controlled by a person or persons from a third country or third countries, the regulatory authority shall notify the **Energy Community Secretariat**.

The regulatory authority shall also notify to the **Energy Community Secretariat** without delay any circumstances that would result in a person or persons from a third country or third countries acquiring control of a transmission system or a transmission system operator.

2. The transmission system operator shall notify to the regulatory authority any circumstances that would result in a person or persons from a third country or third countries acquiring control of the transmission system or the transmission system operator.

3. The regulatory authority shall adopt a draft decision on the certification of a transmission system operator within four months from the date of notification by the transmission system operator. It

shall refuse the certification if it has not been demonstrated:

- (a) that the entity concerned complies with the requirements of Article 9; and
- (b) to the regulatory authority or to another competent authority designated by the **Contracting Party** that granting certification will not put at risk the security of energy supply of the **Contracting Party** and the **Energy Community**. In considering that question the regulatory authority or other competent authority so designated shall take into account:
 - (i) the rights and obligations of the **Energy Community** with respect to that third country arising under international law, including any agreement concluded with one or more third countries to which the **Energy Community** is a party and which addresses the issues of security of energy supply
 - (ii) the rights and obligations of the **Contracting Party** with respect to that third country arising under agreements concluded with it, insofar as they are in compliance with Energy Community law; and
 - (iii) other specific facts and circumstances of the case and the third country concerned.⁴

4. The regulatory authority shall notify the decision to the **Energy Community Secretariat** without delay, together with all the relevant information with respect to that decision.

5. **Contracting Parties** shall provide for the regulatory authority or the designated competent authority referred to in paragraph 3(b), before the regulatory authority adopts a decision on the certification, to request an opinion from the **Energy Community Secretariat** on whether:

- (a) the entity concerned complies with the requirements of Article 9; and
- (b) granting certification will not put at risk the security of energy supply to the **Energy Community**.

6. The **Energy Community Secretariat** shall examine the request referred to in paragraph 5 as soon as it is received. Within a period of two months after receiving the request, it shall deliver its opinion to the national regulatory authority or, if the request was made by the designated competent authority, to that authority.

In preparing its opinion, the Energy Community Secretariat shall request the views of the Energy Community Regulatory Board. It may also request the views of the **Contracting Party** concerned, and interested parties. In the event that the **Energy Community Secretariat** makes such a request, the two-month period shall be extended by two months.

In the absence of an opinion by the **Energy Community Secretariat** within the period referred to in the first and second subparagraphs, the **Energy Community Secretariat** shall be deemed not to raise objections to the decision of the regulatory authority.

7. When assessing whether the control by a person or persons from a third country or third countries will put at risk the security of energy supply to the **Energy Community**, the **Energy Community Secretariat** shall take into account:

- (a) the specific facts of the case and the third country or third countries concerned; and
- (b) the rights and obligations of the **Energy Community** with respect to that third country arising under international law, including any agreement concluded with one or more third countries to

⁴ According to Article 10(1) of Decision 2011/02/MC-EnC, 'the regulatory authority or other competent authority designated shall also take into account the rights and obligations resulting from association or trade agreements between the Contracting Party and the European Union'.

which the **Energy Community** is a party and which addresses the issues of security of energy supply.⁵

8. The national regulatory authority shall, within a period of two months after the expiry of the period referred to in paragraph 6, adopt its final decision on the certification. In adopting its final decision the national regulatory authority shall take utmost account of the opinion of the **Energy Community Secretariat**. In any event **Contracting Parties** shall have the right to refuse certification where granting certification puts at risk the **Contracting Party's** security of energy supply or the security of energy supply of another **Contracting Party**. Where the **Contracting Party** has designated another competent authority to assess paragraph 3(b), it may require the national regulatory authority to adopt its final decision in accordance with the assessment of that competent authority. The national regulatory authority's final decision and the opinion of the **Energy Community Secretariat** shall be published together. Where the final decision diverges from the **Secretariat's** opinion, the **Contracting Party** concerned shall provide and publish, together with that decision, the reasoning underlying such decision.

9. Nothing in this Article shall affect the right of **Contracting Parties** to exercise, in compliance with **Energy Community** law, national legal controls to protect legitimate public security interests.

10. <...>

11. <...>

Article 12

Tasks of transmission system operators

Each transmission system operator shall be responsible for:

- (a) ensuring the long-term ability of the system to meet reasonable demands for the transmission of electricity, operating, maintaining and developing under economic conditions secure, reliable and efficient transmission systems with due regard to the environment;
- (b) ensuring adequate means to meet service obligations;
- (c) contributing to security of supply through adequate transmission capacity and system reliability;
- (d) managing electricity flows on the system, taking into account exchanges with other interconnected systems. To that end, the transmission system operator shall be responsible for ensuring a secure, reliable and efficient electricity system and, in that context, for ensuring the availability of all necessary ancillary services, including those provided by demand response, insofar as such availability is independent from any other transmission system with which its system is interconnected;
- (e) providing to the operator of any other system with which its system is interconnected sufficient information to ensure the secure and efficient operation, coordinated development and interoperability of the interconnected system;
- (f) ensuring non-discrimination as between system users or classes of system users, particularly in favour of its related undertakings;
- (g) providing system users with the information they need for efficient access to the system; and

⁵ According to Article 10(2) of Decision 2011/02/MC-EnC, Article 10(1) of the same Decision applies - 'the regulatory authority or other competent authority designated shall also take into account the rights and obligations resulting from association or trade agreements between the Contracting Party and the European Union'.

(h) collecting congestion rents and payments under the inter-transmission system operator compensation mechanism, in compliance with Article 13 of Regulation (EC) No 714/2009, granting and managing third-party access and giving reasoned explanations when it denies such access, which shall be monitored by the national regulatory authorities; in carrying out their tasks under this Article transmission system operators shall primarily facilitate market integration.

Article 13

Independent system operator

1. Where the transmission system belongs to a vertically integrated undertaking on **6 October 2011**, **Contracting Parties** may decide not to apply Article 9(1) and designate an independent system operator upon a proposal from the transmission system owner. Such designation shall be subject to **the opinion of the Energy Community Secretariat**.

2. The **Contracting Party** may approve and designate an independent system operator only where:

(a) the candidate operator has demonstrated that it complies with the requirements of Article 9(1) (b), (c) and (d);

(b) the candidate operator has demonstrated that it has at its disposal the required financial, technical, physical and human resources to carry out its tasks under Article 12;

(c) the candidate operator has undertaken to comply with a ten-year network development plan monitored by the regulatory authority;

(d) the transmission system owner has demonstrated its ability to comply with its obligations under paragraph 5. To that end, it shall provide all the draft contractual arrangements with the candidate undertaking and any other relevant entity; and

(e) the candidate operator has demonstrated its ability to comply with its obligations under Regulation (EC) No 714/2009, including the cooperation of transmission system operators at European and regional level.

3. Undertakings which have been certified by the regulatory authority as having complied with the requirements of Article 11 and paragraph 2 of this Article shall be approved and designated as independent system operators by **Contracting Parties**. The certification procedure in either Article 10 of this Directive and Article 3 of Regulation (EC) No 714/2009, or in Article 11 of this Directive shall be applicable.

4. Each independent system operator shall be responsible for granting and managing third-party access, including the collection of access charges, congestion charges, and payments under the inter-transmission system operator compensation mechanism in compliance with Article 13 of Regulation (EC) No 714/2009, as well as for operating, maintaining and developing the transmission system, and for ensuring the long-term ability of the system to meet reasonable demand through investment planning. When developing the transmission system, the independent system operator shall be responsible for planning (including authorization procedure), construction and commissioning of the new infrastructure. For this purpose, the independent system operator shall act as a transmission system operator in accordance with this Chapter. The transmission system owner shall not be responsible for granting and managing third-party access, nor for investment planning.

5. Where an independent system operator has been designated, the transmission system owner shall:

- (a) provide all the relevant cooperation and support to the independent system operator for the fulfillment of its tasks, including in particular all relevant information;
- (b) finance the investments decided by the independent system operator and approved by the regulatory authority, or give its agreement to financing by any interested party including the independent system operator. The relevant financial arrangements shall be subject to approval by the regulatory authority. Prior to such approval, the regulatory authority shall consult the transmission system owner together with the other interested parties;
- (c) provide for the coverage of liability relating to the network assets, excluding the liability relating to the tasks of the independent system operator; and
- (d) provide guarantees to facilitate financing any network expansions with the exception of those investments where, pursuant to point (b), it has given its agreement to financing by any interested party including the independent system operator.

6. In close cooperation with the regulatory authority, the relevant national competition authority shall be granted all relevant powers to effectively monitor compliance of the transmission system owner with its obligations under paragraph 5.

Article 14

Unbundling of transmission system owners

1. A transmission system owner, where an independent system operator has been appointed, which is part of a vertically integrated undertaking shall be independent at least in terms of its legal form, organization and decision making from other activities not relating to transmission.

2. In order to ensure the independence of the transmission system owner referred to in paragraph 1, the following minimum criteria shall apply:

- (a) persons responsible for the management of the transmission system owner shall not participate in company structures of the integrated electricity undertaking responsible, directly or indirectly, for the day-to-day operation of the generation, distribution and supply of electricity;
- (b) appropriate measures shall be taken to ensure that the professional interests of persons responsible for the management of the transmission system owner are taken into account in a manner that ensures that they are capable of acting independently; and
- (c) the transmission system owner shall establish a compliance program, which sets out measures taken to ensure that discriminatory conduct is excluded, and ensure that observance of it is adequately monitored. The compliance program shall set out the specific obligations of employees to meet those objectives. An annual report, setting out the measures taken, shall be submitted by the person or body responsible for monitoring the compliance program to the regulatory authority and shall be published.

3. <...>

Article 15

Dispatching and balancing

1. Without prejudice to the supply of electricity on the basis of contractual obligations, including those which derive from the tendering specifications, the transmission system operator shall, where it has such a function, be responsible for dispatching the generating installations in its area and for determining the use of interconnectors with other systems.
2. The dispatching of generating installations and the use of interconnectors shall be determined on the basis of criteria which shall be approved by national regulatory authorities where competent and which must be objective, published and applied in a non-discriminatory manner, ensuring the proper functioning of the internal market in electricity. The criteria shall take into account the economic precedence of electricity from available generating installations or interconnector transfers and the technical constraints on the system.
3. A **Contracting Party** shall require system operators to act in accordance with Article 16 of Directive 2009/28/EC, when dispatching generating installations using renewable energy sources. They also may require the system operator to give priority when dispatching generating installations producing combined heat and power.
4. A **Contracting Party** may, for reasons of security of supply, direct that priority be given to the dispatch of generating installations using indigenous primary energy fuel sources, to an extent not exceeding, in any calendar year, 15% of the overall primary energy necessary to produce the electricity consumed in the **Contracting Party** concerned.
5. The regulatory authorities where **Contracting Parties** have so provided or **Contracting Parties** shall require transmission system operators to comply with minimum standards for the maintenance and development of the transmission system, including interconnection capacity.
6. Transmission system operators shall procure the energy they use to cover energy losses and reserve capacity in their system according to transparent, non-discriminatory and market-based procedures, whenever they have such a function.
7. Rules adopted by transmission system operators for balancing the electricity system shall be objective, transparent and non-discriminatory, including rules for charging system users of their networks for energy imbalance. The terms and conditions, including the rules and tariffs, for the provision of such services by transmission system operators shall be established pursuant to a methodology compatible with Article 37(6) in a non-discriminatory and cost-reflective way and shall be published.

Article 16

Confidentiality for transmission system operators and transmission system owners

1. Without prejudice to Article 30 or any other legal duty to disclose information, each transmission system operator and each transmission system owner shall preserve the confidentiality of commercially sensitive information obtained in the course of carrying out its activities, and shall prevent information about its own activities which may be commercially advantageous from being disclosed in a discriminatory manner. In particular it shall not disclose any commercially sensitive information to the remaining parts of the undertaking, unless this is necessary for carrying out a business transaction.

In order to ensure the full respect of the rules on information unbundling, **Contracting Parties** shall ensure that the transmission system owner and the remaining part of the undertaking do not use joint services, such as joint legal services, apart from purely administrative or IT functions.

2. Transmission system operators shall not, in the context of sales or purchases of electricity by related undertakings, misuse commercially sensitive information obtained from third parties in the context of providing or negotiating access to the system.

3. Information necessary for effective competition and the efficient functioning of the market shall be made public. That obligation shall be without prejudice to preserving the confidentiality of commercially sensitive information.

CHAPTER V

INDEPENDENT TRANSMISSION OPERATOR

Article 17

Assets, equipment, staff and identity

1. Transmission system operators shall be equipped with all human, technical, physical and financial resources necessary for fulfilling their obligations under this Directive and carrying out the activity of electricity transmission, in particular:

(a) assets that are necessary for the activity of electricity transmission, including the transmission system, shall be owned by the transmission system operator;

(b) personnel, necessary for the activity of electricity transmission, including the performance of all corporate tasks, shall be employed by the transmission system operator;

(c) leasing of personnel and rendering of services, to and from any other parts of the vertically integrated undertaking shall be prohibited. A transmission system operator may, however, render services to the vertically integrated undertaking as long as:

(i) the provision of those services does not discriminate between system users, is available to all system users on the same terms and conditions and does not restrict, distort or prevent competition in generation or supply; and

(ii) the terms and conditions of the provision of those services are approved by the regulatory authority;

(d) without prejudice to the decisions of the Supervisory Body under Article 20, appropriate financial resources for future investment projects and/or for the replacement of existing assets shall be made available to the transmission system operator in due time by the vertically integrated undertaking following an appropriate request from the transmission system operator.

2. The activity of electricity transmission shall include at least the following tasks in addition to those listed in Article 12:

(a) the representation of the transmission system operator and contacts to third parties and the regulatory authorities;

(b) <...>

- (c) granting and managing third-party access on a non-discriminatory basis between system users or classes of system users;
- (d) the collection of all the transmission system related charges including access charges, balancing charges for ancillary services such as purchasing of services (balancing costs, energy for losses);
- (e) the operation, maintenance and development of a secure, efficient and economic transmission system;
- (f) investment planning ensuring the long-term ability of the system to meet reasonable demand and guaranteeing security of supply;
- (g) the setting up of appropriate joint ventures, including with one or more transmission system operators, power exchanges, and the other relevant actors pursuing the objectives to develop the creation of regional markets or to facilitate the liberalisation process; and
- (h) all corporate services, including legal services, accountancy and IT services.

3. Transmission system operators shall be organized in a legal form as referred to in Article 1 of Council Directive 68/151/EEC.

4. The transmission system operator shall not, in its corporate identity, communication, branding and premises, create confusion in respect of the separate identity of the vertically integrated undertaking or any part thereof.

5. The transmission system operator shall not share IT systems or equipment, physical premises and security access systems with any part of the vertically integrated undertaking nor use the same consultants or external contractors for IT systems or equipment, and security access systems.

6. The accounts of transmission system operators shall be audited by an auditor other than the one auditing the vertically integrated undertaking or any part thereof.

Article 18

Independence of the transmission system operator

1. Without prejudice to the decisions of the Supervisory Body under Article 20, the transmission system operator shall have:

- (a) effective decision-making rights, independent from the vertically integrated undertaking, with respect to assets necessary to operate, maintain or develop the transmission system; and
- (b) the power to raise money on the capital market in particular through borrowing and capital increase.

2. The transmission system operator shall at all times act so as to ensure it has the resources it needs in order to carry out the activity of transmission properly and efficiently and develop and maintain an efficient, secure and economic transmission system.

3. Subsidiaries of the vertically integrated undertaking performing functions of generation or supply shall not have any direct or indirect shareholding in the transmission system operator. The transmission system operator shall neither have any direct or indirect shareholding in any subsidiary of the vertically integrated undertaking performing functions of generation or supply, nor receive dividends or any other financial benefit from that subsidiary.

4. The overall management structure and the corporate statutes of the transmission system operator shall ensure effective independence of the transmission system operator in compliance with this Chapter. The vertically integrated undertaking shall not determine, directly or indirectly, the competitive behaviour of the transmission system operator in relation to the day to day activities of the transmission system operator and management of the network, or in relation to activities necessary for the preparation of the ten-year network development plan developed pursuant to Article 22.

5. In fulfilling their tasks in Article 12 and Article 17(2) of this Directive, and in complying with Articles 14, 15 and 16 of Regulation (EC) No 714/2009, transmission system operators shall not discriminate against different persons or entities and shall not restrict, distort or prevent competition in generation or supply.

6. Any commercial and financial relations between the vertically integrated undertaking and the transmission system operator, including loans from the transmission system operator to the vertically integrated undertaking, shall comply with market conditions. The transmission system operator shall keep detailed records of such commercial and financial relations and make them available to the regulatory authority upon request.

7. The transmission system operator shall submit for approval by the regulatory authority all commercial and financial agreements with the vertically integrated undertaking.

8. The transmission system operator shall inform the regulatory authority of the financial resources, referred to in Article 17(1)(d), available for future investment projects and/or for the replacement of existing assets.

9. The vertically integrated undertaking shall refrain from any action impeding or prejudicing the transmission system operator from complying with its obligations in this Chapter and shall not require the transmission system operator to seek permission from the vertically integrated undertaking in fulfilling those obligations.

10. An undertaking which has been certified by the regulatory authority as being in compliance with the requirements of this Chapter shall be approved and designated as a transmission system operator by the **Contracting Party** concerned. The certification procedure in either Article 10 of this Directive and Article 3 of Regulation (EC) No 714/2009, or in Article 11 of this Directive shall apply.

Article 19

Independence of the staff and the management of the transmission system operator

1. Decisions regarding the appointment and renewal, working conditions including remuneration, and termination of the term of office of the persons responsible for the management and/or members of the administrative bodies of the transmission system operator shall be taken by the Supervisory Body of the transmission system operator appointed in accordance with Article 20.

2. The identity and the conditions governing the term, the duration and the termination of office of the persons nominated by the Supervisory Body for appointment or renewal as persons responsible for the executive management and/or as members of the administrative bodies of the transmission system operator, and the reasons for any proposed decision terminating such term of office, shall be notified to the regulatory authority. Those conditions and the decisions referred to in paragraph 1 shall become binding only if the regulatory authority has raised no objections within three weeks

of notification.

The regulatory authority may object to the decisions referred to in paragraph 1 where:

(a) doubts arise as to the professional independence of a nominated person responsible for the management and/or member of the administrative bodies; or

(b) in the case of premature termination of a term of office, doubts exist regarding the justification of such premature termination.

3. No professional position or responsibility, interest or business relationship, directly or indirectly, with the vertically integrated undertaking or any part of it or its controlling shareholders other than the transmission system operator shall be exercised for a period of three years before the appointment of the persons responsible for the management and/or members of the administrative bodies of the transmission system operator who are subject to this paragraph.

4. The persons responsible for the management and/or members of the administrative bodies, and employees of the transmission system operator shall have no other professional position or responsibility, interest or business relationship, directly or indirectly, with any other part of the vertically integrated undertaking or with its controlling shareholders.

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

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

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

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

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

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

Article 20

Supervisory Body

1. The transmission system operator shall have a Supervisory Body which shall be in charge of taking decisions which may have a significant impact on the value of the assets of the shareholders within the transmission system operator, in particular decisions regarding the approval of the annual and longer-term financial plans, the level of indebtedness of the transmission system operator and the amount of dividends distributed to shareholders. The decisions falling under the remit of the Supervisory Body shall exclude those that are related to the day to day activities of the transmission system operator and management of the network, and to activities necessary for the preparation of the ten-year network development plan developed pursuant to Article 22.

2. The Supervisory Body shall be composed of members representing the vertically integrated undertaking, members representing third party shareholders and, where the relevant legislation of a **Contracting Party** so provides, members representing other interested parties such as employees of the transmission system operator.

3. The first subparagraph of Article 19(2) and Article 19(3) to (7) shall apply to at least half of the members of the Supervisory Body minus one.

Point (b) of the second subparagraph of Article 19(2) shall apply to all the members of the Supervisory Body.

Article 21

Compliance programme and compliance officer

1. **Contracting Parties** shall ensure that transmission system operators establish and implement a compliance programme which sets out the measures taken in order to ensure that discriminatory conduct is excluded, and ensure that the compliance with that programme is adequately monitored. The compliance programme shall set out the specific obligations of employees to meet those objectives. It shall be subject to approval by the regulatory authority. Without prejudice to the powers of the national regulator, compliance with the program shall be independently monitored by a compliance officer.

2. The compliance officer shall be appointed by the Supervisory Body, subject to the approval by the regulatory authority. The regulatory authority may refuse the approval of the compliance officer only for reasons of lack of independence or professional capacity. The compliance officer may be a natural or legal person. Article 19(2) to (8) shall apply to the compliance officer.

3. The compliance officer shall be in charge of:

- (a) monitoring the implementation of the compliance programme;
- (b) elaborating an annual report, setting out the measures taken in order to implement the compliance programme and submitting it to the regulatory authority;
- (c) reporting to the Supervisory Body and issuing recommendations on the compliance programme and its implementation;

(d) notifying the regulatory authority on any substantial breaches with regard to the implementation of the compliance programme; and

(e) reporting to the regulatory authority on any commercial and financial relations between the vertically integrated undertaking and the transmission system operator.

4. The compliance officer shall submit the proposed decisions on the investment plan or on individual investments in the network to the regulatory authority. This shall occur at the latest when the management and/or the competent administrative body of the transmission system operator submits them to the Supervisory Body.

5. Where the vertically integrated undertaking, in the general assembly or through the vote of the members of the Supervisory Body it has appointed, has prevented the adoption of a decision with the effect of preventing or delaying investments, which under the ten-year network development plan was to be executed in the following three years, the compliance officer shall report this to the regulatory authority, which then shall act in accordance with Article 22.

6. The conditions governing the mandate or the employment conditions of the compliance officer, including the duration of its mandate, shall be subject to approval by the regulatory authority. Those conditions shall ensure the independence of the compliance officer, including by providing him with all the resources necessary for fulfilling his duties. During his mandate, the compliance officer shall have no other professional position, responsibility or interest, directly or indirectly, in or with any part of the vertically integrated undertaking or with its controlling shareholders.

7. The compliance officer shall report regularly, either orally or in writing, to the regulatory authority and shall have the right to report regularly, either orally or in writing, to the Supervisory Body of the transmission system operator.

8. The compliance officer may attend all meetings of the management or administrative bodies of the transmission system operator, and those of the Supervisory Body and the general assembly. The compliance officer shall attend all meetings that address the following matters:

(a) conditions for access to the network, as defined in Regulation (EC) No 714/2009, in particular regarding tariffs, third party access services, capacity allocation and congestion management, transparency, balancing and secondary markets;

(b) projects undertaken in order to operate, maintain and develop the transmission system, including interconnection and connection investments;

(c) energy purchases or sales necessary for the operation of the transmission system.

9. The compliance officer shall monitor the compliance of the transmission system operator with Article 16.

10. The compliance officer shall have access to all relevant data and to the offices of the transmission system operator and to all the information necessary for the fulfilment of his task.

11. After prior approval by the regulatory authority, the Supervisory Body may dismiss the compliance officer. It shall dismiss the compliance officer for reasons of lack of independence or professional capacity upon request of the regulatory authority.

12. The compliance officer shall have access to the offices of the transmission system operator without prior announcement.

Article 22

Network development and powers to make investment decisions

1. Every year, transmission system operators shall submit to the regulatory authority a ten-year network development plan based on existing and forecast supply and demand after having consulted all the relevant stakeholders. That network development plan shall contain efficient measures in order to guarantee the adequacy of the system and the security of supply.

2. The ten-year network development plan shall in particular:

(a) indicate to market participants the main transmission infrastructure that needs to be built or upgraded over the next ten years;

(b) contain all the investments already decided and identify new investments which have to be executed in the next three years; and

(c) provide for a time frame for all investment projects.

3. When elaborating the ten-year network development plan, the transmission system operator shall make reasonable assumptions about the evolution of the generation, supply, consumption and exchanges with other countries, taking into account investment plans for regional and **Energy Community**-wide networks.

4. The regulatory authority shall consult all actual or potential system users on the ten-year network development plan in an open and transparent manner. Persons or undertakings claiming to be potential system users may be required to substantiate such claims. The regulatory authority shall publish the result of the consultation process, in particular possible needs for investments.

5. The regulatory authority shall examine whether the ten-year network development plan covers all investment needs identified during the consultation process <...>. The regulatory authority may require the transmission system operator to amend its ten-year network development plan.

6. The regulatory authority shall monitor and evaluate the implementation of the ten-year network development plan.

7. In circumstances where the transmission system operator, other than for overriding reasons beyond its control, does not execute an investment, which, under the ten-year network development plan, was to be executed in the following three years, **Contracting Parties** shall ensure that the regulatory authority is required to take at least one of the following measures to ensure that the investment in question is made if such investment is still relevant on the basis of the most recent ten-year network development plan:

(a) to require the transmission system operator to execute the investments in question;

(b) to organise a tender procedure open to any investors for the investment in question; or

(c) to oblige the transmission system operator to accept a capital increase to finance the necessary investments and allow independent investors to participate in the capital.

Where the regulatory authority has made use of its powers under point (b) of the first subparagraph, it may oblige the transmission system operator to agree to one or more of the following:

(a) financing by any third party;

(b) construction by any third party;

- (c) building the new assets concerned itself;
- (d) operating the new asset concerned itself.

The transmission system operator shall provide the investors with all information needed to realise the investment, shall connect new assets to the transmission network and shall generally make its best efforts to facilitate the implementation of the investment project.

The relevant financial arrangements shall be subject to approval by the regulatory authority.

8. Where the regulatory authority has made use of its powers under the first subparagraph of paragraph 7, the relevant tariff regulations shall cover the costs of the investments in question.

Article 23

Decision-making powers regarding the connection of new power plant to the transmission system

1. The transmission system operator shall establish and publish transparent and efficient procedures for non-discriminatory connection of new power plants to the transmission system. Those procedures shall be subject to the approval of national regulatory authorities.

2. The transmission system operator shall not be entitled to refuse the connection of a new power plant on the grounds of possible future limitations to available network capacities, such as congestion in distant parts of the transmission system. The transmission system operator shall supply necessary information.

3. The transmission system operator shall not be entitled to refuse a new connection point, on the ground that it will lead to additional costs linked with necessary capacity increase of system elements in the close-up range to the connection point.

CHAPTER VI

DISTRIBUTION SYSTEM OPERATION

Article 24

Designation of distribution system operators

Contracting Parties shall designate or shall require undertakings that own or are responsible for distribution systems to designate, for a period of time to be determined by **Contracting Parties** having regard to considerations of efficiency and economic balance, one or more distribution system operators. **Contracting Parties** shall ensure that distribution system operators act in accordance with Articles 25, 26 and 27.

Article 25

Tasks of distribution system operators

1. The distribution system operator shall be responsible for ensuring the long-term ability of the system to meet reasonable demands for the distribution of electricity, for operating, maintaining and developing under economic conditions a secure, reliable and efficient electricity distribution system in its area with due regard for the environment and energy efficiency.
2. In any event, it must not discriminate between system users or classes of system users, particularly in favour of its related undertakings.
3. The distribution system operator shall provide system users with the information they need for efficient access to, including use of the system.
4. A **Contracting Party** may require the distribution system operator, when dispatching generating installations, to give priority to generating installations using renewable energy sources or waste or producing combined heat and power.
5. Each distribution system operator shall procure the energy it uses to cover energy losses and reserve capacity in its system according to transparent, non-discriminatory and market based procedures, whenever it has such a function. That requirement shall be without prejudice to using electricity acquired under contracts concluded before **1 January 2006**.
6. Where a distribution system operator is responsible for balancing the distribution system, rules adopted by it for that purpose shall be objective, transparent and non-discriminatory, including rules for the charging of system users of their networks for energy imbalance. Terms and conditions, including rules and tariffs, for the provision of such services by distribution system operators shall be established in accordance with Article 37(6) in a non-discriminatory and cost-reflective way and shall be published.
7. When planning the development of the distribution network, energy efficiency/demand-side management measures or distributed generation that might supplant the need to upgrade or replace electricity capacity shall be considered by the distribution system operator.

Article 26

Unbundling of distribution system operators

1. Where the distribution system operator is part of a vertically integrated undertaking, it shall be independent at least in terms of its legal form, organisation and decision making from other activities not relating to distribution. Those rules shall not create an obligation to separate the ownership of assets of the distribution system operator from the vertically integrated undertaking.
2. In addition to the requirements under paragraph 1, where the distribution system operator is part of a vertically integrated undertaking, it shall be independent in terms of its organisation and decision-making from the other activities not related to distribution. In order to achieve this, the following minimum criteria shall apply:
 - (a) those persons responsible for the management of the distribution system operator must not participate in company structures of the integrated electricity undertaking responsible, directly or

indirectly, for the day-to-day operation of the generation, transmission or supply of electricity;

(b) appropriate measures must be taken to ensure that the professional interests of the persons responsible for the management of the distribution system operator are taken into account in a manner that ensures that they are capable of acting independently;

(c) the distribution system operator must have effective decision-making rights, independent from the integrated electricity undertaking, with respect to assets necessary to operate, maintain or develop the network. In order to fulfil those tasks, the distribution system operator shall have at its disposal the necessary resources including human, technical, physical and financial resources. This should not prevent the existence of appropriate coordination mechanisms to ensure that the economic and management supervision rights of the parent company in respect of return on assets, regulated indirectly in accordance with Article 37(6), in a subsidiary are protected. In particular, this shall enable the parent company to approve the annual financial plan, or any equivalent instrument, of the distribution system operator and to set global limits on the levels of indebtedness of its subsidiary. It shall not permit the parent company to give instructions regarding day-to-day operations, nor with respect to individual decisions concerning the construction or upgrading of distribution lines, that do not exceed the terms of the approved financial plan, or any equivalent instrument; and

(d) the distribution system operator must establish a compliance programme, which sets out measures taken to ensure that discriminatory conduct is excluded, and ensure that observance of it is adequately monitored. The compliance programme shall set out the specific obligations of employees to meet that objective. An annual report, setting out the measures taken, shall be submitted by the person or body responsible for monitoring the compliance programme, the compliance officer of the distribution system operator, to the regulatory authority referred to in Article 35(1) and shall be published. The compliance officer of the distribution system operator shall be fully independent and shall have access to all the necessary information of the distribution system operator and any affiliated undertaking to fulfil his task.

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

4. **Contracting Parties** may decide not to apply paragraphs 1, 2 and 3 to integrated electricity undertakings serving less than 100 000 connected customers, or serving small isolated systems.

Article 27

Confidentiality obligation of distribution system operators

Without prejudice to Article 30 or any other legal duty to disclose information, the distribution system operator must preserve the confidentiality of commercially sensitive information obtained in the course of carrying out its business, and shall prevent information about its own activities which may be commercially advantageous being disclosed in a discriminatory manner.

Article 28

Closed distribution systems

1. **Contracting Parties** may provide for national regulatory authorities or other competent authorities to classify a system which distributes electricity within a geographically confined industrial, commercial or shared services site and does not, without prejudice to paragraph 4, supply household customers, as a closed distribution system if:

(a) for specific technical or safety reasons, the operations or the production process of the users of that system are integrated; or

(b) that system distributes electricity primarily to the owner or operator of the system or their related undertakings.

2. **Contracting Parties** may provide for national regulatory authorities to exempt the operator of a closed distribution system from:

(a) the requirement under Article 25(5) to procure the energy it uses to cover energy losses and reserve capacity in its system according to transparent, non-discriminatory and market based procedures;

(b) the requirement under Article 32(1) that tariffs, or the methodologies underlying their calculation, are approved prior to their entry into force in accordance with Article 37.

3. Where an exemption is granted under paragraph 2, the applicable tariffs, or the methodologies underlying their calculation, shall be reviewed and approved in accordance with Article 37 upon request by a user of the closed distribution system.

4. Incidental use by a small number of households with employment or similar associations with the owner of the distribution system and located within the area served by a closed distribution system shall not preclude an exemption under paragraph 2 being granted.

Article 29

Combined operator

Article 26(1) shall not prevent the operation of a combined transmission and distribution system operator provided that operator complies with Articles 9(1), or 13 and 14, or Chapter V or falls under Article 44(2).

CHAPTER VII

UNBUNDLING AND TRANSPARENCY OF ACCOUNTS

Article 30

Right of access to accounts

1. **Contracting Parties** or any competent authority they designate, including the regulatory author-

ities referred to in Article 35, shall, insofar as necessary to carry out their functions, have right of access to the accounts of electricity undertakings as set out in Article 31.

2. **Contracting Parties** and any designated competent authority, including the regulatory authorities, shall preserve the confidentiality of commercially sensitive information. **Contracting Parties** may provide for the disclosure of such information where this is necessary in order for the competent authorities to carry out their functions.

Article 31

Unbundling of accounts

1. **Contracting Parties** shall take the necessary steps to ensure that the accounts of electricity undertakings are kept in accordance with paragraphs 2 and 3.

2. Electricity 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 44(2)(g) of the Treaty on the annual accounts of certain types of companies.

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

3. Electricity undertakings shall, in their internal accounting, keep separate accounts for each of their transmission and distribution activities as they would be required to do if the activities in question were carried out by separate undertakings, with a view to avoiding discrimination, cross-subsidisation and distortion of competition. They shall also keep accounts, which may be consolidated, for other electricity activities not relating to transmission or distribution. Until **1 January 2015**, they shall keep separate accounts for supply activities for eligible customers and supply activities for non-eligible customers. Revenue from ownership of the transmission or distribution system shall be specified in the accounts. Where appropriate, they shall keep consolidated accounts for other, non-electricity activities. The internal accounts shall include a balance sheet and a profit and loss account for each activity.

4. The audit referred to in paragraph 2 shall, in particular, verify that the obligation to avoid discrimination and cross-subsidies referred to in paragraph 3 is respected.

CHAPTER VIII

ORGANISATION OF ACCESS TO THE SYSTEM

Article 32

Third-party access

1. **Contracting Parties** shall ensure the implementation of a system of third party access to the transmission and distribution systems based on published tariffs, applicable to all eligible customers and applied objectively and without discrimination between system users. **Contracting Parties** shall

ensure that those tariffs, or the methodologies underlying their calculation, are approved prior to their entry into force in accordance with Article 37 and that those tariffs, and the methodologies - where only methodologies are approved - are published prior to their entry into force.

2. The transmission or distribution system operator may refuse access where it lacks the necessary capacity. Duly substantiated reasons must be given for such refusal, in particular having regard to Article 3, and based on objective and technically and economically justified criteria. The regulatory authorities where **Contracting Parties** have so provided or **Contracting Parties** 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. The regulatory authorities shall also ensure, where appropriate and when refusal of access takes place, that the transmission or distribution system operator provides relevant information on measures that would be necessary to reinforce the network. The party requesting such information may be charged a reasonable fee reflecting the cost of providing such information.

Article 33

Market opening and reciprocity

1. **Contracting Parties** shall ensure that the eligible customers comprise⁶:

- (a) <...>;
- (b) **from 1 January 2008**, all non-household customers;
- (c) **from 1 January 2015**, all customers.

2. To avoid imbalance in the opening of electricity markets:

- (a) contracts for the supply of electricity with an eligible customer in the system of another **Contracting Party** shall not be prohibited if the customer is considered as eligible in both systems involved; and
- (b) <...>

Article 34

Direct lines

1. **Contracting Parties** shall take the measures necessary to enable:

- (a) all electricity producers and electricity supply undertakings established within their territory to supply their own premises, subsidiaries and eligible customers through a direct line; and
- (b) all eligible customers within their territory to be supplied through a direct line by a producer and supply undertakings.

2. **Contracting Parties** shall lay down the criteria for the grant of authorisations for the construction of direct lines in their territory. Those criteria shall be objective and non-discriminatory.

3. The possibility of supplying electricity through a direct line as referred to in paragraph 1 of this

⁶ According to Article 17(2) of Decision 2011/02/MC-EnC, the following deadlines 'shall apply without prejudice to special deadlines agreed in the Protocols of Accession to the Energy Community'.

Article shall not affect the possibility of contracting electricity in accordance with Article 32.

4. **Contracting Parties** may issue an authorisation to construct a direct line subject either to the refusal of system access on the basis, as appropriate, of Article 32 or to the opening of a dispute settlement procedure under Article 37.

5. **Contracting Parties** may refuse to authorise a direct line if the granting of such an authorisation would obstruct the provisions of Article 3. Duly substantiated reasons shall be given for such refusal.

CHAPTER IX

NATIONAL REGULATORY AUTHORITIES

Article 35

Designation and independence of regulatory authorities

1. Each **Contracting Party** shall designate a single national regulatory authority at national level.
2. Paragraph 1 of this Article shall be without prejudice to the designation of other regulatory authorities at regional level within **Contracting Parties**, provided that there is one senior representative for representation and contact purposes at **Energy Community** level.
3. By way of derogation from paragraph 1 of this Article, a **Contracting Party** may designate regulatory authorities for small systems on a geographically separate region whose consumption, in 2008, accounted for less than 3% of the total consumption of the **Contracting Party** of which it is part. This derogation shall be without prejudice to the appointment of one senior representative for representation and contact purposes at **Energy Community** level.
4. **Contracting Parties** shall guarantee the independence of the regulatory authority and shall ensure that it exercises its powers impartially and transparently. For this purpose, **Contracting Party** shall ensure that, when carrying out the regulatory tasks conferred upon it by this Directive and related legislation, the regulatory authority:
 - (a) is legally distinct and functionally independent from any other public or private entity;
 - (b) ensures that its staff and the persons responsible for its management:
 - (i) act independently from any market interest; and
 - (ii) do not seek or take direct instructions from any government or other public or private entity when carrying out the regulatory tasks. This requirement is without prejudice to close cooperation, as appropriate, with other relevant national authorities or to general policy guidelines issued by the government not related to the regulatory powers and duties under Article 37.
5. In order to protect the independence of the regulatory authority, **Contracting Parties** shall in particular ensure that:
 - (a) the regulatory authority can take autonomous decisions, independently from any political body, and has separate annual budget allocations, with autonomy in the implementation of the allocated budget, and adequate human and financial resources to carry out its duties; and

(b) the members of the board of the regulatory authority or, in the absence of a board, the regulatory authority's top management are appointed for a fixed term of five up to seven years, renewable once.

In regard to point (b) of the first subparagraph, **Contracting Parties** shall ensure an appropriate rotation scheme for the board or the top management. The members of the board or, in the absence of a board, members of the top management may be relieved from office during their term only if they no longer fulfil the conditions set out in this Article or have been guilty of misconduct under national law.

Article 36

General objectives of the regulatory authority

In carrying out the regulatory tasks specified in this Directive, the regulatory authority shall take all reasonable measures in pursuit of the following objectives within the framework of their duties and powers as laid down in Article 37, in close consultation with other relevant national authorities including competition authorities, as appropriate, and without prejudice to their competencies:

(a) promoting, in close cooperation with the **Energy Community Regulatory Board**, regulatory authorities of other **Contracting Parties** and the **Energy Community Secretariat**, a competitive, secure and environmentally sustainable internal market in electricity within the **Energy Community**, and effective market opening for all customers and suppliers in the **Energy Community** and ensuring appropriate conditions for the effective and reliable operation of electricity networks, taking into account long-term objectives;

(b) developing competitive and properly functioning regional markets within the **Energy Community** in view of the achievement of the objectives referred to in point (a);

(c) eliminating restrictions on trade in electricity between **Contracting Parties**, including developing appropriate cross-border transmission capacities to meet demand and enhancing the integration of national markets which may facilitate electricity flows across the **Energy Community**;

(d) helping to achieve, in the most cost-effective way, the development of secure, reliable and efficient non-discriminatory systems that are consumer oriented, and promoting system adequacy and, in line with general energy policy objectives, energy efficiency as well as the integration of large and small-scale production of electricity from renewable energy sources and distributed generation in both transmission and distribution networks;

(e) facilitating access to the network for new generation capacity, in particular removing barriers that could prevent access for new market entrants and of electricity from renewable energy sources;

(f) ensuring that system operators and system users are granted appropriate incentives, in both the short and the long term, to increase efficiencies in system performance and foster market integration;

(g) ensuring that customers benefit through the efficient functioning of their national market, promoting effective competition and helping to ensure consumer protection;

(h) helping to achieve high standards of universal and public service in electricity supply, contributing to the protection of vulnerable customers and contributing to the compatibility of necessary data exchange processes for customer switching.

Article 37

Duties and powers of the regulatory authority

1. The regulatory authority shall have the following duties:

- (a) fixing or approving, in accordance with transparent criteria, transmission or distribution tariffs or their methodologies;
- (b) ensuring compliance of transmission and distribution system operators and, where relevant, system owners, as well as of any electricity undertakings, with their obligations under this Directive and other relevant **Energy Community** legislation, including as regards cross-border issues;
- (c) cooperating in regard to cross-border issues with the regulatory authority or authorities of the **Contracting Parties** concerned and with the **Energy Community Regulatory Board**;
- (d) complying with, and implementing, any relevant legally binding decisions of the **Energy Community Regulatory Board** <...>;
- (e) reporting annually on its activity and the fulfilment of its duties to the relevant authorities of the **Contracting Parties**, **Energy Community Regulatory Board** and the **Energy Community Secretariat**. Such reports shall cover the steps taken and the results obtained as regards each of the tasks listed in this Article;
- (f) ensuring that there are no cross-subsidies between transmission, distribution, and supply activities;
- (g) monitoring investment plans of the transmission system operators, and providing in its annual report an assessment of the **investment plans of the transmission system operators** <...>; such assessment may, which may include recommendations to amend those investment plans;
- (h) monitoring compliance with and reviewing the past performance of network security and reliability rules and setting or approving standards and requirements for quality of service and supply or contributing thereto together with other competent authorities;
- (i) monitoring the level of transparency, including of wholesale prices, and ensuring compliance of electricity undertakings with transparency obligations;
- (j) monitoring the level and effectiveness of market opening and competition at wholesale and retail levels, including on electricity exchanges, prices for household customers including prepayment systems, switching rates, disconnection rates, charges for and the execution of maintenance services, and complaints by household customers, as well as any distortion or restriction of competition, including providing any relevant information, and bringing any relevant cases to the relevant competition authorities;
- (k) monitoring the occurrence of restrictive contractual practices, including exclusivity clauses which may prevent large non-household customers from contracting simultaneously with more than one supplier or restrict their choice to do so, and, where appropriate, informing the national competition authorities of such practices;
- (l) respecting contractual freedom with regard to interruptible supply contracts and with regard to long-term contracts provided that they are compatible with Energy Community law;
- (m) monitoring the time taken by transmission and distribution system operators to make connections and repairs;

- (n) helping to ensure, together with other relevant authorities, that the consumer protection measures, including those set out in Annex I, are effective and enforced;
- (o) publishing recommendations, at least annually, in relation to compliance of supply prices with Article 3, and providing these to the competition authorities, where appropriate;
- (p) ensuring access to customer consumption data, the provision, for optional use, of an easily understandable harmonised format at national level for consumption data, and prompt access for all customers to such data under point (h) of Annex I;
- (q) monitoring the implementation of rules relating to the roles and responsibilities of transmission system operators, distribution system operators, suppliers and customers and other market parties pursuant to Regulation (EC) No 714/2009;
- (r) monitoring investment in generation capacities in relation to security of supply;
- (s) monitoring technical cooperation between **Energy Community** and third-country transmission system operators;
- (t) monitoring the implementation of safeguards measures as referred to in Article 42; and
- (u) contributing to the compatibility of data exchange processes for the most important market processes at regional level.

2. Where a **Contracting Party** has so provided, the monitoring duties set out in paragraph 1 may be carried out by other authorities than the regulatory authority. In such a case, the information resulting from such monitoring shall be made available to the regulatory authority as soon as possible.

While preserving their independence, without prejudice to their own specific competencies and consistent with the principles of better regulation, the regulatory authority shall, as appropriate, consult transmission system operators and, as appropriate, closely cooperate with other relevant national authorities when carrying out the duties set out in paragraph 1.

Any approvals given by a regulatory authority or the **Energy Community Regulatory Board** under this Directive are without prejudice to any duly justified future use of its powers by the regulatory authority under this Article or to any penalties imposed by other relevant authorities <...>.

3. In addition to the duties conferred upon it under paragraph 1 of this Article, when an independent system operator has been designated under Article 13, the regulatory authority shall:

- (a) monitor the transmission system owner's and the independent system operator's compliance with their obligations under this Article, and issue penalties for non-compliance in accordance with paragraph 4(d);
- (b) monitor the relations and communications between the independent system operator and the transmission system owner so as to ensure compliance of the independent system operator with its obligations, and in particular approve contracts and act as a dispute settlement authority between the independent system operator and the transmission system owner in respect of any complaint submitted by either party pursuant to paragraph 11;
- (c) without prejudice to the procedure under Article 13(2)(c), for the first ten-year network development plan, approve the investments planning and the multi-annual network development plan presented annually by the independent system operator;
- (d) ensure that network access tariffs collected by the independent system operator include remuneration for the network owner or network owners, which provides for adequate remuneration of

the network assets and of any new investments made therein, provided they are economically and efficiently incurred;

(e) have the powers to carry out inspections, including unannounced inspections, at the premises of transmission system owner and independent system operator; and

(f) monitor the use of congestion charges collected by the independent system operator in accordance with Article 16(6) of Regulation (EC) No 714/2009.

4. **Contracting Parties** shall ensure that regulatory authorities are granted the powers enabling them to carry out the duties referred to in paragraphs 1, 3 and 6 in an efficient and expeditious manner. For this purpose, the regulatory authority shall have at least the following powers:

(a) to issue binding decisions on electricity undertakings;

(b) to carry out investigations into the functioning of the electricity markets, and to decide upon and impose any necessary and proportionate measures to promote effective competition and ensure the proper functioning of the market. Where appropriate, the regulatory authority shall also have the power to cooperate with the national competition authority and the financial market regulators or the **Energy Community Secretariat** in conducting an investigation relating to competition law;

(c) to require any information from electricity undertakings relevant for the fulfilment of its tasks, including the justification for any refusal to grant third-party access, and any information on measures necessary to reinforce the network;

(d) to impose effective, proportionate and dissuasive penalties on electricity undertakings not complying with their obligations under this Directive or any relevant legally binding decisions of the regulatory authority or the **Energy Community Regulatory Board**, or to propose that a competent court impose such penalties. This shall include the power to impose or propose the imposition of penalties of up to 10% of the annual turnover of the transmission system operator on the transmission system operator or of up to 10% of the annual turnover of the vertically integrated undertaking on the vertically integrated undertaking, as the case may be, for non-compliance with their respective obligations pursuant to this Directive; and

(e) appropriate rights of investigations and relevant powers of instructions for dispute settlement under paragraphs 11 and 12.

5. In addition to the duties and powers conferred on it under paragraphs 1 and 4 of this Article, when a transmission system operator has been designated in accordance with Chapter V, the regulatory authority shall be granted at least the following duties and powers:

(a) to issue penalties in accordance with paragraph 4(d) for discriminatory behaviour in favour of the vertically integrated undertaking;

(b) to monitor communications between the transmission system operator and the vertically integrated undertaking so as to ensure compliance of the transmission system operator with its obligations;

(c) to act as dispute settlement authority between the vertically integrated undertaking and the transmission system operator in respect of any complaint submitted pursuant to paragraph 11;

(d) to monitor commercial and financial relations including loans between the vertically integrated undertaking and the transmission system operator;

(e) to approve all commercial and financial agreements between the vertically integrated undertaking and the transmission system operator on the condition that they comply with market conditions;

(f) to request justification from the vertically integrated undertaking when notified by the compliance officer in accordance with Article 21(4). Such justification shall, in particular, include evidence to the end that no discriminatory behaviour to the advantage of the vertically integrated undertaking has occurred;

(g) to carry out inspections, including unannounced ones, on the premises of the vertically integrated undertaking and the transmission system operator; and

(h) to assign all or specific tasks of the transmission system operator to an independent system operator appointed in accordance with Article 13 in case of a persistent breach by the transmission system operator of its obligations under this Directive, in particular in case of repeated discriminatory behaviour to the benefit of the vertically integrated undertaking.

6. The regulatory authorities shall be responsible for fixing or approving sufficiently in advance of their entry into force at least the methodologies used to calculate or establish the terms and conditions for:

(a) connection and access to national networks, including transmission and distribution tariffs or their methodologies. Those tariffs or methodologies shall allow the necessary investments in the networks to be carried out in a manner allowing those investments to ensure the viability of the networks;

(b) the provision of balancing services which shall be performed in the most economic manner possible and provide appropriate incentives for network users to balance their input and off-takes. The balancing services shall be provided in a fair and non-discriminatory manner and be based on objective criteria; and

(c) access to cross-border infrastructures, including the procedures for the allocation of capacity and congestion management.

7. The methodologies or the terms and conditions referred to in paragraph 6 shall be published.

8. In fixing or approving the tariffs or methodologies and the balancing services, the regulatory authorities shall ensure that transmission and distribution system operators are granted appropriate incentive, over both the short and long term, to increase efficiencies, foster market integration and security of supply and support the related research activities.

9. The regulatory authorities shall monitor congestion management of national electricity systems including interconnectors, and the implementation of congestion management rules. To that end, transmission system operators or market operators shall submit their congestion management rules, including capacity allocation, to the national regulatory authorities. National regulatory authorities may request amendments to those rules.

10. Regulatory authorities shall have the authority to require transmission and distribution system operators, if necessary, to modify the terms and conditions, including tariffs or methodologies referred to in this Article, to ensure that they are proportionate and applied in a non-discriminatory manner. In the event of delay in the fixing of transmission and distribution tariffs, regulatory authorities shall have the power to fix or approve provisional transmission and distribution tariffs or methodologies and to decide on the appropriate compensatory measures if the final transmission and distribution tariffs or methodologies deviate from those provisional tariffs or methodologies.

11. Any party having a complaint against a transmission or distribution system operator in relation to that operator's obligations under this Directive may refer the complaint to the regulatory authority

which, acting as dispute settlement authority, shall issue a decision within a period of two months after receipt of the complaint. That period may be extended by two months where additional information is sought by the regulatory authority. That extended period may be further extended with the agreement of the complainant. The regulatory authority's decision shall have binding effect unless and until overruled on appeal.

12. Any party who is affected and who has a right to complain concerning a decision on methodologies taken pursuant to this Article or, where the regulatory authority has a duty to consult, concerning the proposed tariffs or methodologies, may, at the latest within two months, or a shorter time period as provided by **Contracting Parties**, following publication of the decision or proposal for a decision, submit a complaint for review. Such a complaint shall not have suspensive effect.

13. **Contracting Parties** shall create appropriate and efficient mechanisms for regulation, control and transparency so as to avoid any abuse of a dominant position, in particular to the detriment of consumers, and any predatory behaviour. Those mechanisms shall take account of the provisions of the Treaty, and in particular Article 82 thereof.⁷

14. **Contracting Parties** shall ensure that the appropriate measures are taken, including administrative action or criminal proceedings in conformity with their national law, against the natural or legal persons responsible where confidentiality rules imposed by this Directive have not been respected.

15. Complaints referred to in paragraphs 11 and 12 shall be without prejudice to the exercise of rights of appeal under national law.

16. Decisions taken by regulatory authorities shall be fully reasoned and justified to allow for judicial review. The decisions shall be available to the public while preserving the confidentiality of commercially sensitive information.

17. **Contracting Parties** shall ensure that suitable mechanisms exist at national level under which a party affected by a decision of a regulatory authority has a right of appeal to a body independent of the parties involved and of any government.

Article 38

Regulatory regime for cross-border issues

1. Regulatory authorities shall closely consult and cooperate with each other, and shall provide each other and the **Energy Community Regulatory Board** with any information necessary for the fulfilment of their tasks under this Directive. In respect of the information exchanged, the receiving authority shall ensure the same level of confidentiality as that required of the originating authority.

2. Regulatory authorities shall cooperate at least at a regional level to:

(a) foster the creation of operational arrangements in order to enable an optimal management of the network, promote joint electricity exchanges and the allocation of cross-border capacity, and to enable an adequate level of interconnection capacity, including through new interconnection, within the region and between regions to allow for development of effective competition and improvement of security of supply, without discriminating between supply undertakings in different **Contracting Parties**;

⁷ In the Energy Community Treaty, Article 82 of the EC Treaty is incorporated through Article 18 and Annex III.

(b) coordinate the development of all network codes for the relevant transmission system operators and other market actors; and

(c) coordinate the development of the rules governing the management of congestion.

3. National regulatory authorities shall have the right to enter into cooperative arrangements with each other to foster regulatory cooperation.

4. The actions referred to in paragraph 2 shall be carried out, as appropriate, in close consultation with other relevant national authorities and without prejudice to their specific competencies.

5. <...>

Article 39

Compliances with the Guidelines⁸

The Energy Community shall endeavour to apply the Guidelines adopted by the European Commission under Directive 2009/72/EC, [and] Regulation (EC) No 714/2009 <...>.

These Guidelines, which may need to be adapted to the institutional framework of the Energy Community, shall be adopted by the Permanent High Level Group, following the procedure laid down in Article 79 of the Treaty.

The Permanent High Level Group shall adopt a Procedural Act on application of this article.⁹

Article 40

Record keeping

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

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

3. The regulatory authority may decide to make available to market participants elements of that information provided that commercially sensitive information on individual market players or individual transactions is not released <...>.

4. <...>

5. With respect to transactions in electricity derivatives of supply undertakings with wholesale customers and transmission system operators, this Article shall apply only once **the Permanent High**

⁸ Not applicable, according to Article 21 of Decision 2011/02/MC-EnC. The following text corresponds to Article 27 of Decision 2011/02/MC-EnC.

⁹ Procedural Act 01/2012/PHLG-EnC of Permanent High Level Group of 21 June 2012 laying down the rules governing the adoption of Guidelines and Network Codes in the Energy Community was adopted on 21 June 2012, see page 803.

Level Group has endorsed the Guidelines referred to in paragraph 4.

6. <...>

7. <...>

CHAPTER X

RETAIL MARKETS

Article 41

Retail markets

In order to facilitate the emergence of well functioning and transparent retail markets in the **Energy Community, Contracting Parties** shall ensure that the roles and responsibilities of transmission system operators, distribution system operators, supply undertakings and customers and if necessary other market participants are defined with respect to contractual arrangements, commitment to customers, data exchange and settlement rules, data ownership and metering responsibility.

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

Large non-household customers shall have the right to contract simultaneously with several suppliers.

CHAPTER XI

FINAL PROVISIONS

Article 42

Safeguard measures

In the event of a sudden crisis in the energy market and where the physical safety or security of persons, apparatus or installations or system integrity is threatened, a **Contracting Party** may temporarily take the necessary safeguard measures.

Instead of the second and third subparagraphs, Articles 36 to 39 of the Energy Community Treaty apply.

Article 43**Level playing field**

1. Measures that the **Contracting Parties** may take pursuant to this Directive in order to ensure a level playing field shall be compatible with the Treaty, notably Article 30 thereof,¹⁰ and with **Energy Community law**.
2. The measures referred to in paragraph 1 shall be proportionate, non-discriminatory and transparent. Those measures may be put into effect only **following notification to the Secretariat, which shall issue an opinion**.
3. The **Energy Community Secretariat** shall act on the notification referred to in paragraph 2 within two months of the receipt of the notification. That period shall begin on the day following receipt of the complete information. In the event that the **Energy Community Secretariat** has not acted within that two-month period, it shall be deemed not to have raised objections to the notified measures.

Article 44**Derogations**

1. <...>
2. <...> For the purposes of Article 9(1)(b), the notion "undertaking performing any of the functions of generation or supply" shall not include final customers who perform any of the functions of generation and/or supply of electricity, either directly or via undertakings over which they exercise control, either individually or jointly, provided that the final customers including their shares of the electricity produced in controlled undertakings are, on an annual average, net consumers of electricity and provided that the economic value of the electricity they sell to third parties is insignificant in proportion to their other business operations.

Article 45**Review procedure**

<...>

Article 46**Committee**

<...>

¹⁰ Procedural Act 01/2012/PHLG-EnC of Permanent High Level Group of 21 June 2012 laying down the rules governing the adoption of Guidelines and Network Codes in the Energy Community was adopted on 21 June 2012, see page 803.

Article 47

Reporting¹¹

1. The Secretariat shall monitor and review application of this Decision in the Contracting Parties.

2. The Secretariat shall submit an overall progress report to the Ministerial Council for the first time by 30 June 2012, and thereafter on an annual basis. The progress report shall reflect the progress made on creating a complete and fully operational internal market in electricity and gas and the obstacles that remain in this respect, including aspects of market dominance, market concentration, predatory or anti-competitive behaviour and the effect thereof in terms of market distortion. It shall in particular consider:

- the implementation by each Contracting Party of the provisions on unbundling, certification and on independence of the national regulatory authorities and application of these provisions in practice,
- the existence of non-discriminatory network access,
- effective regulation,
- the development of interconnection infrastructure and the security of supply situation in the Energy Community,
- the extent to which the full benefits of the opening of markets are accruing to small enterprises and household customers, notably with respect to public service and universal service standards,
- the extent to which markets are in practice open to effective competition, including aspects of market dominance, market concentration and predatory or anti-competitive behaviour,
- the extent to which customers are actually switching suppliers and renegotiating tariffs,
- price developments, including supply prices, in relation to the degree of opening of the markets, and
- the experience gained from application of this Decision as far as effective independence of system operators in vertically integrated undertakings is concerned and whether other measures in addition to functional independence and separation of accounts have been developed which have effects equivalent to legal unbundling.

3. The Secretariat shall present a report to the Ministerial Council for the first time by 30 June 2012, and thereafter on an annual basis, summarising the opinions issued by the Secretariat in application of the acts referred to in Article 1, as adapted by this Decision.

Article 48

Repeal

<...>

¹¹ The text displayed here corresponds to Article 31 of Decision 2011/02/MC-EnC.

Article 49

Implementation of the energy acquis¹²

1. Each Contracting Party shall bring into force the laws, regulations and administrative provisions necessary to comply with Directive 2009/72/EC <...>, as adapted by this Decision, by 1 January 2015. They shall forthwith inform the Energy Community Secretariat thereof.

The Contracting Parties¹³ shall apply the measures referred to in the previous paragraph with effect from 1 January 2015 with the following exceptions:

– Article 11 of Directive 2009/72/EC, which they shall apply from 1 January 2017;

– <...>

2. The Contracting Parties shall communicate to the Energy Community Secretariat the text of the main provisions of national law which they adopt in the field covered by this Decision.

Articles 50 and 51

Entry into force and Addressees

This Decision [2011/02/MC-EnC] enters into force upon its adoption and is addressed to the Contracting Parties.¹⁴

¹² The text displayed here corresponds to Article 3 of Decision 2011/02/MC-EnC.

¹³ In accordance with the Accession Protocol, the corresponding date for Georgia is 31 December 2018.

¹⁴ The text displayed here corresponds to Article 32 of Decision 2011/02/MC-EnC.

ANNEX I

MEASURES ON CONSUMER PROTECTION

1. Without prejudice to Energy Community rules on consumer protection <...> the measures referred to in Article 3 are to ensure that customers:

(a) have a right to a contract with their electricity service provider that specifies:

- the identity and address of the supplier,
- the services provided, the service quality levels offered, as well as the time for the initial connection,
- the types of maintenance service offered,
- the means by which up-to-date information on all applicable tariffs and maintenance charges may be obtained,
- the duration of the contract, the conditions for renewal and termination of services and of the contract and whether withdrawal from the contract without charge is permitted,
- any compensation and the refund arrangements which apply if contracted service quality levels are not met, including inaccurate and delayed billing,
- the method of initiating procedures for settlement of disputes in accordance with point (f),
- 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 electricity undertaking's web site,

Conditions shall be fair and well-known in advance. In any case, this information should be provided prior to the conclusion or confirmation of the contract. Where contracts are concluded through intermediaries, the information relating to the matters set out in this point shall also be provided prior to the conclusion of the contract;

(b) are given adequate notice of any intention to modify contractual conditions and are informed about their right of withdrawal when the notice is given. Service providers shall notify their subscribers directly of any increase in charges, at an appropriate time no later than one normal billing period after the increase comes into effect in a transparent and comprehensible manner. The **Contracting Parties** shall ensure that customers are free to withdraw from contracts if they do not accept the new conditions notified to them by their electricity service provider;

(c) receive transparent information on applicable prices and tariffs and on standard terms and conditions, in respect of access to and use of electricity services;

(d) are offered a wide choice of payment methods, which do not unduly discriminate between customers. Prepayment systems shall be fair and adequately reflect likely consumption. Any difference in terms and conditions shall reflect the costs to the supplier of the different payment systems. General terms and conditions shall be fair and transparent. They shall be given in clear and comprehensible language and shall not include non-contractual barriers to the exercise of customers' rights, for example excessive contractual documentation. Customers shall be protected against unfair or misleading selling methods;

(e) are not charged for changing supplier;

(f) benefit from transparent, simple and inexpensive procedures for dealing with their complaints. In particular, all consumers shall have the right to a good standard of service and complaint handling by their electricity service provider. Such out-of-court dispute settlements procedures shall enable disputes to be settled fairly and promptly, preferably within three months, with provision, where warranted, for a system of reimbursement and/or compensation. They should, wherever possible, be in line with the principles set out in Commission Recommendation 98/257/EC of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes;

(g) when having access to universal service under the provisions adopted by Contracting Parties pursuant to Article 3(3), are informed about their rights regarding universal service;

(h) have at their disposal their consumption data, and shall be able to, by explicit agreement and free of charge, give any registered supply undertaking access to its metering data. The party responsible for data management shall be obliged to give those data to the undertaking. **Contracting Parties** shall define a format for the data and a procedure for suppliers and consumers to have access to the data. No additional costs shall be charged to the consumer for that service;

(i) are properly informed of actual electricity consumption and costs frequently enough to enable them to regulate their own electricity consumption. That information shall be given by using a sufficient time frame, which takes account of the capability of customer's metering equipment and the electricity product in question. Due account shall be taken of the cost-efficiency of such measures. No additional costs shall be charged to the consumer for that service;

(j) receive a final closure account following any change of electricity supplier no later than six weeks after the change of supplier has taken place.

2. **Contracting Parties** shall ensure the implementation of intelligent metering systems that shall assist the active participation of consumers in the electricity supply market. The implementation of those metering systems may be subject to an economic assessment of all the long-term costs and benefits to the market and the individual consumer or which form of intelligent metering is economically reasonable and cost-effective and which timeframe is feasible for their distribution.

Such assessment shall take place by **1 January 2014**.

Subject to that assessment, **Contracting Parties** or any competent authority they designate shall prepare a timetable with a target of up to 10 years for the implementation of intelligent metering systems.

Where roll-out of smart meters is assessed positively, at least 80% of consumers shall be equipped with intelligent metering systems by 2020.

The **Contracting Parties**, or any competent authority they designate, shall ensure the interoperability of those metering systems to be implemented within their territories and shall have due regard to the use of appropriate standards and best practice and the importance of the development of the internal market in electricity.

REGULATION (EC) 714/2009 of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) 1228/2003

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

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

Whereas:

(1) The internal market in electricity, 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 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity and Regulation (EC) No 1228/2003 of the European Parliament and of the Council of 26 June 2003 on conditions for access to the network for cross-border exchanges in electricity have made significant contributions towards the creation of such an internal market in electricity.

(3) However, at present, there are obstacles to the sale of electricity 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.

(4) The Communication of the Commission of 10 January 2007 entitled "An Energy Policy for Europe" highlighted the importance of completing the internal market in electricity and creating a level playing field for all electricity 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.

(5) In addition to thoroughly implementing the existing regulatory framework, the regulatory framework for the internal market in electricity set out in Regulation (EC) No 1228/2003 should be adapted in line with those communications.

(6) 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. Those 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 (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.

(7) In order to ensure optimal management of the electricity transmission network and to allow trading and supplying electricity across borders in the Community, a European Network of Transmission System Operators for Electricity (the ENTSO for Electricity), should be established. The tasks of the ENTSO for Electricity should be carried out in compliance with Community competition rules which remain applicable to the decisions of the ENTSO for Electricity. The tasks of the ENTSO for Electricity should be well-defined and its working method should ensure efficiency, transparency and the representative nature of the ENTSO for Electricity. The network codes prepared by the ENTSO for Electricity 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. Member States should promote cooperation and monitor the effectiveness of the network at regional level. Cooperation at regional level should be compatible with progress towards a competitive and efficient internal market in electricity.

(8) All market participants have an interest in the work expected of the ENTSO for Electricity. An effective consultation process is therefore essential and existing structures that are set up to facilitate and streamline the consultation process, such as the Union for the Coordination of Transmission of Electricity, national regulators or the Agency, should play an important role.

(9) In order to ensure greater transparency regarding the entire electricity transmission network in the Community, the ENTSO for Electricity should draw up, publish and regularly update a non-binding Community-wide ten-year network development plan (Community-wide network development plan). Viable electricity 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.

(10) This Regulation should lay down basic principles with regard to tarification and capacity allocation, whilst providing for the adoption of Guidelines detailing further relevant principles and methodologies, in order to allow rapid adaptation to changed circumstances.

(11) In an open, competitive market, transmission system operators should be compensated for costs incurred as a result of hosting cross-border flows of electricity on their networks by the operators of the transmission systems from which cross-border flows originate and the systems where those flows end.

(12) Payments and receipts resulting from compensation between transmission system operators should be taken into account when setting national network tariffs.

(13) The actual amount payable for cross-border access to the system can vary considerably, depending on the transmission system operator involved and as a result of differences in the structure of the tarification systems applied in Member States. A certain degree of harmonisation is therefore

necessary in order to avoid distortions of trade.

(14) A proper system of long-term locational signals is necessary, based on the principle that the level of the network access charges should reflect the balance between generation and consumption of the region concerned, on the basis of a differentiation of the network access charges on producers and/or consumers.

(15) It would not be appropriate to apply distance-related tariffs or, provided appropriate locational signals are in place, a specific tariff to be paid only by exporters or importers in addition to the general charge for access to the national network.

(16) The precondition for effective competition in the internal market in electricity is non-discriminatory and transparent charges for network use including interconnecting lines in the transmission system. The available capacity of those lines should be set at the maximum levels consistent with the safety standards of secure network operation.

(17) It is important to avoid distortion of competition resulting from the differing safety, operational and planning standards used by transmission system operators in Member States. Moreover, there should be transparency for market participants concerning available transfer capacities and the security, planning and operational standards that affect the available transfer capacities.

(18) 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 electricity.

(19) 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 identify the reasons for movements in the wholesale price. This includes more precise information on electricity generation, supply and demand including forecasts, network and interconnection capacity, flows and maintenance, balancing and reserve capacity.

(20) To enhance trust in the market, its participants need to be sure that those engaging in abusive behaviour can be subject 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 electricity market, many relevant decisions are made by the generators, which 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. Small generators with no real ability to distort the market should be exempt from that obligation.

(21) There should be rules on the use of revenues flowing from congestion-management procedures, unless the specific nature of the interconnector concerned justifies an exemption from those rules.

(22) The management of congestion problems should provide correct economic signals to transmission system operators and market participants and should be based on market mechanisms.

(23) Investments in major new infrastructure should be promoted strongly while ensuring the proper functioning of the internal market in electricity. In order to enhance the positive effect of exempted direct current interconnectors on competition and security of supply, market interest during the project-planning phase should be tested and congestion-management rules should be adopted.

Where direct current interconnectors are located in the territory of more than one Member State, the Agency should handle as a last resort the exemption request in order to take better account of its cross-border implications and to facilitate its administrative handling. Moreover, given the exceptional risk profile of constructing those exempt major infrastructure projects, undertakings with supply and production interests should be able to benefit from a temporary derogation from the full unbundling rules for the projects concerned. Exemptions granted under Regulation (EC) No 1228/2003 continue to apply until the scheduled expiry date as decided in the granted exemption decision.

(24) To ensure the smooth functioning of the internal market in electricity, provision should be made for procedures which allow the adoption of decisions and Guidelines with regard, *inter alia*, to tariffication and capacity allocation by the Commission whilst ensuring the involvement of Member States' regulatory authorities in that process, where appropriate through their European association. Regulatory authorities, together with other relevant authorities in the Member States, have an important role to play in contributing to the proper functioning of the internal market in electricity.

(25) National regulatory authorities should ensure compliance with the rules contained in this Regulation and the Guidelines adopted pursuant thereto.

(26) 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. Where necessary, the Commission should have an opportunity to request relevant information directly from undertakings concerned, provided that the competent national authorities are informed.

(27) Member States should lay down rules on penalties applicable to infringements of the provisions of this Regulation and ensure that they are implemented. Those penalties must be effective, proportionate and dissuasive.

(28) 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.

(29) 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, 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.

(30) Since the objective of this Regulation, namely the provision of a harmonised framework for cross-border exchanges of electricity, 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.

(31) Given the scope of the amendments that are being made herein to Regulation (EC) No 1228/2003, 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.

Article 1

Subject-matter and scope

This Regulation aims at:

- (a) setting fair rules for cross-border exchanges in electricity, thus enhancing competition within the internal market in electricity, taking into account the particular characteristics of national and regional markets. This will involve the establishment of a compensation mechanism for cross-border flows of electricity and the setting of harmonised principles on cross-border transmission charges and the allocation of available capacities of interconnections between national transmission systems;
- (b) facilitating the emergence of a well-functioning and transparent wholesale market with a high level of security of supply in electricity. It provides for mechanisms to harmonise the rules for cross-border exchanges in electricity.

Article 2

Definitions

1. For the purpose of this Regulation, the definitions contained in Article 2 of Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity apply, with the exception of the definition of “interconnector” which shall be replaced by the following:

- “interconnector” means a transmission line which crosses or spans a border between **Contracting Parties** and which connects the national transmission systems of the **Contracting Parties**.

2. The following definitions shall apply:

(a) “regulatory authorities” means the regulatory authorities referred to in Article 35(1) of Directive 2009/72/EC;

(b) “cross-border flow” means a physical flow of electricity on a transmission network of a **Contracting Party** that results from the impact of the activity of producers and/or consumers outside that **Contracting Party** on its transmission network;

(c) “congestion” means a situation in which an interconnection linking national transmission networks cannot accommodate all physical flows resulting from international trade requested by market participants, because of a lack of capacity of the interconnectors and/or the national transmission systems concerned;

(d) “declared export” means the dispatch of electricity in one **Contracting Party** on the basis of an underlying contractual arrangement to the effect that the simultaneous corresponding take-up (declared import) of electricity will take place in another **Contracting Party** or a third country;

(e) “declared transit” means a circumstance where a declared export of electricity occurs and where the nominated path for the transaction involves a country in which neither the dispatch nor the simultaneous corresponding take-up of the electricity will take place;

(f) “declared import” means the take-up of electricity in a **Contracting Party** or a third country simultaneously with the dispatch of electricity (declared export) in another **Contracting Party**;

(g) “new interconnector” means an interconnector not completed by **1 July 2007**.

For the purpose of the inter-transmission system operator compensation mechanism referred to in Article 13 only, where transmission networks of two or more **Contracting Parties** form part, in whole or in part, of a single control block, the control block as a whole shall be considered as forming part of the transmission network of one of the **Contracting Parties** concerned, in order to avoid flows within control blocks being considered as cross-border flows under point (b) of the first subparagraph of this paragraph and giving rise to compensation payments under Article 13. The regulatory authorities of the **Contracting Parties** concerned may decide which of the **Contracting Parties** concerned shall be that of which the control block as a whole is to be considered to form part.

Article 3

Certification of transmission system operators

1. The **Energy Community Secretariat** shall examine any notification of a decision on the certification of a transmission system operator as laid down in Article 10(6) of Directive 2009/72/EC as soon as it is received. Within **four months** of the day of receipt of such notification, the **Energy Community Secretariat** shall deliver its opinion to the relevant national regulatory authority as to its compatibility with Article 10(2) or Article 11, and Article 9 of Directive 2009/72/EC.

When preparing the opinion referred to in the first subparagraph, the Secretariat shall request the Energy Community Regulatory Board to provide its opinion on the national regulatory authority's decision.

In the absence of an opinion by the **Energy Community Secretariat** within the periods referred to in the first subparagraph, the **Energy Community Secretariat** shall be deemed not to raise objections to the regulatory authority's decision.

2. Within two months of receiving an opinion of the **Energy Community Secretariat**, the national regulatory authority shall adopt its final decision regarding the certification of the transmission system operator, taking the utmost account of that opinion. The regulatory authority's decision and the **Energy Community Secretariat's** opinion shall be published together.

3. At any time during the procedure, regulatory authorities and/or the **Energy Community Secretariat** may request from a transmission system operator and/or an undertaking performing any of the functions of generation or supply any information relevant to the fulfilment of their tasks under this Article.

4. Regulatory authorities and the **Energy Community Secretariat** shall preserve the confidentiality of commercially sensitive information.

5. <...>

6. Where the **Energy Community Secretariat** has received notification of the certification of a transmission system operator under Article 9(10) of Directive 2009/72/EC, the **Secretariat shall issue an opinion relating to certification. The regulatory authority shall take the utmost account of that opinion. Where the final decision diverges from the Secretariat's opinion, the regulatory authority concerned shall provide and publish, together with that decision, the reasoning underlying its decision. Diverging decisions shall be included in the agenda of the first meeting of the Ministerial Council following the date of the decision, for information and discussion.**

Article 4

European network of transmission system operators for electricity

<...>

Article 5

Establishment of the ENTSO for Electricity

<...>

Article 6

Establishment of network codes¹

1. The Energy Community shall endeavour to apply the network codes developed at European Union level <...>.

2. The relevant network codes shall be adopted by the Permanent High Level Group, following the procedure laid down in Article 79 of the Treaty. Before taking a decision, the Permanent High Level Group shall seek the opinion of the Energy Community Regulatory Board.

3. The Permanent High Level Group shall adopt a procedural act on application of this Article.²

Article 7

Amendments of network codes

<...>

Article 8

Tasks of the ENTSO for Electricity

<...>

Article 9

Monitoring by the Agency

<...>

¹ The following text corresponds to Article 28 of Decision 2011/02/MC-EnC.

² Procedural Act 01/2012/PHLG-EnC of Permanent High Level Group of 21 June 2012 laying down the rules governing the adoption of Guidelines and Network Codes in the Energy Community was adopted on 21 June 2012, see page 803.

Article 10**Consultations**

<...>

Article 11**Costs**

<...>

Article 12³**Regional cooperation of transmission system operators**

Transmission system operators shall promote operational arrangements in order to ensure the optimum management of the Energy Community network and shall promote the development of energy exchanges, the coordinated allocation of cross-border capacity through non-discriminatory market-based solutions, paying due attention to the specific merits of implicit auctions for short-term allocations, and the integration of balancing and reserve power mechanisms.

Article 13**Inter-transmission system operator compensation mechanism**

1. Transmission system operators shall receive compensation for costs incurred as a result of hosting cross-border flows of electricity on their networks.
2. The compensation referred to in paragraph 1 shall be paid by the operators of national transmission systems from which cross-border flows originate and the systems where those flows end.
3. Compensation payments shall be made on a regular basis with regard to a given period of time in the past. *Ex-post* adjustments of compensation paid shall be made where necessary, to reflect costs actually incurred.

<...>

4. <...>⁴

5. The magnitude of cross-border flows hosted and the magnitude of cross-border flows designated as originating and/or ending in national transmission systems shall be determined on the basis of the physical flows of electricity actually measured during a given period of time.
6. The costs incurred as a result of hosting cross-border flows shall be established on the basis of the forward-looking long-run average incremental costs, taking into account losses, investment in

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

⁴ Not applicable in accordance with Article 12(1) of Decision 2011/02/MC-EnC. According to Article 12(2) of that Decision, "[t]he Energy Community shall endeavour to adopt as soon as possible Commission Regulation (EU) No 774/2010 of 2 September 2010 on laying down guidelines relating to inter-transmission system operator compensation and a common regulatory approach to transmission charging."

new infrastructure, and an appropriate proportion of the cost of existing infrastructure, in so far as such infrastructure is used for the transmission of cross-border flows, in particular taking into account the need to guarantee security of supply. When establishing the costs incurred, recognized standard-costing methodologies shall be used. Benefits that a network incurs as a result of hosting cross-border flows shall be taken into account to reduce the compensation received.

Article 14

Charges for access to networks

1. Charges applied by network operators for access to networks shall be transparent, take into account the need for network security and reflect actual costs incurred insofar as they correspond to those of an efficient and structurally comparable network operator and are applied in a non-discriminatory manner. Those charges shall not be distance-related.
2. Where appropriate, the level of the tariffs applied to producers and/or consumers shall provide locational signals at **Energy Community** level, and take into account the amount of network losses and congestion caused, and investment costs for infrastructure.
3. When setting the charges for network access, the following shall be taken into account:
 - (a) payments and receipts resulting from the inter-transmission system operator compensation mechanism;
 - (b) actual payments made and received as well as payments expected for future periods of time, estimated on the basis of past periods.
4. Setting the charges for network access under this Article shall be without prejudice to charges on declared exports and declared imports resulting from congestion management referred to in Article 16.
5. There shall be no specific network charge on individual transactions for declared transits of electricity.

Article 15

Provision of information

1. Transmission system operators shall put in place coordination and information exchange mechanisms to ensure the security of the networks in the context of congestion management.
2. The safety, operational and planning standards used by transmission system operators shall be made public. The information published shall include a general scheme for the calculation of the total transfer capacity and the transmission reliability margin based upon the electrical and physical features of the network. Such schemes shall be subject to the approval of the regulatory authorities.
3. Transmission system operators shall publish estimates of available transfer capacity for each day, indicating any available transfer capacity already reserved. Those publications shall be made at specified intervals before the day of transport and shall include, in any event, week-ahead and month-ahead estimates, as well as a quantitative indication of the expected reliability of the available capacity.

4. Transmission system operators shall publish relevant data on aggregated forecast and actual demand, on availability and actual use of generation and load assets, on availability and use of the networks and interconnections, and on balancing power and reserve capacity. For availability and actual use of small generation and load units, aggregated estimate data may be used.

5. The market participants concerned shall provide the transmission system operators with the relevant data.

6. Generation undertakings which own or operate generation assets, where at least one generation asset has an installed capacity of at least 250 MW, shall keep at the disposal of the national regulatory authority, the national competition authority and the **Energy Community Secretariat**, for five years all hourly data per plant that is necessary to verify all operational dispatching decisions and the bidding behaviour at power exchanges, interconnection auctions, reserve markets and over-the-counter-markets. The per-plant and per hour information to be stored shall include, but shall not be limited to, data on available generation capacity and committed reserves, including allocation of those committed reserves on a per-plant level, at the times the bidding is carried out and when production takes place.

Article 16

General principles of congestion management

1. Network congestion problems shall be addressed with non-discriminatory market-based solutions which give efficient economic signals to the market participants and transmission system operators involved. Network congestion problems shall preferentially be solved with non-transaction based methods, i.e. methods that do not involve a selection between the contracts of individual market participants.

2. Transaction curtailment procedures shall only be used in emergency situations where the transmission system operator must act in an expeditious manner and re-dispatching or countertrading is not possible. Any such procedure shall be applied in a non-discriminatory manner.

Except in cases of force majeure, market participants who have been allocated capacity shall be compensated for any curtailment.

3. The maximum capacity of the interconnections and/or the transmission networks affecting cross-border flows shall be made available to market participants, complying with safety standards of secure network operation.

4. Market participants shall inform the transmission system operators concerned a reasonable time in advance of the relevant operational period whether they intend to use allocated capacity. Any allocated capacity that will not be used shall be reattributed to the market, in an open, transparent and non-discriminatory manner.

5. Transmission system operators shall, as far as technically possible, net the capacity requirements of any power flows in opposite direction over the congested interconnection line in order to use that line to its maximum capacity. Having full regard to network security, transactions that relieve the congestion shall never be denied.

6. Any revenues resulting from the allocation of interconnection shall be used for the following purposes:

- (a) guaranteeing the actual availability of the allocated capacity; and/or
- (b) maintaining or increasing interconnection capacities through network investments, in particular in new interconnectors.

If the revenues cannot be efficiently used for the purposes set out in points (a) and/or (b) of the first subparagraph, they may be used, subject to approval by the regulatory authorities of the **Contracting Parties** concerned, up to a maximum amount to be decided by those regulatory authorities, as income to be taken into account by the regulatory authorities when approving the methodology for calculating network tariffs and/or fixing network tariffs.

The rest of revenues shall be placed on a separate internal account line until such time as it can be spent on the purposes set out in points (a) and/or (b) of the first subparagraph. The regulatory authority shall inform the **Energy Community Secretariat** of the approval referred to in the second subparagraph.

Article 17

New interconnectors

1. New direct current interconnectors may, upon request, be exempted, for a limited period of time, from the provisions of Article 16(6) of this Regulation and Articles 9, 32 and Article 37(6) and (10) of Directive 2009/72/EC under the following conditions:

- (a) the investment must enhance competition in electricity supply;
- (b) the level of risk attached to the investment is such that the investment would not take place unless an exemption is granted;
- (c) the interconnector must be owned by a natural or legal person which is separate at least in terms of its legal form from the system operators in whose systems that interconnector will be built;
- (d) charges are levied on users of that interconnector;
- (e) since **1 July 2007**, no part of the capital or operating costs of the interconnector has been recovered from any component of charges made for the use of transmission or distribution systems linked by the interconnector; and
- (f) the exemption must not be to the detriment of competition or the effective functioning of the internal market in electricity, or the efficient functioning of the regulated system to which the interconnector is linked.

2. Paragraph 1 shall also apply, in exceptional cases, to alternating current interconnectors provided that the costs and risks of the investment in question are particularly high when compared with the costs and risks normally incurred when connecting two neighbouring national transmission systems by an alternating current interconnector.

3. Paragraph 1 shall also apply to significant increases of capacity in existing interconnectors.

4. The decision on the exemption under paragraphs 1, 2 and 3 shall be taken on a case-by-case basis by the regulatory authorities of the **Contracting Parties** concerned. An exemption may cover all or part of the capacity of the new interconnector, or of the existing interconnector with significantly increased capacity.

Within two months from the date on which the request for exemption was received by the last of

the regulatory authorities concerned, the **Energy Community Regulatory Board** may submit an advisory opinion to those regulatory authorities which could provide a basis for their decision.

In deciding to grant an exemption, consideration shall be given, on a case-by-case basis, to the need to impose conditions regarding the duration of the exemption and non-discriminatory access to the interconnector. When deciding those conditions, account shall, in particular, be taken of additional capacity to be built or the modification of existing capacity, the time-frame of the project and national circumstances.

Before granting an exemption, the regulatory authorities of the **Contracting Parties** concerned shall decide upon the rules and mechanisms for management and allocation of capacity.

Congestion-management rules shall include the obligation to offer unused capacity on the market and users of the facility shall be entitled to trade their contracted capacities on the secondary market. In the assessment of the criteria referred to in points (a), (b) and (f) of paragraph 1, the results of the capacity-allocation procedure shall be taken into account.

Where all the regulatory authorities concerned have reached agreement on the exemption decision within six months, they shall inform the **Energy Community Regulatory Board** of that decision.

The exemption decision, including any conditions referred to in the second subparagraph of this paragraph, shall be duly reasoned and published.

5. The decision referred to in paragraph 4 shall be taken by the **Energy Community Regulatory Board**:

(a) where all the regulatory authorities concerned have not been able to reach an agreement within six months from the date the exemption was requested before the last of those regulatory authorities; or

(b) upon a joint request from the regulatory authorities concerned.

Before taking such a decision, the **Energy Community Regulatory Board** shall consult the regulatory authorities concerned and the applicants.

6. Notwithstanding paragraphs 4 and 5, **Contracting Parties** may provide for the regulatory authority or the **Energy Community Regulatory Board**, as the case may be, to submit, for formal decision, to the relevant body in the **Contracting Party**, its opinion on the request for an exemption. That opinion shall be published together with the decision.

7. A copy of every request for exemption shall be transmitted for information without delay by the regulatory authorities to the **Energy Community Regulatory Board** and to the **Energy Community Secretariat** on receipt. The decision shall be notified, without delay, by the regulatory authorities concerned or by the **Energy Community Regulatory Board** (notifying bodies), to the **Energy Community Secretariat**, together with all the relevant information with respect to the decision. That information may be submitted to the **Energy Community Secretariat** in aggregate form, enabling the **Energy Community Secretariat** to reach a well-founded decision. In particular, the information shall contain:

(a) the detailed reasons on the basis of which the exemption was granted or refused, including the financial information justifying the need for the exemption;

(b) the analysis undertaken of the effect on competition and the effective functioning of the internal market in electricity resulting from the grant of the exemption;

(c) the reasons for the time period and the share of the total capacity of the interconnector in ques-

tion for which the exemption is granted; and

(d) the result of the consultation of the regulatory authorities concerned.

8. Within a period of two months from the day following receipt of notification under paragraph 7, the **Secretariat may issue an opinion inviting** the notifying bodies to amend or withdraw the decision to grant an exemption. That two-month period may be extended by an additional period of two months where further information is sought by the **Energy Community Secretariat**. That additional period shall begin on the day following receipt of the complete information. The initial two-month period may also be extended by consent of both the **Energy Community Secretariat** and the notifying bodies.

When the requested information is not provided within the period set out in the request, the notification shall be deemed to be withdrawn unless, before the expiry of that period, either the period is extended by consent of both the Secretariat and the notifying bodies, or the notifying bodies, in a duly reasoned statement, inform the Secretariat that they consider the notification to be complete.

The notifying bodies shall take the utmost account of a Secretariat opinion that recommends to amend or withdraw the exemption decision. Where the final decision diverges from the Secretariat's opinion, the regulatory authority concerned shall provide and publish, together with that decision, the reasoning underlying its decision. Diverting decisions shall be included in the agenda of the first meeting of the Ministerial Council following the date of the decision, for information and discussion.

The **Secretariat** shall preserve the confidentiality of commercially sensitive information.

The **Secretariat's opinion** on an exemption decision shall expire two years after the date of its adoption in the event that construction of the interconnector has not yet started by that date, and five years after the date of its adoption if the interconnector has not become operational by that date, unless the **Secretariat** considers that any delay is due to major obstacles beyond the control of the person to whom the exemption has been granted.

9. <...>

Article 18

Guidelines⁵

The Energy Community shall endeavour to apply the Guidelines adopted by the European Commission under <...> Regulation (EC) No 714/2009 <...>.

These Guidelines, which may need to be adapted to the institutional framework of the Energy Community, shall be adopted by the Permanent High Level Group, following the procedure laid down in Article 79 of the Treaty.

The Permanent High Level Group shall adopt a Procedural Act on the application of this article.⁶

⁵ The text displayed here corresponds to Article 27 of Decision 2011/02/MC-EnC.

⁶ Procedural Act 01/2012/PHLG-EnC of Permanent High Level Group of 21 June 2012 laying down the rules governing the adoption of Guidelines and Network Codes in the Energy Community was adopted on 21 June 2012, see page 803.

Article 19

Regulatory authorities

The regulatory authorities, when carrying out their responsibilities, shall ensure compliance with this Regulation and the Guidelines adopted pursuant to Article 18.⁷

Where appropriate to fulfil the aims of this Regulation the regulatory authorities shall cooperate with each other, with the **Energy Community Secretariat** and the **Energy Community Regulatory Board** in compliance with Chapter IX of Directive 2009/72/EC.

Article 20

Provision of information and confidentiality

1. **Contracting Parties** and the regulatory authorities shall, on request, provide to the **Energy Community Secretariat** all information necessary for the purposes of <...> Article 18.⁸

In particular, for the purposes of Article 13 <...> (6), regulatory authorities shall, on a regular basis, provide information on the actual costs incurred by national transmission system operators, as well as data and all relevant information relating to the physical flows in transmission system operators' networks and the cost of the networks.

The **Energy Community Secretariat** shall fix 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.

2. If the **Contracting Party** or the regulatory authority concerned does not provide the information referred to in paragraph 1 within the given time-limit pursuant to paragraph 1 of this Article, the **Energy Community Secretariat** may request all information necessary for the purpose of <...> Article 18 directly from the undertakings concerned.

When sending a request for information to an undertaking, the **Energy Community Secretariat** shall at the same time forward a copy of the request to the regulatory authorities of the **Contracting Party** in whose territory the seat of the undertaking is situated.

3. In its request for information under paragraph 1, the **Energy Community Secretariat** shall state the legal basis of the request, the time-limit within which the information is to be provided, the purpose of the request <...>.⁹ The **Energy Community Secretariat** shall fix a reasonable time-limit taking into account the complexity of the information required and the urgency with which the information is needed.

4. The owners of the undertakings or their representatives and, in the case of legal persons, the persons authorised to represent them by law or by their instrument of incorporation, shall supply the information requested. Where lawyers duly authorised so to act supply the information on behalf of their clients, the client shall remain fully responsible in the event that the information supplied is incomplete, incorrect or misleading.

⁷ As adopted by the Permanent High Level Group under Procedural Act 01/2012/PHLG-EnC.

⁸ As adopted by the Permanent High Level Group under Procedural Act 01/2012/PHLG-EnC.

⁹ According to Article 19(2) of Decision 2011/02/MC-EnC, Article 22(2) of Regulation (EC) 714/2009 shall not be applicable.

5. <...>

6. The information referred to in paragraphs 1 and 2 shall be used only for the purposes of <...> Article 18.

The **Energy Community Secretariat** shall not disclose information acquired pursuant to this Regulation of the kind covered by the obligation of professional secrecy.

Article 21

Right of Contracting Parties to provide for more detailed measures

This Regulation shall be without prejudice to the rights of **Contracting Parties** to maintain or introduce measures that contain more detailed provisions than those set out herein or in the Guidelines referred to in Article 18.¹⁰

Article 22

Penalties¹¹

1. Contracting Parties shall lay down rules on penalties applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that those provisions are implemented. The penalties provided for must be effective, proportionate and dissuasive. Contracting Parties shall notify these provisions to the Secretariat by 1 January 2015 and shall notify the Secretariat without delay of any subsequent amendment affecting them.

2. <...>

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

Article 23

Committee procedure

<...>

Article 24

Secretariat report¹²

1. The Secretariat shall monitor and review the application of this Decision in the Contracting Parties.

2. The Secretariat shall submit an overall progress report to the Ministerial Council for the first time by 30 June 2012, and thereafter on an annual basis. The progress report shall

¹⁰ As adopted by the Permanent High Level Group under Procedural Act 01/2012/PHLG-EnC.

¹¹ As adapted by Article 19 of Decision 2011/02/MC-EnC.

¹² The text displayed here corresponds to Article 31 of Decision 2011/02/MC-EnC.

reflect the progress made on creating a complete and fully operational internal market in electricity and gas and the obstacles that remain in this respect, including aspects of market dominance, market concentration, predatory or anti-competitive behaviour and the effect thereof in terms of market distortion. It shall in particular consider:

- the implementation by each Contracting Party of the provisions on unbundling, certification and on independence of the national regulatory authorities and application of these provisions in practice,
- the existence of non-discriminatory network access,
- effective regulation,
- the development of interconnection infrastructure and the security of supply situation in the Energy Community,
- the extent to which the full benefits of the opening of markets are accruing to small enterprises and household customers, notably with respect to public service and universal service standards,
- the extent to which markets are in practice open to effective competition, including aspects of market dominance, market concentration and predatory or anti-competitive behaviour,
- the extent to which customers are actually switching suppliers and renegotiating tariffs,
- price developments, including supply prices, in relation to the degree of opening of the markets, and
- the experience gained from application of this Decision as far as effective independence of system operators in vertically integrated undertakings is concerned and whether other measures in addition to functional independence and separation of accounts have been developed which have effects equivalent to legal unbundling.

3. The Secretariat shall present a report to the Ministerial Council for the first time by 30 June 2012, and thereafter on an annual basis, summarising the opinions issued by the Secretariat in application of the acts referred to in Article 1, as adapted by this Decision.

Article 25

Repeal

<...>

Article 26

Entry into force¹³

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

Article 3 of Decision 2011/02/MC-EnC

Each Contracting Party shall bring into force the laws, regulations and administrative provisions necessary to comply with <...> Regulation (EC) 714/2009 <...>, as adapted by this Decision, by 1 January 2015.¹⁴ They shall forthwith inform the Energy Community Secretariat thereof.

<...>

The Contracting Parties shall communicate to the Energy Community Secretariat the text of the main provisions of national law which they adopt in the field covered by this Decision.

¹³ The text displayed here corresponds to Article 32 of Decision 2011/02/MC-EnC.

¹⁴ In accordance with the Accession Protocol, the corresponding date for Georgia is 31 December 2018.

ANNEX I

GUIDELINES ON THE MANAGEMENT AND ALLOCATION OF AVAILABLE TRANSFER CAPACITY OF INTERCONNECTIONS BETWEEN NATIONAL SYSTEMS

1. General Provisions

1.1. Transmission system operators (TSOs) shall endeavour to accept all commercial transactions, including those involving cross-border-trade.

1.2. When there is no congestion, there shall be no restriction of access to the interconnection. Where this is usually the case, there need be no permanent general allocation procedure for access to a cross-border transmission service.

1.3. Where scheduled commercial transactions are not compatible with secure network operation, the TSOs shall alleviate congestion in compliance with the requirements of network operational security while endeavouring to ensure that any associated costs remain at an economically efficient level. Curative re-dispatching or countertrading shall be envisaged in case lower cost measures cannot be applied.

1.4. If structural congestion appears, appropriate congestion-management methods and arrangements defined and agreed upon in advance shall be implemented immediately by the TSOs. The congestion-management methods shall ensure that the physical power flows associated with all allocated transmission capacity comply with network security standards.

1.5. The methods adopted for congestion management shall give efficient economic signals to market participants and TSOs, promote competition and be suitable for regional and Community-wide application.

1.6. No transaction-based distinction shall be applied in congestion management. A particular request for transmission service shall be denied only when the following cumulative conditions are fulfilled:

- (a) the incremental physical power flows resulting from the acceptance of that request imply that secure operation of the power system may no longer be guaranteed, and
- (b) the monetary value of the request in the congestion-management procedure is lower than all other requests intended to be accepted for the same service and conditions.

1.7. When defining appropriate network areas in and between which congestion management is to apply, TSOs shall be guided by the principles of cost-effectiveness and minimisation of negative impacts on the internal market in electricity. Specifically, TSOs shall not limit interconnection capacity in order to solve congestion inside their own control area, save for the abovementioned reasons and reasons of operational security¹⁵. If such a situation occurs, this shall be described and transparently presented by the TSOs to all the system users. Such a situation shall be tolerated only until a long-term solution is found. The methodology and projects for achieving the long-term solution shall be described and transparently presented by the TSOs to all the system users.

1.8. When balancing the network inside the control area through operational measures in the network and through re-dispatching, the TSO shall take into account the effect of those measures on neighbouring control areas.

¹⁵ Operational security means "keeping the transmission system within agreed security limits".

1.9. By **31 December 2009**¹⁶, mechanisms for the intra-day congestion management of interconnector capacity shall be established in a coordinated way and under secure operational conditions, in order to maximise opportunities for trade and to provide for cross-border balancing.

1.10. The national regulatory authorities shall regularly evaluate the congestion-management methods, paying particular attention to compliance with the principles and rules established in this Regulation and those Guidelines and with the terms and conditions set by the regulatory authorities themselves under those principles and rules. Such evaluation shall include consultation of all market participants and dedicated studies.

2. Congestion-management methods

2.1. Congestion-management methods shall be market-based in order to facilitate efficient cross-border trade. For that purpose, capacity shall be allocated only by means of explicit (capacity) or implicit (capacity and energy) auctions. Both methods may coexist on the same interconnection. For intra-day trade continuous trading may be used.

2.2. Depending on competition conditions, the congestion-management mechanisms may need to allow for both long and short-term transmission capacity allocation.

2.3. Each capacity-allocation procedure shall allocate a prescribed fraction of the available interconnection capacity plus any remaining capacity not previously allocated and any capacity released by capacity holders from previous allocations.

2.4. TSOs shall optimise the degree to which capacity is firm, taking into account the obligations and rights of the TSOs involved and the obligations and rights of market participants, in order to facilitate effective and efficient competition. A reasonable fraction of capacity may be offered to the market at a reduced degree of firmness, but the exact conditions for transport over cross-border lines shall, at all times, be made known to market participants.

2.5. The access rights for long and medium-term allocations shall be firm transmission capacity rights. They shall be subject to the use-it-or-lose-it or use-it-or-sell-it principles at the time of nomination.

2.6. TSOs shall define an appropriate structure for the allocation of capacity between different timeframes. This may include an option for reserving a minimum percentage of interconnection capacity for daily or intra-daily allocation. Such an allocation structure shall be subject to review by the respective regulatory authorities. In drawing up their proposals, the TSOs shall take into account:

- (a) the characteristics of the markets;
- (b) the operational conditions, such as the implications of netting firmly declared schedules;
- (c) the level of harmonisation of the percentages and timeframes adopted for the different capacity-allocation mechanisms in place.

2.7. Capacity allocation shall not discriminate between market participants that wish to use their rights to make use of bilateral supply contracts or to bid into power exchanges. The highest value bids, whether implicit or explicit in a given timeframe, shall be successful.

2.8. In regions where forward financial electricity markets are well developed and have shown their efficiency, all interconnection capacity may be allocated through implicit auctioning.

2.9. Other than in the case of new interconnectors which benefit from an exemption under Article

¹⁶ Adapted by Article 2(2) of Decision 2008/02/MC-EnC.

7 of Regulation (EC) No 1228/2003 or Article 17 of this Regulation, establishing reserve prices in capacity-allocation methods shall not be allowed.

2.10. In principle, all potential market participants shall be permitted to participate in the allocation process without restriction. To avoid creating or aggravating problems related to the potential use of dominant position of any market player, the relevant regulatory and/or competition authorities, where appropriate, may impose restrictions in general or on an individual company on account of market dominance.

2.11. Market participants shall firmly nominate their use of the capacity to the TSOs by a defined deadline for each timeframe. That deadline shall be such that TSOs are able to reassign unused capacity for reallocation in the next relevant timeframe - including intra-day sessions.

2.12. Capacity shall be freely tradable on a secondary basis, provided that the TSO is informed sufficiently in advance. Where a TSO refuses any secondary trade (transaction), this must be clearly and transparently communicated and explained to all the market participants by that TSO and notified to the regulatory authority.

2.13. The financial consequences of failure to honour obligations associated with the allocation of capacity shall be attributed to those who are responsible for such a failure. Where market participants fail to use the capacity that they have committed to use, or, in the case of explicitly auctioned capacity, fail to trade on a secondary basis or give the capacity back in due time, they shall lose the rights to such capacity and pay a cost-reflective charge. Any cost-reflective charges for the non-use of capacity shall be justified and proportionate. Likewise, if a TSO does not fulfil its obligation, it shall be liable to compensate the market participant for the loss of capacity rights. No consequential losses shall be taken into account for that purpose. The key concepts and methods for the determination of liabilities that accrue upon failure to honour obligations shall be set out in advance in respect of the financial consequences, and shall be subject to review by the relevant national regulatory authority or authorities.

3. Coordination

3.1. Capacity allocation at an interconnection shall be coordinated and implemented using common allocation procedures by the TSOs involved. In cases where commercial exchanges between two countries (TSOs) are expected to affect physical flow conditions in any third-country (TSO) significantly, congestion-management methods shall be coordinated between all the TSOs so affected through a common congestion-management procedure. National regulatory authorities and TSOs shall ensure that no congestion-management procedure with significant effects on physical electric power flows in other networks is devised unilaterally.

3.2. A common coordinated congestion-management method and procedure for the allocation of capacity to the market at least annually, monthly and day-ahead shall be applied by 1 January 2007 between countries in the following regions:

- (a) Northern Europe (i.e. Denmark, Sweden, Finland, Germany and Poland),
- (b) North-West Europe (i.e. Benelux, Germany and France),
- (c) Italy (i.e. Italy, France, Germany, Austria, Slovenia and Greece),
- (d) Central Eastern Europe (i.e. Germany, Poland, Czech Republic, Slovakia, Hungary, Austria and Slovenia),

- (e) South-West Europe (i.e. Spain, Portugal and France),
- (f) UK, Ireland and France,
- (g) Baltic states (i.e. Estonia, Latvia and Lithuania).

At an interconnection involving countries belonging to more than one region, the congestion-management method applied may differ in order to ensure the compatibility with the methods applied in the other regions to which those countries belong. In that case, the relevant TSOs shall propose the method which shall be subject to review by the relevant regulatory authorities.

3.3. The regions referred to in point 2.8. may allocate all interconnection capacity through day-ahead allocation.

3.4. Compatible congestion-management procedures shall be defined in all those seven regions with a view to forming a truly integrated internal market in electricity. Market participants shall not be confronted with incompatible regional systems.

3.5. With a view to promoting fair and efficient competition and cross-border trade, coordination between TSOs within the regions set out in point 3.2. shall include all the steps from capacity calculation and optimisation of allocation to secure operation of the network, with clear assignments of responsibility. Such coordination shall include, in particular:

- (a) the use of a common transmission model dealing efficiently with interdependent physical loop-flows and having regard to discrepancies between physical and commercial flows,
- (b) allocation and nomination of capacity to deal efficiently with interdependent physical loop-flows,
- (c) identical obligations on capacity holders to provide information on their intended use of the capacity, i.e. nomination of capacity (for explicit auctions),
- (d) identical timeframes and closing times,
- (e) identical structure for the allocation of capacity among different timeframes (for example, 1 day, 3 hours, 1 week, etc.) and in terms of blocks of capacity sold (amount of power in MW, MWh, etc.),
- (f) consistent contractual framework with market participants,
- (g) verification of flows to comply with the network security requirements for operational planning and for real-time operation,
- (h) accounting and settlement of congestion-management actions.

3.6. Coordination shall also include the exchange of information between TSOs. The nature, time and frequency of information exchange shall be compatible with the activities set out in point 3.5 and the functioning of the electricity markets. That information exchange shall, in particular, enable the TSOs to make the best possible forecast of the global network situation in order to assess the flows in their network and the available interconnection capacities. Any TSO collecting information on behalf of other TSOs shall give back to the participating TSO the results of the collection of data.

4. Timetable for market operations

4.1. The allocation of the available transmission capacity shall take place sufficiently in advance. Prior to each allocation, the involved TSOs shall, jointly, publish the capacity to be allocated, taking into account where appropriate the capacity released from any firm transmission rights and, where relevant, associated netted nominations, along with any time periods during which the capacity will be reduced or not available (for the purpose of maintenance, for example).

4.2. Having full regard to network security, the nomination of transmission rights shall take place sufficiently in advance, before the day-ahead sessions of all the relevant organised markets and before the publication of the capacity to be allocated under the day-ahead or intra-day allocation mechanism. Nominations of transmission rights in the opposite direction shall be netted in order to make efficient use of the interconnection.

4.3. Successive intra-day allocations of available transmission capacity for day D shall take place on days D-1 and D, after the issuing of the indicated or actual day-ahead production schedules.

4.4. When preparing day-ahead network operation, the TSOs shall exchange information with neighbouring TSOs, including their forecast network topology, the availability and forecasted production of generation units, and load flows in order to optimise the use of the overall network through operational measures in compliance with the rules for secure network operation.

5. Transparency

5.1. TSOs shall publish all relevant data related to network availability, network access and network use, including a report on where and why congestion exists, the methods applied for managing the congestion and the plans for its future management.

5.2. TSOs shall publish a general description of the congestion-management method applied under different circumstances for maximising the capacity available to the market, and a general scheme for the calculation of the interconnection capacity for the different timeframes, based upon the electrical and physical realities of the network. Such a scheme shall be subject to review by the regulatory authorities of the **Contracting Parties** concerned.

5.3. The congestion management and capacity-allocation procedures in use, together with the times and procedures for applying for capacity, a description of the products offered and the obligations and rights of both the TSOs and the party obtaining the capacity, including the liabilities that accrue upon failure to honour obligations, shall be described in detail and made available in a transparent manner to all potential network users by TSOs.

5.4. The operational and planning security standards shall form an integral part of the information that TSOs publish in an open and public document. That document shall also be subject to review of the national regulatory authorities.

5.5. TSOs shall publish all relevant data concerning cross-border trade on the basis of the best possible forecast. In order to fulfil that obligation the market participants concerned shall provide the TSOs with the relevant data. The manner in which such information is published shall be subject to review by the regulatory authorities. TSOs shall publish at least:

(a) annually: information on the long-term evolution of the transmission infrastructure and its impact on cross-border transmission capacity;

(b) monthly: month- and year-ahead forecasts of the transmission capacity available to the market, taking into account all relevant information available to the TSO at the time of the forecast calculation (for example, impact of summer and winter seasons on the capacity of lines, maintenance of the network, availability of production units, etc.);

(c) weekly: week-ahead forecasts of the transmission capacity available to the market, taking into account all relevant information available to the TSOs at the time of calculation of the forecast, such as the weather forecast, planned network maintenance work, availability of production units, etc.;

(d) daily: day-ahead and intra-day transmission capacity available to the market for each market time unit, taking into account all netted day-ahead nominations, day-ahead production schedules, demand forecasts and planned network maintenance work;

(e) total capacity already allocated, by market time unit, and all relevant conditions under which that capacity may be used (for example, auction clearing price, obligations on how to use the capacity, etc.), so as to identify any remaining capacity;

(f) allocated capacity as soon as possible after each allocation, as well as an indication of prices paid;

(g) total capacity used, by market time unit, immediately after nomination;

(h) as closely as possible to real time: aggregated realised commercial and physical flows, by market time unit, including a description of the effects of any corrective actions taken by the TSOs (such as curtailment) for solving network or system problems;

(i) *ex-ante* information on planned outages and *ex-post* information for the previous day on planned and unplanned outages of generation units larger than 100 MW.

5.6. All relevant information shall be available for the market in due time for the negotiation of all transactions (such as the time of negotiation of annual supply contracts for industrial customers or the time when bids have to be sent into organised markets).

5.7. The TSO shall publish the relevant information on forecast demand and on generation according to the timeframes referred to in points 5.5 and 5.6. The TSO shall also publish the relevant information necessary for the cross-border balancing market.

5.8. When forecasts are published, the *ex-post* realised values for the forecast information shall also be published in the time period following that to which the forecast applies or at the latest on the following day ($D + 1$).

5.9. All information published by the TSOs shall be made freely available in an easily accessible form. All data shall also be accessible through adequate and standardised means of information exchange, to be defined in close cooperation with market participants. The data shall include information on past time periods with a minimum of two years, so that new market entrants may also have access to such data.

5.10.¹⁷ TSOs shall exchange regularly a set of sufficiently accurate network and load flow data in order to enable load flow calculations for each TSO in their relevant area. The same set of data shall be made available to the regulatory authorities and to the **Energy Community Secretariat** upon request. The regulatory authorities and the **Energy Community Secretariat** shall ensure the confidential treatment of that set of data, by themselves and by any consultant carrying out analytical work for them on the basis of those data.

¹⁷ Adapted by Article 4(1)(d) of Decision 2011/02/MC-EnC.

6. Use of congestion income

6.1. Congestion-management procedures associated with a pre-specified timeframe may generate revenue only in the event of congestion which arises for that timeframe, except in the case of new interconnectors which benefit from an exemption under Article 7 of Regulation (EC) No 1228/2003 or Article 17 of this Regulation. The procedure for the distribution of those revenues shall be subject to review by the regulatory authorities and shall neither distort the allocation process in favour of any party requesting capacity or energy nor provide a disincentive to reduce congestion.

6.2. National regulatory authorities shall be transparent regarding the use of revenues resulting from the allocation of interconnection capacity.

6.3. The congestion income shall be shared among the TSOs involved in accordance with criteria agreed between the TSOs involved and reviewed by the respective regulatory authorities.

6.4. TSOs shall clearly establish beforehand the use they will make of any congestion income they may obtain and report on the actual use of that income. Regulatory authorities shall verify that such use complies with this Regulation and those Guidelines,¹⁸ and that the total amount of congestion income resulting from the allocation of interconnection capacity is devoted to one or more of the three purposes set out in Article 16(6) of this Regulation.

6.5. On an annual basis, and by 31 July each year, the regulatory authorities shall publish a report setting out the amount of revenue collected for the 12-month period up to 30 June of the same year and the use made of the revenues in question, together with verification that that use complies with this Regulation and those Guidelines,¹⁹ and that the total amount of congestion income is devoted to one or more of the three prescribed purposes.

6.6. The use of congestion income for investment to maintain or increase interconnection capacity shall preferably be assigned to specific predefined projects which contribute to relieving the existing associated congestion and which may also be implemented within a reasonable time, particularly as regards the authorisation process.

¹⁸ As adopted by the Permanent High Level Group under Procedural Act 01/2012/PHLG-EnC.

¹⁹ As adopted by the Permanent High Level Group under Procedural Act 01/2012/PHLG-EnC.

PART II

ACQUIS COMMUNAUTAIRE

GAS

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

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

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

Whereas:

(1) The internal market in natural gas, which has been progressively implemented throughout the Community since 1999, aims to deliver real choice for all consumers of the European Union, 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 has made a significant contribution towards the creation of such an internal market in natural gas.

(3) The freedoms which the Treaty guarantees the citizens of the Union - *inter alia*, the free movement of goods, the freedom of establishment and the freedom to provide services - are achievable only in a fully open market, which enables all consumers freely to choose their suppliers and all suppliers freely to deliver to their customers.

(4) However, at present, there are obstacles to the sale of gas on equal terms and without discrimination or disadvantages in the Community. In particular, non-discriminatory network access and an equally effective level of regulatory supervision in each Member State do not yet exist.

(5) 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 of creating a level playing field for all natural gas undertakings established 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)” showed that the present rules and measures do not provide the necessary framework for achieving the objective of a well-functioning internal market.

(6) Without effective separation of networks from activities of production and supply (effective unbundling), there is a risk of discrimination not only in the operation of the network but also in the incentives for vertically integrated undertakings to invest adequately in their networks.

(7) The rules on legal and functional unbundling as provided for in Directive 2003/55/EC have not, however, led to effective unbundling of the transmission system operators. At its meeting on 8 and 9 March 2007, the European Council therefore invited the Commission to develop legislative proposals for the “effective separation of supply and production activities from network operations”.

(8) Only the removal of the incentive for vertically integrated undertakings to discriminate against competitors as regards network access and investment can ensure effective unbundling. Ownership unbundling, which implies the appointment of the network owner as the system operator and its

independence from any supply and production interests, is clearly an effective and stable way to solve the inherent conflict of interests and to ensure security of supply. For that reason, the European Parliament, in its resolution of 10 July 2007 on prospects for the internal gas and electricity market referred to ownership unbundling at transmission level as the most effective tool by which to promote investments in infrastructure in a non-discriminatory way, fair access to the network for new entrants and transparency in the market. Under ownership unbundling, Member States should therefore be required to ensure that the same person or persons are not entitled to exercise control over a production or supply undertaking and, at the same time, exercise control or any right over a transmission system operator or transmission system. Conversely, control over a transmission system or transmission system operator should preclude the possibility of exercising control or any right over a production or supply undertaking. Within those limits, a production or supply undertaking should be able to have a minority shareholding in a transmission system operator or transmission system.

(9) 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.

(10) The definition of the term “control” is taken from Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation).

(11) Since ownership unbundling requires, in some instances, the restructuring of undertakings, Member States that decide to implement ownership unbundling should be granted additional time to apply the relevant provisions. In view of the vertical links between the electricity and gas sectors, the unbundling provisions should apply across the two sectors.

(12) Under ownership unbundling, to ensure full independence of network operation from supply and production interests and to prevent exchanges of any confidential information, the same person should not be a member of the managing boards of both a transmission system operator or a transmission system and an undertaking performing any of the functions of production or supply. For the same reason, the same person should not be entitled to appoint members of the managing boards of a transmission system operator or a transmission system and to exercise control or any right over a production or supply undertaking.

(13) The setting up of a system operator or a transmission operator that is independent from supply and production interests should enable a vertically integrated undertaking to maintain its ownership of network assets whilst ensuring an effective separation of interests, provided that such independent system operator or such independent transmission operator performs all the functions of a system operator and detailed regulation and extensive regulatory control mechanisms are put in place.

(14) Where, on 3 September 2009, an undertaking owning a transmission system is part of a vertically integrated undertaking, Member States should therefore be given a choice between ownership unbundling and setting up a system operator or transmission operator which is independent from supply and production interests.

(15) To preserve fully the interests of the shareholders of vertically integrated undertakings, Member States should have the choice of implementing ownership unbundling either by direct divestiture or by splitting the shares of the integrated undertaking into shares of the network undertaking and shares of the remaining supply and production undertaking, provided that the requirements result-

ing from ownership unbundling are complied with.

(16) The full effectiveness of the independent system operator or independent transmission operator solutions should be ensured by way of specific additional rules. The rules on the independent transmission operator provide an appropriate regulatory framework to guarantee fair competition, sufficient investment, access for new market entrants and the integration of gas markets. Effective unbundling through the independent transmission operator provisions should be based on a pillar of organisational measures and measures relating to the governance of transmission system operators and on a pillar of measures relating to investment, connecting new production capacities to the network and market integration through regional cooperation. The independence of the transmission operator should also, *inter alia*, be ensured through certain “cooling-off” periods during which no management or other relevant activity giving access to the same information as could have been obtained in a managerial position is exercised in the vertically integrated undertaking. The independent transmission operator model of effective unbundling is in line with the requirements laid down by the European Council at its meeting on 8 and 9 March 2007.

(17) In order to develop competition in the internal market in gas, large non-household customers should be able to choose their suppliers and enter into contracts with several suppliers to secure their gas requirements. Such customers should be protected against exclusivity clauses, the effect of which is to exclude competing or complementary offers.

(18) A Member State has the right to opt for full ownership unbundling in its territory. Where a Member State has exercised that right, an undertaking does not have the right to set up an independent system operator or an independent transmission operator. Furthermore, an undertaking performing any of the functions of production or supply cannot directly or indirectly exercise control or any right over a transmission system operator from a Member State that has opted for full ownership unbundling.

(19) Under this Directive different types of market organisation will exist in the internal market in natural gas. The measures that Member States could take in order to ensure a level playing field should be based on overriding requirements of general interest. The Commission should be consulted on the compatibility of the measures with the Treaty and Community law.

(20) The implementation of effective unbundling should respect the principle of non-discrimination between the public and private sectors. To that end, the same person should not be able to exercise control or any right, in violation of the rules of ownership unbundling or the independent system operator option, solely or jointly, over the composition, voting or decision of the bodies of both the transmission system operators or the transmission systems and the production or supply undertakings. With regard to ownership unbundling and the independent system operator solution, provided that the Member State in question is able to demonstrate that the requirement is complied with, two separate public bodies should be able to control production and supply activities on the one hand and transmission activities on the other.

(21) Fully effective separation of network activities from supply and production activities should apply throughout the Community to both Community and non-Community undertakings. To ensure that network activities and supply and production activities throughout the Community remain independent from each other, regulatory authorities should be empowered to refuse certification to transmission system operators that do not comply with the unbundling rules. To ensure the consistent application of those rules across the Community, the regulatory authorities should take utmost

account of the Commission's opinion when the former take decisions on certification. To ensure, in addition, respect for the international obligations of the Community and solidarity and energy security within the Community, the Commission should have the right to give an opinion on certification in relation to a transmission system owner or a transmission system operator which is controlled by a person or persons from a third country or third countries.

(22) The security of energy supply is an essential element of public security and is therefore inherently connected to the efficient functioning of the internal market in gas and the integration of the isolated gas markets of Member States. Gas can reach the citizens of the Union only through the network. Functioning open gas markets and, in particular, the networks and other assets associated with gas supply are essential for public security, for the competitiveness of the economy and for the well-being of the citizens of the Union. Persons from third countries should therefore only be allowed to control a transmission system or a transmission system operator if they comply with the requirements of effective separation that apply inside the Community. Without prejudice to the international obligations of the Community, the Community considers that the gas transmission system sector is of high importance to the Community and therefore additional safeguards are necessary regarding the preservation of the security of supply of energy to the Community to avoid any threats to public order and public security in the Community and the welfare of the citizens of the Union. The security of supply of energy to the Community requires, in particular, an assessment of the independence of network operation, the level of the Community's and individual Member States' dependence on energy supply from third countries, and the treatment of both domestic and foreign trade and investment in energy in a particular third country. Security of supply should therefore be assessed in the light of the factual circumstances of each case as well as the rights and obligations arising under international law, in particular the international agreements between the Community and the third country concerned. Where appropriate the Commission is encouraged to submit recommendations to negotiate relevant agreements with third countries addressing the security of supply of energy to the Community or to include the necessary issues in other negotiations with those third countries.

(23) Further measures should be taken in order to ensure transparent and non-discriminatory tariffs for access to transport. Those tariffs should be applicable to all users on a non-discriminatory basis. Where a storage facility, linepack or ancillary service operates in a sufficiently competitive market, access could be allowed on the basis of transparent and non-discriminatory market-based mechanisms.

(24) It is necessary to ensure the independence of storage system operators in order to improve third-party access to storage facilities that are technically and/or economically necessary for providing efficient access to the system for the supply of customers. It is therefore appropriate that storage facilities are operated through legally separate entities that have effective decision-making rights with respect to assets necessary to maintain, operate and develop storage facilities. It is also necessary to increase transparency in respect of the storage capacity that is offered to third parties, by obliging Member States to define and publish a non-discriminatory, clear framework that determines the appropriate regulatory regime applicable to storage facilities. That obligation should not require a new decision on access regimes but should improve the transparency regarding the access regime to storage. Confidentiality requirements for commercially sensitive information are particularly important where data of a strategic nature are concerned or where there is only a single user of a storage facility.

(25) Non-discriminatory access to the distribution network determines downstream access to customers at retail level. The scope for discrimination as regards third party access and investment,

however, is less significant at distribution level than at transmission level where congestion and the influence of production interests are generally greater than at distribution level. Moreover, legal and functional unbundling of distribution system operators was required, pursuant to Directive 2003/55/EC, only from 1 July 2007 and its effects on the internal market in natural gas still need to be evaluated. The rules on legal and functional unbundling currently in place can lead to effective unbundling provided they are more clearly defined, properly implemented and closely monitored. To create a level playing field at retail level, the activities of distribution system operators should therefore be monitored so that they are prevented from taking advantage of their vertical integration as regards their competitive position on the market, in particular in relation to household and small non-household customers.

(26) Member States should take concrete measures to assist the wider use of biogas and gas from biomass, the producers of which should be granted non-discriminatory access to the gas system, provided that such access is compatible with the relevant technical rules and safety standards on an ongoing basis.

(27) To avoid imposing a disproportionate financial and administrative burden on small distribution system operators, Member States should be able, where necessary, to exempt the undertakings concerned from the legal distribution unbundling requirements.

(28) Where a closed distribution system is used to ensure the optimal efficiency of an integrated energy supply requiring specific operational standards, or a closed distribution system is maintained primarily for the use of the owner of the system, it should be possible to exempt the distribution system operator 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.

(29) Directive 2003/55/EC introduced a requirement for Member States to establish regulators with specific competences. However, experience shows that the effectiveness of regulation is frequently hampered through a lack of independence of regulators from government, and insufficient powers and discretion. For that reason, at its meeting on 8 and 9 March 2007, the European Council invited the Commission to develop legislative proposals providing for further harmonisation of the powers and strengthening of the independence of national energy regulators. It should be possible for those national regulatory authorities to cover both the electricity and the gas sectors.

(30) Energy regulators need to be able to take decisions in relation to all relevant regulatory issues if the internal market in natural gas is to function properly, and to be fully independent from any other public or private interests. This precludes neither judicial review nor parliamentary supervision in accordance with the constitutional law of the Member States. In addition, approval of the budget of the regulator by the national legislator does not constitute an obstacle to budgetary autonomy. The provisions relating to autonomy in the implementation of the allocated budget of the regulatory authority should be implemented within the framework defined by national budgetary law and rules. While contributing to the independence of the national regulatory authority from any political or economic interest through an appropriate rotation scheme, it should be possible for Member States to take due account of the availability of human resources and of the size of the board.

(31) In order to ensure effective market access for all market players, including new entrants,

non-discriminatory and cost-reflective balancing mechanisms are necessary. This should be achieved through the setting up of transparent market-based mechanisms for the supply and purchase of gas, needed in the framework of balancing requirements. National regulatory authorities should play an active role to ensure that balancing tariffs are non-discriminatory and cost-reflective. At the same time, appropriate incentives should be provided to balance the in-put and off-take of gas and not to endanger the system.

(32) National regulatory authorities should be able to fix or approve tariffs, or the methodologies underlying the calculation of the tariffs, on the basis of a proposal by the transmission system operator or distribution system operator(s) or liquefied natural gas (LNG) system operator, or on the basis of a proposal agreed between those operator(s) and the users of the network. In carrying out those tasks, national regulatory authorities should ensure that transmission and distribution tariffs are non-discriminatory and cost-reflective, and should take account of the long-term, marginal, avoided network costs from demand-side management measures.

(33) Energy regulators should have the power to issue binding decisions in relation to natural gas undertakings and to impose effective, proportionate and dissuasive penalties on natural gas undertakings which fail to comply with their obligations or to propose that a competent court impose such penalties on them. Energy regulators should also be granted the power to decide, irrespective of the application of competition rules, on appropriate measures ensuring customer benefits through the promotion of effective competition necessary for the proper functioning of the internal market in natural gas. The establishment of gas-release programmes is one of the possible measures that can be used to promote effective competition and ensure the proper functioning of the market. Energy regulators should also be granted the powers to contribute to ensuring high standards of public service in compliance with market opening, to the protection of vulnerable customers, and to the full effectiveness of consumer protection measures. Those provisions should be without prejudice to both the Commission's powers concerning the application of competition rules including the examination of mergers with a Community dimension, and the rules on the internal market such as the free movement of capital. The independent body to which a party affected by the decision of a national regulator has a right to appeal could be a court or other tribunal empowered to conduct a judicial review.

(34) Any harmonisation of the powers of national regulatory authorities should include the powers to provide incentives to natural gas undertakings and to impose effective, proportionate and dissuasive penalties on natural gas undertakings or to propose that a competent court impose such penalties. Moreover, regulatory authorities should have the power to request relevant information from natural gas undertakings, make appropriate and sufficient investigations and settle disputes.

(35) Investments in major new infrastructure should be strongly promoted while ensuring the proper functioning of the internal market in natural gas. In order to enhance the positive effect of exempted infrastructure projects on competition and security of supply, market interest during the project planning phase should be tested and congestion management rules should be implemented. Where an infrastructure is located in the territory of more than one Member State, 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 (the "Agency") should handle as a last resort the exemption request in order to take better account of its cross-border implications and to facilitate its administrative handling. Moreover, given the exceptional risk profile of constructing those exempt major infrastructure projects, it should

be possible temporarily to grant partial derogations to undertakings with supply and production interests in respect of the unbundling rules for the projects concerned. The possibility of temporary derogations should apply, for security of supply reasons, in particular, to new pipelines within the Community transporting gas from third countries into the Community. Exemptions granted under Directive 2003/55/EC continue to apply until the scheduled expiry date as decided in the granted exemption decision.

(36) The internal market in natural gas suffers from a lack of liquidity and transparency hindering the efficient allocation of resources, risk hedging and new entry. Trust in the market, its liquidity and the number of market participants needs to increase, and, therefore, regulatory oversight of undertakings active in the supply of gas needs to be increased. Such requirements should be without prejudice to, and compatible with, existing Community law in relation to the financial markets. Energy regulators and financial market regulators need to cooperate in order to enable each other to have an overview of the markets concerned.

(37) Natural gas is mainly, and increasingly, imported into the Community from third countries. Community law should take account of the characteristics of natural gas, such as certain structural rigidities arising from the concentration of suppliers, the long-term contracts or the lack of downstream liquidity. Therefore, more transparency is needed, including in regard to the formation of prices.

(38) Prior to the adoption by the Commission of Guidelines defining further the record-keeping requirements, the Agency and the Committee of European Securities Regulators (the "CESR"), established by Commission Decision 2009/77/EC, should confer and advise the Commission in regard to their content. The Agency and the CESR should also cooperate to investigate further and advise on whether transactions in gas supply contracts and gas derivatives should be subject to pre- and/or post-trade transparency requirements and, if so, what the content of those requirements should be.

(39) Member States or, where a Member State has so provided, the regulatory authority, should encourage the development of interruptible supply contracts.

(40) In the interests of security of supply, the balance between supply and demand in individual Member States should be monitored, and such monitoring should be followed by a report on the situation at Community level, taking account of interconnection capacity between areas. Such monitoring should be carried out sufficiently early to enable appropriate measures to be taken if security of supply is compromised. The construction and maintenance of the necessary network infrastructure, including interconnection capacity, should contribute to ensuring a stable gas supply.

(41) Member States should ensure that, taking into account the necessary quality requirements, biogas and gas from biomass or other types of gas are granted non-discriminatory access to the gas system, provided such access is permanently compatible with the relevant technical rules and safety standards. Those rules and standards should ensure that those gases can technically and safely be injected into, and transported through the natural gas system and should also address their chemical characteristics.

(42) Long-term contracts will continue to be an important part of the gas supply of Member States and should be maintained as an option for gas supply undertakings in so far as they do not undermine the objective of this Directive and are compatible with the Treaty, including the competition rules. It is therefore necessary to take into account long-term contracts in the planning of supply and transport capacity of natural gas undertakings.

(43) In order to ensure the maintenance of high standards of public service in the Community, all measures taken by Member States to achieve the objectives of this Directive should be regularly notified to the Commission. The Commission should regularly publish a report analysing measures taken at national level to achieve public service objectives and comparing their effectiveness, with a view to making recommendations as regards measures to be taken at national level to achieve high public service standards. Member States should ensure that when they are connected to the gas system customers are informed about their rights to be supplied with natural gas of a specified quality at reasonable prices. Measures taken by Member States to protect final customers may differ according to whether they are aimed at household customers or small and medium-sized enterprises.

(44) Respect for the public service requirements is a fundamental requirement of this Directive, and it is important that common minimum standards, respected by all Member States, are specified in this Directive, which take into account the objectives of common protection, security of supply, environmental protection and equivalent levels of competition in all Member States. It is important that the public service requirements can be interpreted on a national basis, taking into account national circumstances and subject to the respect of Community law.

(45) It should be possible for measures implemented by Member States to achieve the objectives of social and economic cohesion to include, in particular, the provision of adequate economic incentives, using, where appropriate, all existing national and Community tools. It should be possible for such tools to include liability mechanisms to guarantee the necessary investment.

(46) To the extent to which measures taken by Member States to fulfil public service obligations constitute State aid under Article 87(1) of the Treaty, there is an obligation under Article 88(3) of the Treaty to notify them to the Commission.

(47) The public service requirements and the common minimum standards that follow from them need to be further strengthened to make sure that all consumers, especially vulnerable ones, can benefit from competition and fair prices. The public service requirements should be defined at national level, taking into account national circumstances; Community law should, however, be respected by the Member States. The citizens of the Union and, where Member States deem it to be appropriate, small enterprises, should be able to enjoy public service obligations, in particular with regard to security of supply and reasonable tariffs. A key aspect in supplying customers is access to objective and transparent consumption data. Thus, consumers should have access to their consumption data and associated prices and services costs so that they can invite competitors to make an offer based on those data. Consumers should also have the right to be properly informed about their energy consumption. Prepayments should reflect the likely consumption of natural gas and different payment systems should be non-discriminatory. Information on energy costs provided to consumers frequently enough will create incentives for energy savings because it will give customers direct feedback on the effects of investment in energy efficiency and change of behaviour.

(48) Consumer interests should be at the heart of this Directive and quality of service should be a central responsibility of natural gas undertakings. Existing rights of consumers need to be strengthened and guaranteed, and should include greater transparency. Consumer protection should ensure that all consumers in the wider remit of the Community benefit from a competitive market. Consumer rights should be enforced by Member States or, where a Member State has so provided, the regulatory authorities.

(49) Clear and comprehensible information should be made available to consumers concerning their

rights in relation to the energy sector. The Commission should establish, after consulting relevant stakeholders including Member States, national regulatory authorities, consumer organisations and natural gas undertakings, an accessible, user-friendly energy consumer checklist providing consumers with practical information about their rights. That energy consumer checklist should be provided to all consumers and should be made publicly available.

(50) Energy poverty is a growing problem in the Community. Member States which are affected and which have not yet done so should, therefore, develop national action plans or other appropriate frameworks to tackle energy poverty, aiming at decreasing the number of people suffering such situation. In any event, Member States should ensure the necessary energy supply for vulnerable customers. In doing so, an integrated approach, such as in the framework of social policy, could be used and measures could include social policies or energy efficiency improvements for housing. At the very least, this Directive should allow national policies in favour of vulnerable customers.

(51) Greater consumer protection is guaranteed by the availability of effective means of dispute settlement for all consumers. Member States should introduce speedy and effective complaint handling procedures.

(52) It should be possible to base the introduction of intelligent metering systems on an economic assessment. Should that assessment conclude that the introduction of such metering systems is economically reasonable and cost-effective only for consumers with a certain amount of gas consumption, Member States should be able to take this into account when implementing intelligent metering systems.

(53) Market prices should give the right incentives for the development of the network.

(54) Promoting fair competition and easy access for different suppliers should be of the utmost importance for Member States in order to allow consumers to take full advantage of the opportunities of a liberalised internal market in natural gas.

(55) In order to contribute to security of supply whilst maintaining a spirit of solidarity between Member States, notably in the event of an energy supply crisis, it is important to provide a framework for regional cooperation in a spirit of solidarity. Such cooperation may rely, if Member States so decide, first and foremost on market-based mechanisms. Cooperation for the promotion of regional and bilateral solidarity should not impose a disproportionate burden on or discriminate between market participants.

(56) With a view to creating an internal market in natural gas, Member States should foster the integration of their national markets and the cooperation of system operators at Community and regional level, also incorporating the isolated systems forming gas islands that persist in the Community.

(57) The development of a true internal market in natural gas, through a network connected across the Community, should be one of the main goals of this Directive and regulatory issues on cross border interconnections and regional markets should, therefore, be one of the main tasks of the regulatory authorities, in close cooperation with the Agency where relevant.

(58) Securing common rules for a true internal market and a broad supply of gas should also be one of the main goals of this Directive. To that end, undistorted market prices would provide an incentive for cross-border interconnections while leading, in the long term, to price convergence.

(59) The regulatory authorities should also provide information on the market to permit the Commission to exercise its role of observing and monitoring the internal market in natural gas and its short,

medium and long-term evolution, including aspects such as supply and demand, transmission and distribution infrastructure, quality of service, cross-border trade, congestion management, investments, wholesale and consumer prices, market liquidity and environmental and efficiency improvements. National regulatory authorities should report to the competition authorities and the Commission those Member States in which prices impair competition and proper functioning of the market.

(60) Since the objective of this Directive, namely the creation of a fully operational internal market in natural gas, 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 Directive does not go beyond what is necessary in order to achieve that objective.

(61) Under 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, the Commission may adopt Guidelines to achieve the necessary degree of harmonisation. Such Guidelines, which constitute binding implementing measures, are, also with regard to certain provisions of this Directive, a useful tool which can be adapted quickly where necessary.

(62) The measures necessary for the implementation of this Directive 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.

(63) In particular, the Commission should be empowered to adopt the Guidelines necessary for providing the minimum degree of harmonisation required to achieve the aim of this Directive. Since those measures are of general scope and are designed to amend non-essential elements of this Directive, 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.

(64) In accordance with point 34 of the Interinstitutional Agreement on better law-making, Member States are encouraged to draw up, for themselves and in the interest of the Community, their own tables, illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public.

(65) Given the scope of the amendments made to Directive 2003/55/EC herein, 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 Directive.

(66) This Directive respects the fundamental rights, and observes the principles, recognised in particular by the Charter of Fundamental Rights of the European Union.

CHAPTER I

SUBJECT MATTER, SCOPE AND DEFINITIONS

Article 1

Subject matter and scope

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

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

Article 2

Definitions

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

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

(2) “upstream pipeline network” means any pipeline or network of pipelines operated and/or constructed as part of an oil or gas production project, or used to convey natural gas from one or more such projects to a processing plant or terminal or final coastal landing terminal;

(3) “transmission” means the transport of natural gas through a network, which mainly contains high-pressure pipelines, other than an upstream pipeline network and other than the part of high-pressure pipelines primarily used in the context of local distribution of natural gas, with a view to its delivery to customers, but not including supply;

(4) “transmission system operator” means a natural or legal person who carries out the function of transmission and is responsible for operating, ensuring the maintenance of, and, if necessary, developing the transmission system in a given area and, where applicable, its interconnections with other systems, and for ensuring the long-term ability of the system to meet reasonable demands for the transport of gas;

(5) “distribution” means the transport of natural gas through local or regional pipeline networks with a view to its delivery to customers, but not including supply;

(6) “distribution system operator” means a natural or legal person who carries out the function of distribution and is responsible for operating, ensuring the maintenance of, and, if necessary, developing the distribution system in a given area and, where applicable, its interconnections with other systems, and for ensuring the long-term ability of the system to meet reasonable demands for the

distribution of gas;

(7) “supply” means the sale, including resale, of natural gas, including LNG, to customers;

(8) “supply undertaking” means any natural or legal person who carries out the function of supply;

(9) “storage facility” means a facility used for the stocking of natural gas and owned and/or operated by a natural gas undertaking, including the part of LNG facilities used for storage but excluding the portion used for production operations, and excluding facilities reserved exclusively for transmission system operators in carrying out their functions;

(10) “storage system operator” means a natural or legal person who carries out the function of storage and is responsible for operating a storage facility;

(11) “LNG facility” means a terminal which is used for the liquefaction of natural gas or the importation, offloading, and re-gasification of LNG, and includes ancillary services and temporary storage necessary for the re-gasification process and subsequent delivery to the transmission system, but does not include any part of LNG terminals used for storage;

(12) “LNG system operator” means a natural or legal person who carries out the function of liquefaction of natural gas, or the importation, offloading, and re-gasification of LNG and is responsible for operating a LNG facility;

(13) “system” means any transmission networks, distribution networks, LNG facilities and/or storage facilities owned and/or operated by a natural gas undertaking, including linepack and its facilities supplying ancillary services and those of related undertakings necessary for providing access to transmission, distribution and LNG;

(14) “ancillary services” means all services necessary for access to and the operation of transmission networks, distribution networks, LNG facilities, and/or storage facilities, including load balancing, blending and injection of inert gases, but not including facilities reserved exclusively for transmission system operators carrying out their functions;

(15) “linepack” means the storage of gas by compression in gas transmission and distribution systems, but not including facilities reserved for transmission system operators carrying out their functions;

(16) “interconnected system” means a number of systems which are linked with each other;

(17) “interconnector” means a transmission line which crosses or spans a border between **Contracting Parties** for the sole purpose of connecting the national transmission systems of those **Contracting Parties**;

(18) “direct line” means a natural gas pipeline complementary to the interconnected system;

(19) “integrated natural gas undertaking” means a vertically or horizontally integrated undertaking;

(20) “vertically integrated undertaking” means a natural gas undertaking or a group of natural gas undertakings where the same person or the same persons are entitled, directly or indirectly, to exercise control, and where the undertaking or group of undertakings perform at least one of the functions of transmission, distribution, LNG or storage, and at least one of the functions of production or supply of natural gas;

(21) “horizontally integrated undertaking” means an undertaking performing at least one of the functions of production, transmission, distribution, supply or storage of natural gas, and a non-gas activity;

- (22) “related undertaking” means an affiliated undertaking, within the meaning of Article 41 of Seventh Council Directive 83/349/EEC of 13 June 1983 based on the Article 44(2)(g) of the Treaty on consolidated accounts and/or an associated undertaking, within the meaning of Article 33(1) of that Directive, and/or an undertaking which belong to the same shareholders;
- (23) “system user” means a natural or legal person supplying to, or being supplied by, the system;
- (24) “customer” means a wholesale or final customer of natural gas or a natural gas undertaking which purchases natural gas;
- (25) “household customer” means a customer purchasing natural gas for his own household consumption;
- (26) “non-household customer” means a customer purchasing natural gas which is not for his own household use;
- (27) “final customer” means a customer purchasing natural gas for his own use;
- (28) “eligible customer” means a customer who is free to purchase gas from the supplier of his choice, within the meaning of Article 37;
- (29) “wholesale customer” means a natural or legal person other than a transmission system operator or distribution system operator who purchases natural gas for the purpose of resale inside or outside the system where he is established;
- (30) “long-term planning” means the planning of supply and transport capacity of natural gas undertakings on a long-term basis with a view to meeting the demand for natural gas of the system, diversification of sources and securing supplies to customers;
- (31) “emergent market means a **Contracting Party** in which the first commercial supply of its first long-term natural gas supply contract was made not more than 10 years earlier;
- (32) “security” means both security of supply of natural gas and technical safety;
- (33) “new infrastructure” means an infrastructure not completed by **1 July 2007**;
- (34) “gas supply contract” means a contract for the supply of natural gas, but does not include a gas derivative;
- (35) “gas derivative” means a financial instrument specified in points 5, 6 or 7 of Section C of Annex I to Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments, where that instrument relates to natural gas;
- (36) “control” means any rights, contracts or any other means which, either separately or in combination and having regard to the considerations of fact or law involved, confer the possibility of exercising decisive influence on an undertaking, in particular by:
- (a) ownership or the right to use all or part of the assets of an undertaking;
 - (b) rights or contracts which confer decisive influence on the composition, voting or decisions of the organs of an undertaking.

CHAPTER II

GENERAL RULES FOR THE ORGANISATION OF THE SECTOR

Article 3

Public service obligations and customer protection

1. **Contracting Parties** shall ensure, on the basis of their institutional organisation and with due regard to the principle of subsidiarity, that, without prejudice to paragraph 2, natural gas undertakings are operated in accordance with the principles of this Directive with a view to achieving a competitive, secure and environmentally sustainable market in natural gas, and shall not discriminate between those undertakings as regards their rights or obligations.

2. Having full regard to the relevant provisions of the **Energy Community Treaty, in particular Article 19 thereof**, **Contracting Parties** may impose on undertakings operating in the gas sector, in the general economic interest, public service obligations which may relate to security, including security of supply, regularity, quality and price of supplies, and environmental protection, including energy efficiency, energy from renewable sources and climate protection. Such obligations shall be clearly defined, transparent, non-discriminatory, verifiable and shall guarantee equality of access for natural gas undertakings of the **Energy Community** to national consumers. In relation to security of supply, energy efficiency/demand-side management and for the fulfilment of environmental goals and goals for energy from renewable sources, as referred to in this paragraph, **Contracting Parties** may introduce the implementation of long-term planning, taking into account the possibility of third parties seeking access to the system.

3. **Contracting Parties** shall take appropriate measures to protect final customers, and shall, in particular, ensure that there are adequate safeguards to protect vulnerable customers. In this context, each **Contracting Party** shall define the concept of vulnerable customers which may refer to energy poverty and, *inter alia*, to the prohibition of disconnection of gas to such customers in critical times. **Contracting Parties** shall ensure that rights and obligations linked to vulnerable customers are applied. In particular, they shall take appropriate measures to protect final customers in remote areas who are connected to the gas system. **Contracting Parties** may appoint a supplier of last resort for customers connected to the gas system. They shall ensure high levels of consumer protection, particularly with respect to transparency regarding contractual terms and conditions, general information and dispute settlement mechanisms. **Contracting Parties** shall ensure that the eligible customer is in fact able easily to switch to a new supplier. As regards at least household customers those measures shall include those set out in Annex I.

4. **Contracting Parties** shall take appropriate measures, such as formulating national energy action plans, providing social security benefits to ensure the necessary gas supply to vulnerable customers, or providing for support for energy efficiency improvements, to address energy poverty where identified, including in the broader context of poverty. Such measures shall not impede the effective opening of the market set out in Article 37 and market functioning and shall be notified to the **Energy Community Secretariat**, where relevant, in accordance with paragraph 11 of this Article. Such notification shall not include measures taken within the general social security system.

5. **Contracting Parties** shall ensure that all customers connected to the gas network are entitled

to have their gas provided by a supplier, subject to the supplier's agreement, regardless of the **Contracting Party** in which the supplier is registered, as long as the supplier follows the applicable trading and balancing rules and subject to security of supply requirements. In this regard, **Contracting Parties** shall take all measures necessary to ensure that administrative procedures do not constitute a barrier for supply undertakings already registered in another **Contracting Party**.

6. **Contracting Parties** shall ensure that:

(a) where a customer, while respecting the contractual conditions, wishes to change supplier, the change is effected by the operator(s) concerned within three weeks; and

(b) customers are entitled to receive all relevant consumption data.

Contracting Parties shall ensure that the rights referred to in points (a) and (b) of the first subparagraph are granted to customers in a non-discriminatory manner as regards cost, effort or time.

7. **Contracting Parties** shall implement appropriate measures to achieve the objectives of social and economic cohesion and environmental protection, which may include means to combat climate change, and security of supply. Such measures may include, in particular, the provision of adequate economic incentives, using, where appropriate, all existing national tools, as well as financing from the international donors, for the maintenance and construction of necessary network infrastructure, including interconnection capacity.

8. In order to promote energy efficiency, **Contracting Parties** or, where a **Contracting Party** has so provided, the regulatory authority shall strongly recommend that natural gas undertakings optimise the use of gas, for example by providing energy management services, developing innovative pricing formulas or introducing intelligent metering systems or smart grids where appropriate

9. **Contracting Parties** shall ensure the provision of single points of contact to provide consumers with all necessary information concerning their rights, current legislation and the means of dispute settlement available to them in the event of a dispute. Such contact points may be part of general consumer information points.

Contracting Parties shall ensure that an independent mechanism such as an energy ombudsman or a consumer body is in place in order to ensure efficient treatment of complaints and out-of-court dispute settlements.

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

11. **Contracting Parties** shall, upon implementation of this Directive, inform the **Energy Community Secretariat** of all measures adopted to fulfill public service obligations, including consumer and environmental protection, and their possible effect on national and international competition, whether or not such measures require a derogation from the provisions of this Directive. They shall notify the **Energy Community Secretariat** subsequently every two years of any changes to such measures, whether or not they require a derogation from this Directive.

12.¹ **1. Contracting Parties shall ensure that <...> gas suppliers or distribution system operators, in cooperation with the regulatory authority, take the necessary steps to provide their consumers with a copy of the energy consumer checklists established by the European Commission <...>.**

2. The checklists shall be adopted by the Permanent High Level Group, following the procedure laid down in Article 79 of the Treaty.

Article 4

Authorisation procedure

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

2. Where **Contracting Parties** have a system of authorisation, they shall lay down objective and non-discriminatory criteria which shall be met by an undertaking applying for an authorisation to build and/or operate natural gas facilities or applying for an authorisation to supply natural gas. The non-discriminatory criteria and procedures for the granting of authorisations shall be made public. **Contracting Parties** shall ensure that authorisation procedures for facilities, pipelines and associated equipment take into account the importance of the project for the internal market in natural gas where appropriate.

3. **Contracting Parties** shall ensure that the reasons for any refusal to grant an authorisation are objective and non-discriminatory and that they are given to the applicant. Reasons for such refusals shall be notified to the **Energy Community Secretariat** for information. Contracting Parties shall establish a procedure enabling the applicant to appeal against such refusals.

4. For the development of newly supplied areas and efficient operation generally, and without prejudice to Article 38, **Contracting Parties** may decline to grant a further authorisation to build and operate distribution pipeline systems in any particular area once such pipeline systems have been or are proposed to be built in that area and if existing or proposed capacity is not saturated.

Article 5

Monitoring of security of supply

Contracting Parties shall ensure the monitoring of security of supply issues. Where **Contracting Parties** consider it appropriate, they may delegate that task to the regulatory authorities referred to in Article 39(1). Such monitoring shall, in particular, cover the balance of supply and demand on the national market, the level of expected future demand and available supplies, envisaged additional capacity being planned or under construction, and the quality and level of maintenance of the net-

¹ Replaced by Article 6 of Decision 2011/02/MC-EnC.

works, as well as measures to cover peak demand and to deal with shortfalls of one or more suppliers. The competent authorities shall publish, by 31 July each year, a report outlining the findings resulting from the monitoring of those issues, as well as any measures taken or envisaged to address them and shall forward that report to the **Energy Community Secretariat** forthwith.

Article 6

Regional solidarity

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

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

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

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

(c) conditions and practical modalities for mutual assistance.

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

4. <...>

Article 7

Promotion of regional cooperation²

1. **Contracting Parties** as well as the regulatory authorities shall cooperate with each other for the purpose of integrating their national markets at regional level, as a first step towards the creation of a fully liberalised internal market. In particular, the regulatory authorities where **Contracting Parties** have so provided or **Contracting Parties** shall promote and facilitate the cooperation of transmission system operators at a regional level, including on cross-border issues with the aim of creating a competitive internal market in natural gas, foster the consistency of their legal, regulatory and technical framework and facilitate integration of the isolated systems forming gas islands that persist in the **Energy Community**. <...>

2. The **Energy Community Regulatory Board** shall cooperate with national regulatory authorities and transmission system operators to ensure the compatibility of regulatory frameworks with other European regions with the aim of creating a competitive internal market in natural gas. <...>

3. **Contracting Parties** shall ensure, through the implementation of this Directive, that transmission

² In addition, Article 25 of Decision 2011/02/MC-EnC reads: 'Transmission system operators shall promote operational arrangements in order to ensure the optimum management of the Energy Community network and shall promote the development of energy exchanges, the coordinated allocation of cross-border capacity through non-discriminatory market-based solutions, paying due attention to the specific merits of implicit auctions for short-term allocations, and the integration of balancing and reserve power mechanisms.'

system operators have one or more integrated system(s) at regional level covering two or more **Contracting Parties** for capacity allocation and for checking the security of the network.

4. Where vertically integrated transmission system operators participate in a joint undertaking established for implementing such cooperation, the joint undertaking shall establish and implement a compliance programme which sets out the measures to be taken to ensure that discriminatory and anticompetitive conduct is excluded. That compliance programme shall set out the specific obligations of employees to meet the objective of excluding discriminatory and anticompetitive conduct. It shall be notified to the **Energy Community Regulatory Board**. Compliance with the programme shall be independently monitored by the compliance officers of the vertically integrated transmission system operators.

Article 8 **Technical rules**

The regulatory authorities where **Contracting Parties** have so provided or **Contracting Parties** shall ensure that technical safety criteria are defined and that technical rules establishing the minimum technical design and operational requirements for the connection to the system of LNG facilities, storage facilities, other transmission or distribution systems, and direct lines, are developed and made public. Those technical rules shall ensure the interoperability of systems and shall be objective and non-discriminatory. <...>

CHAPTER III **TRANSMISSION, STORAGE AND LNG**

Article 9 **Unbundling of transmission systems and transmission system operators**

1. **Contracting Parties** shall ensure that from **1 June 2016**³:

- (a) each undertaking which owns a transmission system acts as a transmission system operator;
- (b) the same person or persons are entitled neither:
 - (i) directly or indirectly to exercise control over an undertaking performing any of the functions of production or supply, and directly or indirectly to exercise control or exercise any right over a transmission system operator or over a transmission system; nor
 - (ii) directly or indirectly to exercise control over a transmission system operator or over a transmission system, and directly or indirectly to exercise control or exercise any right over an undertaking performing any of the functions of production or supply;
- (c) the same person or persons are not entitled to appoint members of the supervisory board, the administrative board or bodies legally representing the undertaking, of a transmission system oper-

³ According to Ministerial Council Decision 2012/05/MC-EnC of 5 December 2012, this date is replaced by 1 January 2020 for the Republic of Moldova.

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

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

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

(a) the power to exercise voting rights;

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

(c) the holding of a majority share.

3. For the purpose of paragraph 1(b), the notion “undertaking performing any of the functions of production or supply” shall include “undertaking performing any of the functions of generation and supply” within the meaning of Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity, **as adapted under Article 24 of the Energy Community Treaty**, and the terms “transmission system operator” and “transmission system” shall include “transmission system operator” and “transmission system” within the meaning of that Directive.

4. **Contracting Parties** may allow for derogations from points (b) and (c) of paragraph 1 until **1 June 2017**, provided that transmission system operators are not part of a vertically integrated undertaking.

5. The obligation set out in paragraph 1(a) of this Article shall be deemed to be fulfilled in a situation where two or more undertakings which own transmission systems have created a joint venture which acts as a transmission system operator in two or more **Contracting Parties** for the transmission systems concerned. No other undertaking may be part of the joint venture, unless it has been approved under Article 14 as an independent system operator or as an independent transmission operator for the purposes of Chapter IV.

6. For the implementation of this Article, where the person referred to in points (b), (c) and (d) of paragraph 1 is the Contracting Party or another public body, two separate public bodies exercising control over a transmission system operator or over a transmission system on the one hand, and over an undertaking performing any of the functions of production or supply on the other, shall be deemed not to be the same person or persons.

7. **Contracting Parties** shall ensure that neither commercially sensitive information referred to in Article 16 held by a transmission system operator which was part of a vertically integrated undertaking, nor the staff of such a transmission system operator, is transferred to undertakings performing any of the functions of production and supply.

8. Where on **6 October 2011**, the transmission system belongs to a vertically integrated undertaking a **Contracting Party** may decide not to apply paragraph 1.

In such case, the **Contracting Party** concerned shall either:

(a) designate an independent system operator in accordance with Article 14, or

(b) comply with the provisions of Chapter IV.

9. Where on **6 October 2011**, the transmission system belongs to a vertically integrated undertaking

and there are arrangements in place which guarantee more effective independence of the transmission system operator than the provisions of Chapter IV, a **Contracting** Party may decide not to apply paragraph 1.

10. Before an undertaking is approved and designated as a transmission system operator under paragraph 9 of this Article, it shall be certified according to the procedures laid down in Article 10(4), (5) and (6) of this Directive and in Article 3 of Regulation (EC) No 715/2009, **as adapted under Article 24 of the Energy Community Treaty**, pursuant to which the **Energy Community Secretariat** shall verify that the arrangements in place clearly guarantee more effective independence of the transmission system operator than the provisions of Chapter IV.

11. Vertically integrated undertakings which own a transmission system shall not in any event be prevented from taking steps to comply with paragraph 1.

12. Undertakings performing any of the functions of production or supply shall not in any event be able to directly or indirectly take control over or exercise any right over unbundled transmission system operators in **Contracting Parties** which apply paragraph 1.

Article 10

Designation and certification of transmission system operators

1. Before an undertaking is approved and designated as transmission system operator, it shall be certified according to the procedures laid down in paragraphs 4, 5 and 6 of this Article and in Article 3 of Regulation (EC) No 715/2009, **as adapted under Article 24 of the Energy Community Treaty**.

2. Undertakings which own a transmission system and which have been certified by the national regulatory authority as having complied with the requirements of Article 9, pursuant to the certification procedure, shall be approved and designated as transmission system operators by **Contracting Parties**. The designation of transmission system operators shall be notified to the **Energy Community Secretariat** and published in **a dedicated section of the website of the Energy Community**.

3. Transmission system operators shall notify to the regulatory authority any planned transaction which may require a reassessment of their compliance with the requirements of Article 9.

4. The regulatory authorities shall monitor the continuing compliance of transmission system operators with the requirements of Article 9. They shall open a certification procedure to ensure such compliance:

- (a) upon notification by the transmission system operator pursuant to paragraph 3;
- (b) on their own initiative where they have knowledge that a planned change in rights or influence over transmission system owners or transmission system operators may lead to an infringement of Article 9, or where they have reason to believe that such an infringement may have occurred; or
- (c) upon a reasoned request from the **Energy Community Secretariat**.

5. The regulatory authorities shall adopt a decision on the certification of a transmission system operator within a period of four months from the date of the notification by the transmission system operator or from the date of the **Energy Community Secretariat** request. After expiry of that period, the certification shall be deemed to be granted. The explicit or tacit decision of the regulatory authority shall become effective only after the conclusion of the procedure set out in paragraph 6.

6. The explicit or tacit decision on the certification of a transmission system operator shall be notified without delay to the **Energy Community Secretariat** by the regulatory authority, together with all the relevant information with respect to that decision. The **Energy Community Secretariat** shall act in accordance with the procedure laid down in Article 3 of Regulation (EC) No 715/2009, **as adapted under Article 24 of the Energy Community Treaty**.

7. The regulatory authorities and the **Energy Community Secretariat** may request from transmission system operators and undertakings performing any of the functions of production or supply any information relevant for the fulfillment of their tasks under this Article.

8. The regulatory authorities and the **Energy Community Secretariat** shall preserve the confidentiality of commercially sensitive information.

Article 11

Certification in relation to third countries

1. Where certification is requested by a transmission system owner or a transmission system operator which is controlled by a person or persons from a third country or third countries, the regulatory authority shall notify the **Energy Community Secretariat**.

The regulatory authority shall also notify to the **Energy Community Secretariat** without delay any circumstances that would result in a person or persons from a third country or third countries acquiring control of a transmission system or a transmission system operator.

2. The transmission system operator shall notify to the regulatory authority any circumstances that would result in a person or persons from a third country or third countries acquiring control of the transmission system or the transmission system operator.

3. The regulatory authority shall adopt a draft decision on the certification of a transmission system operator within four months from the date of notification by the transmission system operator. It shall refuse the certification if it has not been demonstrated:

(a) that the entity concerned complies with the requirements of Article 9; and

(b) to the regulatory authority or to another competent authority designated by the **Contracting Party** that granting certification will not put at risk the security of energy supply of the **Contracting Party** and the **Energy Community**. In considering that question the regulatory authority or other competent authority so designated shall take into account:

(i) the rights and obligations of the **Energy Community** with respect to that third country arising under international law, including any agreement concluded with one or more third countries to which the **Energy Community** is a party and which addresses the issues of security of energy supply

(ii) the rights and obligations of the **Contracting Party** with respect to that third country arising under agreements concluded with it, insofar as they are in compliance with **Energy Community law**; and

(iii) other specific facts and circumstances of the case and the third country concerned.⁴

⁴ According to Article 10(1) of Decision 2011/02/MC-EnC, 'the regulatory authority or other competent authority designated shall also take into account the rights and obligations resulting from association or trade agreements between the Contracting Party and the European Union'.

4. The regulatory authority shall notify the decision to the **Energy Community Secretariat** without delay, together with all the relevant information with respect to that decision.

5. **Contracting Parties** shall provide for the regulatory authority or the designated competent authority referred to in paragraph 3(b), before the regulatory authority adopts a decision on the certification, to request an opinion from the **Energy Community Secretariat** on whether:

(a) the entity concerned complies with the requirements of Article 9; and

(b) granting certification will not put at risk the security of energy supply to the **Energy Community**.

6. The **Energy Community Secretariat** shall examine the request referred to in paragraph 5 as soon as it is received. Within a period of two months after receiving the request, it shall deliver its opinion to the national regulatory authority or, if the request was made by the designated competent authority, to that authority.

In preparing its opinion, the Secretariat shall request the views of the Energy Community Regulatory Board. It may also request the views of the **Contracting Party** concerned and interested parties. In the event that the **Energy Community Secretariat** makes such a request, the two-month period shall be extended by two months.

In the absence of an opinion by the **Energy Community Secretariat** within the period referred to in the first and second subparagraphs, the **Energy Community Secretariat** is deemed not to raise objections to the decision of the regulatory authority.

7. When assessing whether the control by a person or persons from a third country or third countries will put at risk the security of energy supply to the **Energy Community**, the **Energy Community Secretariat** shall take into account:

(a) the specific facts of the case and the third country or third countries concerned; and

(b) the rights and obligations of the **Energy Community** with respect to that third country arising under international law, including any agreement concluded with one or more third countries to which the **Energy Community** is a party and which addresses the issues of security of energy supply.⁵

8. The national regulatory authority shall, within a period of two months after the expiry of the period referred to in paragraph 6, adopt its final decision on the certification. In adopting its final decision the national regulatory authority shall take utmost account of the the **Energy Community Secretariat's** opinion. In any event **Contracting Parties** shall have the right to refuse certification where granting certification puts at risk the **Contracting Party's** security of energy supply or the security of energy supply of another **Contracting Party**. Where the **Contracting Party** has designated another competent authority to assess paragraph 3(b), it may require the national regulatory authority to adopt its final decision in accordance with the assessment of that competent authority. The regulatory authority's final decision and the opinion of the **Energy Community Secretariat** shall be published together. Where the final decision diverges from the **Energy Community Secretariat's** opinion, the **Contracting Party** concerned shall provide and publish, together with that decision, the reasoning underlying such decision.

9. Nothing in this Article shall affect the right of **Contracting Parties** to exercise, in compliance with **Energy Community** law, national legal controls to protect legitimate public security interests.

⁵ According to Article 10(2) of Decision 2011/02/MC-EnC, Article 10(1) of the same Decision applies - 'the regulatory authority or other competent authority designated shall also take into account the rights and obligations resulting from association or trade agreements between the Contracting Party and the European Union'.

10. <...>

11. <...>

Article 12

Designation of storage and LNG system operators

Contracting Parties shall designate, or shall require natural gas undertakings which own storage or LNG facilities to designate, for a period of time to be determined by **Contracting Parties**, having regard to considerations of efficiency and economic balance, one or more storage and LNG system operators.

Article 13

Tasks of transmission, storage and/or LNG system operators

1. Each transmission, storage and/or LNG system operator shall:

(a) operate, maintain and develop under economic conditions secure, reliable and efficient transmission, storage and/or LNG facilities to secure an open market, with due regard to the environment, ensure adequate means to meet service obligations;

(b) refrain from discriminating between system users or classes of system users, particularly in favour of its related undertakings;

(c) provide any other transmission system operator, any other storage system operator, any other LNG system operator and/or any distribution system operator, sufficient information to ensure that the transport and storage of natural gas may take place in a manner compatible with the secure and efficient operation of the interconnected system; and

(d) provide system users with the information they need for efficient access to the system.

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

3. Rules adopted by transmission system operators for balancing the gas transmission system shall be objective, transparent and non-discriminatory, including rules for the charging of system users of their networks for energy imbalance. Terms and conditions, including rules and tariffs, for the provision of such services by transmission system operators shall be established pursuant to a methodology compatible with Article 41(6) in a non-discriminatory and cost-reflective way and shall be published.

4. The regulatory authorities where **Contracting Parties** have so provided or **Contracting Parties** may require transmission system operators to comply with minimum standards for the maintenance and development of the transmission system, including interconnection capacity.

5. Transmission system operators shall procure the energy they use for the carrying out of their functions according to transparent, non-discriminatory and market based procedures.

Article 14

Independent system operators

1. Where the transmission system belongs to a vertically integrated undertaking on **6 October 2011**, **Contracting Parties** may decide not to apply Article 9(1) and designate an independent system operator upon a proposal from the transmission system owner. Such designation shall be subject to **the opinion of the Energy Community Secretariat**.

2. The **Contracting Party** may approve and designate an independent system operator only where:

(a) the candidate operator has demonstrated that it complies with the requirements of Article 9(1) (b), (c) and (d);

(b) the candidate operator has demonstrated that it has at its disposal the required financial, technical, physical and human resources to carry out its tasks under Article 13;

(c) the candidate operator has undertaken to comply with a ten-year network development plan monitored by the regulatory authority;

(d) the transmission system owner has demonstrated its ability to comply with its obligations under paragraph 5. To that end, it shall provide all the draft contractual arrangements with the candidate undertaking and any other relevant entity; and

(e) the candidate operator has demonstrated its ability to comply with its obligations under Regulation (EC) No 715/2009, **as adapted under Article 24 of the Energy Community Treaty**, including the cooperation of transmission system operators at regional level.

3. Undertakings which have been certified by the regulatory authority as having complied with the requirements of Article 11 and of paragraph 2 of this Article shall be approved and designated as independent system operators by Contracting Parties. The certification procedure in either Article 10 of this Directive and Article 3 of Regulation (EC) No 715/2009, **as adapted under Article 24 of the Energy Community Treaty**, or in Article 11 of this Directive shall be applicable.

4. Each independent system operator shall be responsible for granting and managing third-party access, including the collection of access charges and congestion charges, for operating, maintaining and developing the transmission system, as well as for ensuring the long-term ability of the system to meet reasonable demand through investment planning. When developing the transmission system the independent system operator shall be responsible for planning (including authorisation procedure), construction and commissioning of the new infrastructure. For this purpose, the independent system operator shall act as a transmission system operator in accordance with this Chapter. The transmission system owner shall not be responsible for granting and managing third-party access, nor for investment planning.

5. Where an independent system operator has been designated, the transmission system owner shall:

(a) provide all the relevant cooperation and support to the independent system operator for the fulfillment of its tasks, including in particular all relevant information;

(b) finance the investments decided by the independent system operator and approved by the regulatory authority, or give its agreement to financing by any interested party including the independent system operator. The relevant financing arrangements shall be subject to approval by the regulatory authority. Prior to such approval, the regulatory authority shall consult the transmission system own-

er together with other interested parties;

(c) provide for the coverage of liability relating to the network assets, excluding the liability relating to the tasks of the independent system operator; and

(d) provide guarantees to facilitate financing any network expansions with the exception of those investments where, pursuant to point (b), it has given its agreement to financing by any interested party including the independent system operator.

6. In close cooperation with the regulatory authority, the relevant national competition authority shall be granted all relevant powers to effectively monitor compliance of the transmission system owner with its obligations under paragraph 5.

Article 15

Unbundling of transmission system owners and storage system operators

1. A transmission system owner, where an independent system operator has been appointed, and a storage system operator which are part of vertically integrated undertakings shall be independent at least in terms of their legal form, organisation and decision making from other activities not relating to transmission, distribution and storage.

This Article shall apply only to storage facilities that are technically and/or economically necessary for providing efficient access to the system for the supply of customers pursuant to Article 33.

2. In order to ensure the independence of the transmission system owner and storage system operator referred to in paragraph 1, the following minimum criteria shall apply:

(a) persons responsible for the management of the transmission system owner and storage system operator shall not participate in company structures of the integrated natural gas undertaking responsible, directly or indirectly, for the day-to-day operation of the production and supply of natural gas;

(b) appropriate measures shall be taken to ensure that the professional interests of persons responsible for the management of the transmission system owner and storage system operator are taken into account in a manner that ensures that they are capable of acting independently;

(c) the storage system operator shall have effective decision-making rights, independent from the integrated natural gas undertaking, with respect to assets necessary to operate, maintain or develop the storage facilities. This shall not preclude the existence of appropriate coordination mechanisms to ensure that the economic and management supervision rights of the parent company in respect of return on assets regulated indirectly in accordance with Article 41(6) in a subsidiary are protected. In particular, this shall enable the parent company to approve the annual financial plan, or any equivalent instrument, of the storage system operator and to set global limits on the levels of indebtedness of its subsidiary. It shall not permit the parent company to give instructions regarding day-to-day operations, nor with respect to individual decisions concerning the construction or upgrading of storage facilities, that do not exceed the terms of the approved financial plan, or any equivalent instrument; and

(d) the transmission system owner and the storage system operator shall establish a compliance programme, which sets out measures taken to ensure that discriminatory conduct is excluded, and ensure that observance of it is adequately monitored. The compliance programme shall set out the

specific obligations of employees to meet those objectives. An annual report, setting out the measures taken, shall be submitted by the person or body responsible for monitoring the compliance programme to the regulatory authority and shall be published.

3. <...>

Article 16

Confidentiality for transmission system operators and transmission system owners

1. Without prejudice to Article 30 or any other legal duty to disclose information, each transmission, storage and/or LNG system operator, and each transmission system owner, shall preserve the confidentiality of commercially sensitive information obtained in the course of carrying out its activities, and shall prevent information about its own activities which may be commercially advantageous from being disclosed in a discriminatory manner. In particular, it shall not disclose any commercially sensitive information to the remaining parts of the undertaking, unless this is necessary for carrying out a business transaction. In order to ensure the full respect of the rules on information unbundling, **Contracting Parties** shall ensure that the transmission system owner including, in the case of a combined operator, the distribution system operator, and the remaining part of the undertaking do not use joint services, such as joint legal services, apart from purely administrative or IT functions.

2. Transmission, storage and/or LNG system operators shall not, in the context of sales or purchases of natural gas by related undertakings, misuse commercially sensitive information obtained from third parties in the context of providing or negotiating access to the system.

3. Information necessary for effective competition and the efficient functioning of the market shall be made public. That obligation shall be without prejudice to protecting commercially sensitive information.

CHAPTER IV

INDEPENDENT TRANSMISSION OPERATOR

Article 17

Assets, equipment, staff and identity

1. Transmission system operators shall be equipped with all human, technical, physical and financial resources necessary for fulfilling their obligations under this Directive and carrying out the activity of gas transmission, in particular:

(a) assets that are necessary for the activity of gas transmission, including the transmission system, shall be owned by the transmission system operator;

(b) personnel necessary for the activity of gas transmission, including the performance of all corporate tasks, shall be employed by the transmission system operator;

(c) leasing of personnel and rendering of services, to and from any other parts of the vertically integrated undertaking shall be prohibited. A transmission system operator may, however, render

services to the vertically integrated undertaking as long as:

(i) the provision of those services does not discriminate between system users, is available to all system users on the same terms and conditions and does not restrict, distort or prevent competition in production or supply; and

(ii) the terms and conditions of the provision of those services are approved by the regulatory authority;

(d) without prejudice to the decisions of the Supervisory Body under Article 20, appropriate financial resources for future investment projects and/or for the replacement of existing assets shall be made available to the transmission system operator in due time by the vertically integrated undertaking following an appropriate request from the transmission system operator.

2. The activity of gas transmission shall include at least the following tasks in addition to those listed in Article 13:

(a) the representation of the transmission system operator and contacts to third parties and the regulatory authorities;

(b) <...>

(c) granting and managing third-party access on a non-discriminatory basis between system users or classes of system users;

(d) the collection of all the transmission system related charges including access charges, balancing charges for ancillary services such as gas treatment, purchasing of services (balancing costs, energy for losses);

(e) the operation, maintenance and development of a secure, efficient and economic transmission system;

(f) investment planning ensuring the long-term ability of the system to meet reasonable demand and guaranteeing security of supply;

(g) the setting up of appropriate joint ventures, including with one or more transmission system operators, gas exchanges, and the other relevant actors pursuing the objective to develop the creation of regional markets or to facilitate the liberalisation process; and

(h) all corporate services, including legal services, accountancy and IT services.

3. Transmission system operators shall be organised in a legal form as referred to in Article 1 of Council Directive 68/151/EEC.

4. The transmission system operator shall not, in its corporate identity, communication, branding and premises, create confusion in respect of the separate identity of the vertically integrated undertaking or any part thereof.

5. The transmission system operator shall not share IT systems or equipment, physical premises and security access systems with any part of the vertically integrated undertaking, nor use the same consultants or external contractors for IT systems or equipment, and security access systems.

6. The accounts of transmission system operators shall be audited by an auditor other than the one auditing the vertically integrated undertaking or any part thereof.

Article 18

Independence of the transmission system operator

1. Without prejudice to the decisions of the Supervisory Body under Article 20, the transmission system operator shall have:

- (a) effective decision-making rights, independent from the vertically integrated undertaking, with respect to assets necessary to operate, maintain or develop the transmission system; and
- (b) the power to raise money on the capital market in particular through borrowing and capital increase.

2. The transmission system operator shall at all times act so as to ensure it has the resources it needs in order to carry out the activity of transmission properly and efficiently and develop and maintain an efficient, secure and economic transmission system.

3. Subsidiaries of the vertically integrated undertaking performing functions of production or supply shall not have any direct or indirect shareholding in the transmission system operator. The transmission system operator shall neither have any direct or indirect shareholding in any subsidiary of the vertically integrated undertaking performing functions of production or supply, nor receive dividends or any other financial benefit from that subsidiary.

4. The overall management structure and the corporate statutes of the transmission system operator shall ensure effective independence of the transmission system operator in compliance with this Chapter. The vertically integrated undertaking shall not determine, directly or indirectly, the competitive behaviour of the transmission system operator in relation to the day to day activities of the transmission system operator and management of the network, or in relation to activities necessary for the preparation of the ten-year network development plan developed pursuant to Article 22.

5. In fulfilling their tasks in Article 13 and Article 17(2) of this Directive, and in complying with Article 13(1), Article 14(1)(a), Article 16(2), (3) and (5), Article 18(6) and Article 21(1) of Regulation (EC) No 715/2009, **as adapted under Article 24 of the Energy Community Treaty**, transmission system operators shall not discriminate against different persons or entities and shall not restrict, distort or prevent competition in production or supply.

6. Any commercial and financial relations between the vertically integrated undertaking and the transmission system operator, including loans from the transmission system operator to the vertically integrated undertaking shall comply with market conditions. The transmission system operator shall keep detailed records of such commercial and financial relations and make them available to the regulatory authority upon request.

7. The transmission system operator shall submit for approval by the regulatory authority all commercial and financial agreements with the vertically integrated undertaking.

8. The transmission system operator shall inform the regulatory authority of the financial resources, referred to in Article 17(1)(d), available for future investment projects and/or for the replacement of existing assets.

9. The vertically integrated undertaking shall refrain from any action impeding or prejudicing the transmission system operator from complying with its obligations in this Chapter and shall not require the transmission system operator to seek permission from the vertically integrated undertaking in fulfilling those obligations.

10. An undertaking which has been certified by the regulatory authority as being in compliance with the requirements of this Chapter shall be approved and designated as a transmission system operator by the **Contracting Party** concerned. The certification procedure in either Article 10 of this Directive and Article 3 of Regulation (EC) No 715/2009, **as adapted under Article 24 of the Energy Community Treaty**, or in Article 11 of this Directive shall apply.

Article 19

Independence of the staff and the management of the transmission system operator

1. Decisions regarding the appointment and renewal, working conditions including remuneration, and termination of the term of office, of the persons responsible for the management and/or members of the administrative bodies of the transmission system operator shall be taken by the Supervisory Body of the transmission system operator appointed in accordance with Article 20.

2. The identity of, and the conditions governing the term, the duration and the termination of office of, the persons nominated by the Supervisory Body for appointment or renewal as persons responsible for the executive management and/or as members of the administrative bodies of the transmission system operator, and the reasons for any proposed decision terminating such term of office, shall be notified to the regulatory authority. Those conditions and the decisions referred to in paragraph 1 shall become binding only if the regulatory authority has raised no objections within three weeks of notification.

The regulatory authority may object to the decisions referred to in paragraph 1 where:

(a) doubts arise as to the professional independence of a nominated person responsible for the management and/or member of the administrative bodies; or

(b) in the case of premature termination of a term of office, doubts exist regarding the justification of such premature termination.

3. No professional position or responsibility, interest or business relationship, directly or indirectly, with the vertically integrated undertaking or any part of it or its controlling shareholders other than the transmission system operator shall be exercised for a period of three years before the appointment of the persons responsible for the management and/or members of the administrative bodies of the transmission system operator who are subject to this paragraph.

4. The persons responsible for the management and/or members of the administrative bodies, and employees of the transmission system operator shall have no other professional position or responsibility, interest or business relationship, directly or indirectly, with any other part of the vertically integrated undertaking or with its controlling shareholders.

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

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

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

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

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

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

Article 20

Supervisory Body

1. The transmission system operator shall have a Supervisory Body which shall be in charge of taking decisions which may have a significant impact on the value of the assets of the shareholders within the transmission system operator, in particular decisions regarding the approval of the annual and longer-term financial plans, the level of indebtedness of the transmission system operator and the amount of dividends distributed to shareholders. The decisions falling under the remit of the Supervisory Body shall exclude those that are related to the day to day activities of the transmission system operator and management of the network, and in relation to activities necessary for the preparation of the ten-year network development plan developed pursuant to Article 22.

2. The Supervisory Body shall be composed of members representing the vertically integrated undertaking, members representing third party shareholders and, where the relevant legislation of a **Contracting Party** so provides, members representing other interested parties such as employees of the transmission system operator.

3. The first subparagraph of Article 19(2) and Article 19(3) to (7) shall apply to at least half of the members of the Supervisory Body minus one.

Point (b) of the second subparagraph of Article 19(2) shall apply to all the members of the Supervisory Body.

Article 21

Compliance programme and compliance officer

1. **Contracting Parties** shall ensure that transmission system operators establish and implement a compliance programme which sets out the measures taken in order to ensure that discriminatory conduct is excluded, and ensure that the compliance with that programme is adequately monitored.

The compliance programme shall set out the specific obligations of employees to meet those objectives. It shall be subject to approval by the regulatory authority. Without prejudice to the powers of the national regulator, compliance with the program shall be independently monitored by a compliance officer.

2. The compliance officer shall be appointed by the Supervisory Body, subject to the approval by the regulatory authority. The regulatory authority may refuse the approval of the compliance officer only for reasons of lack of independence or professional capacity. The compliance officer may be a natural or legal person. Article 19(2) to (8) shall apply to the compliance officer.

3. The compliance officer shall be in charge of:

(a) monitoring the implementation of the compliance programme;

(b) elaborating an annual report, setting out the measures taken in order to implement the compliance programme and

submitting it to the regulatory authority;

(c) reporting to the Supervisory Body and issuing recommendations on the compliance programme and its implementation;

(d) notifying the regulatory authority on any substantial breaches with regard to the implementation of the compliance programme; and

(e) reporting to the regulatory authority on any commercial and financial relations between the vertically integrated undertaking and the transmission system operator.

4. The compliance officer shall submit the proposed decisions on the investment plan or on individual investments in the network to the regulatory authority. This shall occur at the latest when the management and/or the competent administrative body of the transmission system operator submits them to the Supervisory Body.

5. Where the vertically integrated undertaking, in the general assembly or through the vote of the members of the Supervisory Body it has appointed, has prevented the adoption of a decision with the effect of preventing or delaying investments, which under the ten-year network development plan, was to be executed in the following three years, the compliance officer shall report this to the regulatory authority, which then shall act in accordance with Article 22.

6. The conditions governing the mandate or the employment conditions of the compliance officer, including the duration of his mandate, shall be subject to approval by the regulatory authority. Those conditions shall ensure the independence of the compliance officer, including by providing it with all the resources necessary for fulfilling his duties. During his mandate, the compliance officer shall have no other professional position, responsibility or interest, directly or indirectly, in or with any part of the vertically integrated undertaking or with its controlling shareholders.

7. The compliance officer shall report regularly, either orally or in writing, to the regulatory authority and shall have the right to report regularly, either orally or in writing, to the Supervisory Body of the transmission system operator.

8. The compliance officer may attend all meetings of the management or administrative bodies of the transmission system operator, and those of the Supervisory Body and the general assembly. The compliance officer shall attend all meetings that address the following matters:

(a) conditions for access to the network, as defined in Regulation (EC) No 715/2009, **as adapted under Article 24 of the Energy Community Treaty**, in particular regarding tariffs, third party

access services, capacity allocation and congestion management, transparency, balancing and secondary markets;

(b) projects undertaken in order to operate, maintain and develop the transmission system, including investments in new transport connections, in expansion of capacity and in optimisation of existing capacity;

(c) energy purchases or sales necessary for the operation of the transmission system.

9. The compliance officer shall monitor the compliance of the transmission system operator with Article 16.

10. The compliance officer shall have access to all relevant data and to the offices of the transmission system operator and to all the information necessary for the fulfillment of his task.

11. After prior approval by the regulatory authority, the Supervisory Body may dismiss the compliance officer. It shall dismiss the compliance officer for reasons of lack of independence or professional capacity upon request of the regulatory authority.

12. The compliance officer shall have access to the offices of the transmission system operator without prior announcement.

Article 22

Network development and powers to make investment decisions

1. Every year, transmission system operators shall submit to the regulatory authority a ten-year network development plan based on existing and forecast supply and demand after having consulted all the relevant stakeholders. That network development plan shall contain efficient measures in order to guarantee the adequacy of the system and the security of supply.

2. The ten-year network development plan shall, in particular:

(a) indicate to market participants the main transmission infrastructure that needs to be built or upgraded over the next ten years;

(b) contain all the investments already decided and identify new investments which have to be executed in the next three years; and

(c) provide for a time frame for all investment projects.

3. When elaborating the ten-year network development plan, the transmission system operator shall make reasonable assumptions about the evolution of the production, supply, consumption and exchanges with other countries, taking into account investment plans for regional and **Energy Community**-wide networks, as well as investment plans for storage and LNG regasification facilities.

4. The regulatory authority shall consult all actual or potential system users on the ten-year network development plan in an open and transparent manner. Persons or undertakings claiming to be potential system users may be required to substantiate such claims. The regulatory authority shall publish the result of the consultation process, in particular possible needs for investments.

5. The regulatory authority shall examine whether the ten-year network development plan covers all investment needs identified during the consultation process <...>. The regulatory authority may require the transmission system operator to amend its ten-year network development plan.

6. The regulatory authority shall monitor and evaluate the implementation of the ten-year network development plan.

7. In circumstances where the transmission system operator, other than for overriding reasons beyond its control, does not execute an investment, which, under the ten-year network development plan, was to be executed in the following three years, **Contracting Parties** shall ensure that the regulatory authority is required to take at least one of the following measures to ensure that the investment in question is made if such investment is still relevant on the basis of the most recent ten-year network development plan:

- (a) to require the transmission system operator to execute the investments in question;
- (b) to organise a tender procedure open to any investors for the investment in question; or
- (c) to oblige the transmission system operator to accept a capital increase to finance the necessary investments and allow independent investors to participate in the capital.

Where the regulatory authority has made use of its powers under point (b) of the first subparagraph, it may oblige the transmission system operator to agree to one or more of the following:

- (a) financing by any third party;
- (b) construction by any third party;
- (c) building the new assets concerned itself;
- (d) operating the new asset concerned itself.

The transmission system operator shall provide the investors with all information needed to realise the investment, shall connect new assets to the transmission network and shall generally make its best efforts to facilitate the implementation of the investment project.

The relevant financial arrangements shall be subject to approval by the regulatory authority.

8. Where the regulatory authority has made use of its powers under the first subparagraph of paragraph 7, the relevant tariff regulations shall cover the costs of the investments in question.

Article 23

Decision-making powers regarding the connection of storage facilities, LNG regasification facilities and industrial customers to the transmission system

1. The transmission system operator shall establish and publish transparent and efficient procedures and tariffs for non-discriminatory connection of storage facilities, LNG regasification facilities and industrial customers to the transmission system. Those procedures shall be subject to approval by the regulatory authority.

2. The transmission system operator shall not be entitled to refuse the connection of a new storage facility, LNG regasification facility or industrial customer on the grounds of possible future limitations to available network capacities or additional costs linked with necessary capacity increase. The transmission system operator shall ensure sufficient entry and exit capacity for the new connection.

CHAPTER V

DISTRIBUTION AND SUPPLY

Article 24

Designation of distribution system operators

Contracting Parties shall designate, or shall require undertakings which own or are responsible for distribution systems to designate, for a period of time to be determined by **Contracting Parties**, having regard to considerations of efficiency and economic balance, one or more distribution system operators and shall ensure that those operators act in accordance with Articles 25, 26 and 27.

Article 25

Tasks of distribution system operators

1. Each distribution system operator shall be responsible for ensuring the long-term ability of the system to meet reasonable demands for the distribution of gas, and for operating, maintaining and developing under economic conditions a secure, reliable and efficient system in its area, with due regard for the environment and energy efficiency.
2. In any event, the distribution system operator shall not discriminate between system users or classes of system users, particularly in favour of its related undertakings.
3. Each distribution system operator shall provide any other distribution, transmission, LNG, and/or storage system operator with sufficient information to ensure that the transport and storage of natural gas takes place in a manner compatible with the secure and efficient operation of the inter-connected system.
4. Each distribution system operator shall provide system users with the information they need for efficient access to, including use of, the system.
5. Where a distribution system operator is responsible for balancing the distribution system, rules adopted by it for that purpose shall be objective, transparent and non-discriminatory, including rules for the charging of system users for energy imbalance. Terms and conditions, including rules and tariffs, for the provision of such services by distribution system operators shall be established pursuant to a methodology compatible with Article 41(6) in a non-discriminatory and cost-reflective way and shall be published.

Article 26

Unbundling of distribution system operators

1. Where the distribution system operator is part of a vertically integrated undertaking, it shall be independent at least in terms of its legal form, organisation and decision making from other activities not relating to distribution. Those rules shall not create an obligation to separate the ownership of assets of the distribution system from the vertically integrated undertaking.

2. In addition to the requirements under paragraph 1, where the distribution system operator is part of a vertically integrated undertaking, it shall be independent in terms of its organisation and decision-making from the other activities not related to distribution. In order to achieve this, the following minimum criteria shall apply:

(a) those persons responsible for the management of the distribution system operator must not participate in company structures of the integrated natural gas undertaking responsible, directly or indirectly, for the day-to-day operation of the production, transmission and supply of natural gas;

(b) appropriate measures must be taken to ensure that the professional interests of persons responsible for the management of the distribution system operator are taken into account in a manner that ensures that they are capable of acting independently;

(c) the distribution system operator must have effective decision-making rights, independent from the integrated natural gas undertaking, with respect to assets necessary to operate, maintain or develop the network. In order to fulfill those tasks, the distribution system operator shall have at its disposal the necessary resources including human, technical, financial and physical resources. This should not prevent the existence of appropriate coordination mechanisms to ensure that the economic and management supervision rights of the parent company in respect of return on assets, regulated indirectly in accordance with Article 41(6) in a subsidiary are protected. In particular, this shall enable the parent company to approve the annual financial plan, or any equivalent instrument, of the distribution system operator and to set global limits on the levels of indebtedness of its subsidiary. It shall not permit the parent company to give instructions regarding day-to-day operations, nor with respect to individual decisions concerning the construction or upgrading of distribution lines, that do not exceed the terms of the approved financial plan, or any equivalent instrument; and

(d) the distribution system operator must establish a compliance programme, which sets out measures taken to ensure that discriminatory conduct is excluded, and ensure that observance of it is adequately monitored. The compliance programme shall set out the specific obligations of employees to meet that objective. An annual report, setting out the measures taken, shall be submitted by the person or body responsible for monitoring the compliance programme, the compliance officer of the distribution system operator, to the regulatory authority referred to in Article 39(1) and shall be published. The compliance officer of the distribution system operator shall be fully independent and shall have access to all the necessary information of the distribution system operator and any affiliated undertaking to fulfill his task.

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

4. **Contracting Parties** may decide not to apply paragraphs 1, 2 and 3 to integrated natural gas undertakings serving less than 100 000 connected customers.

Article 27

Confidentiality obligations of distribution system operators

1. Without prejudice to Article 30 or any other legal duty to disclose information, each distribution system operator shall preserve the confidentiality of commercially sensitive information obtained in the course of carrying out its business, and shall prevent information about its own activities which may be commercially advantageous from being disclosed in a discriminatory manner.
2. Distribution system operators shall not, in the context of sales or purchases of natural gas by related undertakings, abuse commercially sensitive information obtained from third parties in the context of providing or negotiating access to the system.

Article 28

Closed distribution systems

1. **Contracting Parties** may provide for national regulatory authorities or other competent authorities to classify a system which distributes gas within a geographically confined industrial, commercial or shared services site and does not, without prejudice to paragraph 4, supply household customers, as a closed distribution system if:
 - (a) for specific technical or safety reasons, the operations or the production process of the users of that system are integrated; or
 - (b) that system distributes gas primarily to the owner or operator of the system or to their related undertakings.
2. **Contracting Parties** may provide for national regulatory authorities to exempt the operator of a closed distribution system from the requirement under Article 32(1) that tariffs, or the methodologies underlying their calculation, are approved prior to their entry into force in accordance with Article 41.
3. Where an exemption is granted under paragraph 2, the applicable tariffs, or the methodologies underlying their calculation, shall be reviewed and approved in accordance with Article 41 upon request by a user of the closed distribution system.
4. Incidental use by a small number of households with employment or similar associations with the owner of the distribution system and located within the area served by a closed distribution system shall not preclude an exemption under paragraph 2 being granted.

Article 29

Combined operator

Article 26(1) shall not prevent the operation of a combined transmission, LNG, storage and distribution system operator provided that operator complies with Articles 9(1), or 14 and 15, or Chapter IV or falls under Article 49(6).

CHAPTER VI

UNBUNDLING AND TRANSPARENCY OF ACCOUNTS

Article 30

Right of access to accounts

1. **Contracting Parties** or any competent authority they designate, including the regulatory authorities referred to in Article 39(1) and the dispute settlement authorities referred to in Article 34(3) shall, insofar as necessary to carry out their functions, have right of access to the accounts of natural gas undertakings as set out in Article 31.

2. **Contracting Parties** and any designated competent authority, including the regulatory authorities referred to in Article 39(1) and the dispute settlement authorities, shall preserve the confidentiality of commercially sensitive information. Contracting Parties may provide for the disclosure of such information where this is necessary in order for the competent authorities to carry out their functions.

Article 31

Unbundling of accounts

1. **Contracting Parties** shall take the necessary steps to ensure that the accounts of natural gas undertakings are kept in accordance with paragraphs 2 to 5 of this Article. Where natural gas undertakings benefit from a derogation from this provision on the basis of Article 49(2) and (4), they shall at least keep their internal accounts in accordance with this Article.

2. Natural gas undertakings, whatever their system of ownership or legal form, shall draw up, submit to audit and publish their annual accounts in accordance with the rules of national law concerning the annual accounts of limited liability companies which should comply with the Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 44(2)(g) of the Treaty on the annual accounts of certain types of companies.

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

3. Natural gas undertakings shall, in their internal accounting, keep separate accounts for each of their transmission, distribution, LNG and storage activities as they would be required to do if the activities in question were carried out by separate undertakings, with a view to avoiding discrimination, cross-subsidisation and distortion of competition. They shall also keep accounts, which may be consolidated, for other gas activities not relating to transmission, distribution, LNG and storage. Until **1 January 2015**, they shall keep separate accounts for supply activities for eligible customers and supply activities for non-eligible customers. Revenue from ownership of the transmission or distribution network shall be specified in the accounts. Where appropriate, they shall keep consolidated accounts for other, non-gas activities. The internal accounts shall include a balance sheet and a profit and loss account for each activity.

4. The audit, referred to in paragraph 2, shall, in particular, verify that the obligation to avoid discrimination and cross-subsidies referred to in paragraph 3 is respected.

5. Undertakings shall specify in their internal accounting the rules for the allocation of assets and liabilities, expenditure and income as well as for depreciation, without prejudice to nationally applicable accounting rules, which they follow in drawing up the separate accounts referred to in paragraph 3. Those internal rules may be amended only in exceptional cases. Such amendments shall be mentioned and duly substantiated.

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

CHAPTER VII

ORGANISATION OF ACCESS TO THE SYSTEM

Article 32

Third-party access

1. **Contracting Parties** shall ensure the implementation of a system of third party access to the transmission and distribution system, and LNG facilities based on published tariffs, applicable to all eligible customers, including supply undertakings, and applied objectively and without discrimination between system users. **Contracting Parties** shall ensure that those tariffs, or the methodologies underlying their calculation are approved prior to their entry into force in accordance with Article 41 by a regulatory authority referred to in Article 39(1) and that those tariffs - and the methodologies, where only methodologies are approved - are published prior to their entry into force.

2. Transmission system operators shall, if necessary for the purpose of carrying out their functions including in relation to cross-border transmission, have access to the network of other transmission system operators.

3. The provisions of this Directive shall not prevent the conclusion of long-term contracts in so far as they comply with **Energy Community** competition rules.

Article 33

Access to storage

1. For the organisation of access to storage facilities and linepack when technically and/or economically necessary for providing efficient access to the system for the supply of customers, as well as for the organisation of access to ancillary services, Contracting Parties may choose either or both of the procedures referred to in paragraphs 3 and 4. Those procedures shall operate in accordance with objective, transparent and non-discriminatory criteria.

The regulatory authorities where **Contracting Parties** have so provided or **Contracting Parties** shall define and publish criteria according to which the access regime applicable to storage facilities and linepack may be determined. They shall make public, or oblige storage and transmission system operators to make public, which storage facilities, or which parts of those storage facilities, and

which linepack is offered under the different procedures referred to in paragraphs 3 and 4.

The obligation referred to in the second sentence of the second subparagraph shall be without prejudice to the right of choice granted to **Contracting Parties** in the first subparagraph.

2. The provisions of paragraph 1 shall not apply to ancillary services and temporary storage that are related to LNG facilities and are necessary for the re-gasification process and subsequent delivery to the transmission system.

3. In the case of negotiated access, **Contracting Parties** or, where **Contracting Parties** have so provided, the regulatory authorities shall take the necessary measures for natural gas undertakings and eligible customers either inside or outside the territory covered by the interconnected system to be able to negotiate access to storage facilities and linepack, when technically and/or economically necessary for providing efficient access to the system, as well as for the organisation of access to other ancillary services. The parties shall be obliged to negotiate access to storage, linepack and other ancillary services in good faith.

Contracts for access to storage, linepack and other ancillary services shall be negotiated with the relevant storage system operator or natural gas undertakings. The regulatory authorities where **Contracting Parties** have so provided or **Contracting Parties** shall require storage system operators and natural gas undertakings to publish their main commercial conditions for the use of storage, linepack and other ancillary services **1 January 2007** and on an annual basis every year thereafter.

When developing the conditions referred to in the second subparagraph, storage operators and natural gas undertakings shall consult system users.

4. In the case of regulated access, **the regulatory authorities where Contracting Parties** have so provided or **Contracting Parties** shall take the necessary measures to give natural gas undertakings and eligible customers either inside or outside the territory covered by the interconnected system a right to access to storage, linepack and other ancillary services, on the basis of published tariffs and/or other terms and obligations for use of that storage and linepack, when technically and/or economically necessary for providing efficient access to the system, as well as for the organisation of access to other ancillary services. The regulatory authorities where **Contracting Parties** have so provided or **Contracting Parties** shall consult system users when developing those tariffs or the methodologies for those tariffs. The right of access for eligible customers may be given by enabling them to enter into supply contracts with competing natural gas undertakings other than the owner and/or operator of the system or a related undertaking.

Article 34

Access to upstream pipeline networks

1. **Contracting Parties** shall take the necessary measures to ensure that natural gas undertakings and eligible customers, wherever they are located, are able to obtain access to upstream pipeline networks, including facilities supplying technical services incidental to such access, in accordance with this Article, except for the parts of such networks and facilities which are used for local production operations at the site of a field where the gas is produced. The measures shall be notified to the **Energy Community Secretariat**.

2. The access referred to in paragraph 1 shall be provided in a manner determined by the **Contract-**

ing Party in accordance with the relevant legal instruments. **Contracting Parties** shall apply the objectives of fair and open access, achieving a competitive market in natural gas and avoiding any abuse of a dominant position, taking into account security and regularity of supplies, capacity which is or can reasonably be made available, and environmental protection. The following matters may be taken into account:

- (a) the need to refuse access where there is an incompatibility of technical specifications which cannot reasonably be overcome;
- (b) the need to avoid difficulties which cannot reasonably be overcome and could prejudice the efficient, current and planned future production of hydrocarbons, including that from fields of marginal economic viability;
- (c) the need to respect the duly substantiated reasonable needs of the owner or operator of the upstream pipeline network for the transport and processing of gas and the interests of all other users of the upstream pipeline network or relevant processing or handling facilities who may be affected; and
- (d) the need to apply their laws and administrative procedures, in conformity with **Energy Community law**, for the grant of authorisation for production or upstream development.

3. **Contracting Parties** shall ensure that they have in place dispute-settlement arrangements, including an authority independent of the parties with access to all relevant information, to enable disputes relating to access to upstream pipeline networks to be settled expeditiously, taking into account the criteria in paragraph 2 and the number of parties which may be involved in negotiating access to such networks.

4. In the event of cross-border disputes, the dispute-settlement arrangements for the **Contracting Party** having jurisdiction over the upstream pipeline network which refuses access shall be applied. Where, in cross-border disputes, more than one **Contracting Party** covers the network concerned, the **Contracting Parties** concerned shall consult each other with a view to ensuring that the provisions of this Directive are applied consistently.

Article 35

Refusal of access

1. Natural gas undertakings may refuse access to the system on the basis of lack of capacity or where the access to the system would prevent them from carrying out the public service obligations referred to in Article 3(2) which are assigned to them or on the basis of serious economic and financial difficulties with take-or-pay contracts having regard to the criteria and procedures set out in Article 48 and the alternative chosen by the **Contracting Party** in accordance with paragraph 1 of that Article. Duly substantiated reasons shall be given for any such a refusal.

2. **Contracting Parties** may take the measures necessary to ensure that the natural gas undertaking refusing access to the system on the basis of lack of capacity or a lack of connection makes the necessary enhancements as far as it is economic to do so or when a potential customer is willing to pay for them. In circumstances where **Contracting Parties** apply Article 4(4), **Contracting Parties** shall take such measures.

Article 36**New infrastructure**

1. Major new gas infrastructure, i.e. interconnectors, LNG and storage facilities, may, upon request, be exempted, for a defined period of time, from the provisions of Articles 9, 32, 33 and 34 and Article 41(6), (8) and (10) under the following conditions:

- (a) the investment must enhance competition in gas supply and enhance security of supply;
- (b) the level of risk attached to the investment must be such that the investment would not take place unless an exemption was granted;
- (c) the infrastructure must be owned by a natural or legal person which is separate at least in terms of its legal form from the system operators in whose systems that infrastructure will be built;
- (d) charges must be levied on users of that infrastructure; and
- (e) the exemption must not be detrimental to competition or the effective functioning of the internal market in natural gas, or the efficient functioning of the regulated system to which the infrastructure is connected.

2. Paragraph 1 shall also apply to significant increases of capacity in existing infrastructure and to modifications of such infrastructure which enable the development of new sources of gas supply.

3. The regulatory authority referred to in Chapter VIII may, on a case-by-case basis, decide on the exemption referred to in paragraphs 1 and 2.

4. Where the infrastructure in question is located in the territory of more than one **Contracting Party**, the **Energy Community Regulatory Board** may submit an advisory opinion to the regulatory authorities of the **Contracting Parties** concerned, which may be used as a basis for their decision, within two months from the date on which the request for exemption was received by the last of those regulatory authorities.

Where all the regulatory authorities concerned agree on the request for exemption within six months of the date on which it was received by the last of the regulatory authorities, they shall inform the **Energy Community Regulatory Board** of their decision.

The **Energy Community Regulatory Board** shall exercise the tasks conferred on the regulatory authorities of the **Contracting Parties** concerned by the present Article:

- (a) where all regulatory authorities concerned have not been able to reach an agreement within a period of six months from the date on which the request for exemption was received by the last of those regulatory authorities; or
- (b) upon a joint request from the regulatory authorities concerned.

All regulatory authorities concerned may, jointly, request that the period referred to in point (a) of the third subparagraph is extended by up to three months.

5. Before taking a decision, the **Energy Community Regulatory Board** shall consult the relevant regulatory authorities and the applicants.

6. An exemption may cover all or part of the capacity of the new infrastructure, or of the existing infrastructure with significantly increased capacity.

In deciding to grant an exemption, consideration shall be given, on a case-by-case basis, to the need

to impose conditions regarding the duration of the exemption and non-discriminatory access to the infrastructure. When deciding on those conditions, account shall, in particular, be taken of the additional capacity to be built or the modification of existing capacity, the time horizon of the project and national circumstances.

Before granting an exemption, the regulatory authority shall decide upon the rules and mechanisms for management and allocation of capacity. The rules shall require that all potential users of the infrastructure are invited to indicate their interest in contracting capacity before capacity allocation in the new infrastructure, including for own use, takes place. The regulatory authority shall require congestion management rules to include the obligation to offer unused capacity on the market, and shall require users of the infrastructure to be entitled to trade their contracted capacities on the secondary market. In its assessment of the criteria referred to in points (a), (b) and (e) of paragraph 1, the regulatory authority shall take into account the results of that capacity allocation procedure.

The exemption decision, including any conditions referred to in the second subparagraph of this paragraph, shall be duly reasoned and published.

7. Notwithstanding paragraph 3, **Contracting Parties** may provide that their regulatory authority or the **Energy Community Regulatory Board**, as the case may be, shall submit, for the purposes of the formal decision, to the relevant body in the **Contracting** Party its opinion on the request for an exemption. That opinion shall be published together with the decision.

8. The regulatory authority shall transmit to the **Energy Community Secretariat**, without delay, a copy of every request for exemption as of its receipt. The decision shall be notified, without delay, by the competent authority to the **Energy Community Secretariat**, together with all the relevant information with respect to the decision. That information may be submitted to the **Energy Community Secretariat** in aggregate form, enabling the **Energy Community Secretariat** to reach a well-founded decision. In particular, the information shall contain:

- (a) the detailed reasons on the basis of which the regulatory authority, or **Contracting Party**, granted or refused the exemption together with a reference to paragraph 1 including the relevant point or points of that paragraph on which such decision is based, including the financial information justifying the need for the exemption;
- (b) the analysis undertaken of the effect on competition and the effective functioning of the internal market in natural gas resulting from the grant of the exemption;
- (c) the reasons for the time period and the share of the total capacity of the gas infrastructure in question for which the exemption is granted;
- (d) in case the exemption relates to an interconnector, the result of the consultation with the regulatory authorities concerned; and
- (e) the contribution of the infrastructure to the diversification of gas supply.

9. Within a period of two months from the day following the receipt of a notification, the **Secretariat** may issue an opinion inviting the regulatory authority to amend or withdraw the decision to grant an exemption. That two-month period may be extended by an additional period of two months where further information is sought by the **Energy Community Secretariat**. That additional period shall begin on the day following the receipt of the complete information. The initial two-month period may also be extended with the consent of both the **Energy Community Secretariat** and the regulatory authority.

Where the requested information is not provided within the period set out in the request, the notification shall be deemed to be withdrawn unless, before the expiry of that period, either the period has been extended with the consent of both the **Energy Community Secretariat** and the regulatory authority, or the regulatory authority, in a duly reasoned statement, has informed the **Energy Community Secretariat** that it considers the notification to be complete.

The notifying bodies shall take the utmost account of a Secretariat opinion that recommends to amend or withdraw the exemption decision. Where the final decision diverges from the Secretariat's opinion, the regulatory authority concerned shall provide and publish, together with that decision, the reasoning underlying its decision. Diverting decisions shall be included in the agenda of the first meeting of the Ministerial Council following the date of the decision, for information and discussion.

The **Secretariat** shall preserve the confidentiality of commercially sensitive information.

The **Secretariat's** opinion on an exemption decision shall lose its effect two years from its adoption in the event that construction of the infrastructure has not yet started, and five years from its adoption in the event that the infrastructure has not become operational unless the **Secretariat** considers that any delay is due to major obstacles beyond control of the person to whom the exemption has been granted.

10. <...>

Article 37

Market opening and reciprocity

1. **Contracting Parties** shall ensure that the eligible customers comprise⁶:

- (a) <...>;
- (b) **from 1 January 2008**, all non-household customers;
- (c) **from 1 January 2015**, all customers.

2. To avoid imbalance in the opening of the gas markets:

- (a) contracts for the supply with an eligible customer in the system of another **Contracting Party** shall not be prohibited if the customer is eligible in both systems involved; and
- (b) <...>.

Article 38

Direct lines

1. **Contracting Parties** shall take the necessary measures to enable:

- (a) natural gas undertakings established within their territory to supply the eligible customers through a direct line; and,
- (b) any such eligible customer within their territory to be supplied through a direct line by natural

⁶ According to Article 17(2) of Decision 2011/02/MC-EnC, the following deadlines 'shall apply without prejudice to special deadlines agreed in the Protocols of Accession to the Energy Community'.

gas undertakings.

2. In circumstances where an authorisation (for example, licence, permission, concession, consent or approval) is required for the construction or operation of direct lines, the **Contracting Parties** or any competent authority they designate shall lay down the criteria for the grant of authorisations for the construction or operation of such lines in their territory. Those criteria shall be objective, transparent and non-discriminatory.

3. **Contracting Parties** may issue an authorisation to construct a direct line subject either to the refusal of system access on the basis of Article 35 or to the opening of a dispute-settlement procedure under Article 41.

CHAPTER VIII

NATIONAL REGULATORY AUTHORITIES

Article 39

Designation and independence of regulatory authorities

1. Each **Contracting Party** shall designate a single national regulatory authority at national level.
2. Paragraph 1 of this Article shall be without prejudice to the designation of other regulatory authorities at regional level within **Contracting Parties**, provided that there is one senior representative for representation and contact purposes at **Energy Community** level.
3. By way of derogation from paragraph 1 of this Article, a **Contracting Party** may designate regulatory authorities for small systems on a geographically separate region whose consumption, in 2008, accounted for less than 3% of the total consumption of the **Contracting Party** of which it is part. That derogation shall be without prejudice to the appointment of one senior representative for representation and contact purposes at **Energy Community** level.
4. **Contracting Parties** shall guarantee the independence of the regulatory authority and shall ensure that it exercises its powers impartially and transparently. For this purpose, **Contracting Parties** shall ensure that, when carrying out the regulatory tasks conferred upon it by this Directive and related legislation, the regulatory authority:
 - (a) is legally distinct and functionally independent from any other public or private entity;
 - (b) ensures that its staff and the persons responsible for its management:
 - (i) act independently from any market interest; and
 - (ii) do not seek or take direct instructions from any government or other public or private entity when carrying out the regulatory tasks. That requirement is without prejudice to close cooperation, as appropriate, with other relevant national authorities or to general policy guidelines issued by the government not related to the regulatory powers and duties under Article 41.
5. In order to protect the independence of the regulatory authority, **Contracting Parties** shall in particular ensure that:
 - (a) the regulatory authority can take autonomous decisions, independently from any political body, and has separate annual budget allocations, with autonomy in the implementation of the allocated

budget, and adequate human and financial resources to carry out its duties; and

(b) the members of the board of the regulatory authority or, in the absence of a board, the regulatory authority's top management are appointed for a fixed term of five up to seven years, renewable once.

In regard to point (b) of the first subparagraph, **Contracting Parties** shall ensure an appropriate rotation scheme for the board or the top management. The members of the board or, in the absence of a board, members of the top management may be relieved from office during their term only if they no longer fulfill the conditions set out in this Article or have been guilty of misconduct under national law.

Article 40

General objectives of the regulatory authority

In carrying out the regulatory tasks specified in this Directive, the regulatory authority shall take all reasonable measures in pursuit of the following objectives within the framework of their duties and powers as laid down in Article 41, in close consultation with other relevant national authorities, including competition authorities, as appropriate, and without prejudice to their competencies:

(a) promoting, in close cooperation with the **Energy Community Regulatory Board**, regulatory authorities of other **Contracting Parties** and the **Energy Community Secretariat**, a competitive, secure and environmentally sustainable internal market in natural gas within the **Energy Community**, and effective market opening for all customers and suppliers in the **Energy Community**, and ensuring appropriate conditions for the effective and reliable operation of gas networks, taking into account long-term objectives;

(b) developing competitive and properly functioning regional markets within the **Energy Community** in view of the achievement of the objectives referred to in point (a);

(c) eliminating restrictions on trade in natural gas between **Contracting Parties**, including developing appropriate cross-border transmission capacities to meet demand and enhancing the integration of national markets which may facilitate natural gas flow across the **Energy Community**;

(d) helping to achieve, in the most cost-effective way, the development of secure, reliable and efficient non-discriminatory systems that are consumer oriented, and promoting system adequacy and, in line with general energy policy objectives, energy efficiency as well as the integration of large and small scale production of gas from renewable energy sources and distributed production in both transmission and distribution networks;

(e) facilitating access to the network for new production capacity, in particular removing barriers that could prevent access for new market entrants and of gas from renewable energy sources;

(f) ensuring that system operators and system users are granted appropriate incentives, in both the short and the long term, to increase efficiencies in system performance and foster market integration;

(g) ensuring that customers benefit through the efficient functioning of their national market, promoting effective competition and helping to ensure consumer protection;

(h) helping to achieve high standards of public service for natural gas, contributing to the protection

of vulnerable customers and contributing to the compatibility of necessary data exchange processes for customer switching.

Article 41

Duties and powers of the regulatory authority

1. The regulatory authority shall have the following duties:

- (a) fixing or approving, in accordance with transparent criteria, transmission or distribution tariffs or their methodologies;
- (b) ensuring compliance of transmission and distribution system operators, and where relevant, system owners, as well as of any natural gas undertakings, with their obligations under this Directive and other relevant **Energy Community** legislation, including as regards cross-border issues;
- (c) cooperating in regard to cross-border issues with the regulatory authority or authorities of the **Contracting Parties** concerned and with the **Energy Community Regulatory Board**;
- (d) complying with, and implementing, any relevant legally binding decisions of the **Energy Community Regulatory Board** <...>;
- (e) reporting annually on its activity and the fulfillment of its duties to the relevant authorities of the **Contracting Parties**, to the **Energy Community Regulatory Board** and the **Energy Community Secretariat**. Such reports shall cover the steps taken and the results obtained as regards each of the tasks listed in this Article;
- (f) ensuring that there are no cross-subsidies between transmission, distribution, storage, LNG and supply activities;
- (g) monitoring investment plans of the transmission system operators, and providing in its annual report an assessment of the investment plans of the transmission system operators <...>; which may include recommendations to amend those investment plans;
- (h) monitoring compliance with and reviewing the past performance of network security and reliability rules and setting or approving standards and requirements for quality of service and supply or contributing thereto together with other competent authorities;
- (i) monitoring the level of transparency, including of wholesale prices, and ensuring compliance of natural gas undertakings with transparency obligations;
- (j) monitoring the level and effectiveness of market opening and competition at wholesale and retail levels, including on natural gas exchanges, prices for household customers including prepayment systems, switching rates, disconnection rates, charges for and the execution of maintenance services and complaints by household customers, as well as any distortion or restriction of competition, including providing any relevant information, and bringing any relevant cases to the relevant competition authorities;
- (k) monitoring the occurrence of restrictive contractual practices, including exclusivity clauses which may prevent large non-household customers from contracting simultaneously with more than one supplier or restrict their choice to do so, and, where appropriate, informing the national competition authorities of such practices;
- (l) respecting contractual freedom with regard to interruptible supply contracts as well as with regard

to long-term contracts provided that they are compatible with **Energy Community law**;

(m) monitoring the time taken by transmission and distribution system operators to make connections and repairs;

(n) monitoring and reviewing the access conditions to storage, linepack and other ancillary services as provided for in Article 33. In the event that the access regime to storage is defined according to Article 33(3), that task shall exclude the reviewing of tariffs;

(o) helping to ensure, together with other relevant authorities, that the consumer protection measures, including those set out in Annex I, are effective and enforced;

(p) publishing recommendations, at least annually, in relation to compliance of supply prices with Article 3, and providing those to the competition authorities, where appropriate;

(q) ensuring access to customer consumption data, the provision for optional use, of an easily understandable harmonised format at national level for consumption data and prompt access for all customers to such data under point (h) of Annex I;

(r) monitoring the implementation of rules relating to the roles and responsibilities of transmission system operators, distribution system operators, suppliers and customers and other market parties pursuant to Regulation (EC) No 715/2009, **as adapted under Article 24 of the Energy Community Treaty**;

(s) monitoring the correct application of the criteria that determine whether a storage facility falls under Article 33(3) or (4); and

(t) monitoring the implementation of safeguards measures as referred to in Article 46;

(u) contributing to the compatibility of data exchange processes for the most important market processes at regional level.

2. Where a **Contracting Party** has so provided, the monitoring duties set out in paragraph 1 may be carried out by other authorities than the regulatory authority. In such a case, the information resulting from such monitoring shall be made available to the regulatory authority as soon as possible.

While preserving their independence, without prejudice to their own specific competencies and consistent with the principles of better regulation, the regulatory authority shall, as appropriate, consult transmission system operators and, as appropriate, closely cooperate with other relevant national authorities when carrying out the duties set out in paragraph 1.

Any approvals given by a regulatory authority or the **Energy Community Regulatory Board** under this Directive are without prejudice to any duly justified future use of its powers by the regulatory authority under this Article or to any penalties imposed by other relevant authorities <...>.

3. In addition to the duties conferred upon it under paragraph 1 of this Article, when an independent system operator has been designated under Article 14, the regulatory authority shall:

(a) monitor the transmission system owner's and the independent system operator's compliance with their obligations under this Article, and issue penalties for non compliance in accordance with paragraph 4(d);

(b) monitor the relations and communications between the independent system operator and the transmission system owner so as to ensure compliance of the independent system operator with its obligations, and in particular approve contracts and act as a dispute settlement authority between the independent system operator and the transmission system owner in respect of any complaint

submitted by either party pursuant to paragraph 11;

(c) without prejudice to the procedure under Article 14(2)(c), for the first ten-year network development plan, approve the investments planning and the multi-annual network development plan presented annually by the independent system operator;

(d) ensure that network access tariffs collected by the independent system operator include remuneration for the network owner or network owners, which provides for adequate remuneration of the network assets and of any new investments made therein, provided they are economically and efficiently incurred; and

(e) have the powers to carry out inspections, including unannounced inspections, at the premises of transmission system owner and independent system operator.

4. **Contracting Parties** shall ensure that regulatory authorities are granted the powers enabling them to carry out the duties referred to in paragraph 1, 3 and 6 in an efficient and expeditious manner. For this purpose, the regulatory authority shall have at least the following powers:

(a) to issue binding decisions on natural gas undertakings;

(b) to carry out investigations into the functioning of the gas markets, and to decide upon and impose any necessary and proportionate measures to promote effective competition and ensure the proper functioning of the market. Where appropriate, the regulatory authority shall also have the power to cooperate with the national competition authority and the financial market regulators or the **Energy Community Secretariat** in conducting an investigation relating to competition law;

(c) to require any information from natural gas undertakings relevant for the fulfillment of its tasks, including the justification for any refusal to grant third-party access, and any information on measures necessary to reinforce the network;

(d) to impose effective, proportionate and dissuasive penalties on natural gas undertakings not complying with their obligations under this Directive or any relevant legally binding decisions of the regulatory authority or of the **Energy Community Regulatory Board**, or to propose to a competent court to impose such penalties. This shall include the power to impose or propose the imposition of penalties of up to 10% of the annual turnover of the transmission system operator or of up to 10% of the annual turnover of the vertically integrated undertaking on the transmission system operator or on the vertically integrated undertaking, as the case may be, for non compliance with their respective obligations pursuant to this Directive; and

(e) appropriate rights of investigations and relevant powers of instructions for dispute settlement under paragraphs 11 and 12.

5. In addition to the duties and powers conferred on it under paragraphs 1 and 4 of this Article, when a transmission system operator has been designated in accordance with Chapter IV, the regulatory authority shall be granted at least the following duties and powers:

(a) to issue penalties in accordance with paragraph 4(d) for discriminatory behaviour in favour of the vertically integrated undertaking;

(b) to monitor communications between the transmission system operator and the vertically integrated undertaking so as to ensure compliance of the transmission system operator with its obligations;

(c) to act as dispute settlement authority between the vertically integrated undertaking and the transmission system operator in respect of any complaint submitted pursuant to paragraph 11;

(d) to monitor commercial and financial relations including loans between the vertically integrated

undertaking and the transmission system operator;

(e) to approve all commercial and financial agreements between the vertically integrated undertaking and the transmission system operator, on the condition that they comply with market conditions;

(f) to request justification from the vertically integrated undertaking when notified by the compliance officer in accordance with Article 21(4). Such justification shall in particular include evidence to the end that no discriminatory behaviour to the advantage of the vertically integrated undertaking has occurred;

(g) to carry out inspections, including unannounced inspections, on the premises of the vertically integrated undertaking and the transmission system operator; and

(h) to assign all or specific tasks of the transmission system operator to an independent system operator appointed in accordance with Article 14 in case of a persistent breach by the transmission system operator of its obligations under this Directive, in particular in case of repeated discriminatory behaviour to the benefit of the vertically integrated undertaking.

6. The regulatory authorities shall be responsible for fixing or approving sufficiently in advance of their entry into force at least the methodologies used to calculate or establish the terms and conditions for:

(a) connection and access to national networks, including transmission and distribution tariffs, and terms, conditions and tariffs for access to LNG facilities. Those tariffs or methodologies shall allow the necessary investments in the networks and LNG facilities to be carried out in a manner allowing those investments to ensure the viability of the networks and LNG facilities;

(b) the provision of balancing services which shall be performed in the most economic manner and provide appropriate incentives for network users to balance their input and off-takes. The balancing services shall be provided in a fair and non-discriminatory manner and be based on objective criteria; and

(c) access to cross-border infrastructures, including the procedures for the allocation of capacity and congestion management.

7. The methodologies or the terms and conditions referred to in paragraph 6 shall be published.

8. In fixing or approving the tariffs or methodologies and the balancing services, the regulatory authorities shall ensure that transmission and distribution system operators are granted appropriate incentive, over both the short and long term, to increase efficiencies, foster market integration and security of supply and support the related research activities

9. The regulatory authorities shall monitor congestion management of national gas transmission networks including interconnectors, and the implementation of congestion management rules. To that end, transmission system operators or market operators shall submit their congestion management rules, including capacity allocation, to the national regulatory authorities. National regulatory authorities may request amendments to those rules.

10. Regulatory authorities shall have the authority to require transmission, storage, LNG and distribution system operators, if necessary, to modify the terms and conditions, including tariffs and methodologies referred to in this Article, to ensure that they are proportionate and applied in a non-discriminatory manner. In the event that the access regime to storage is defined according to Article 33(3), that task shall exclude the modification of tariffs. In the event of delay in the fixing of transmission and distribution tariffs, regulatory authorities shall have the power to fix or approve

provisional transmission and distribution tariffs or methodologies and to decide on the appropriate compensatory measures if the final tariffs or methodologies deviate from those provisional tariffs or methodologies.

11. Any party having a complaint against a transmission, storage, LNG or distribution system operator in relation to that operator's obligations under this Directive may refer the complaint to the regulatory authority which, acting as dispute settlement authority, shall issue a decision within a period of two months after receipt of the complaint. That period may be extended by two months where additional information is sought by the regulatory authorities. That extended period may be further extended with the agreement of the complainant. The regulatory authority's decision shall have binding effect unless and until overruled on appeal.

12. Any party who is affected and who has a right to complain concerning a decision on methodologies taken pursuant to this Article or, where the regulatory authority has a duty to consult, concerning the proposed tariffs or methodologies, may, at the latest within two months, or a shorter time period as provided by **Contracting Parties**, following publication of the decision or proposal for a decision, submit a complaint for review. Such a complaint shall not have suspensive effect.

13. **Contracting Parties** shall create appropriate and efficient mechanisms for regulation, control and transparency so as to avoid any abuse of a dominant position, in particular to the detriment of consumers, and any predatory behaviour. Those mechanisms shall take account the provisions of the Treaty, and in particular Article 82 thereof.⁷

14. **Contracting Parties** shall ensure that the appropriate measures are taken, including administrative action or criminal proceedings in conformity with their national law, against the natural or legal persons responsible where confidentiality rules imposed by this Directive have not been respected.

15. Complaints referred to in paragraphs 11 and 12 shall be without prejudice to the exercise of rights of appeal under national law.

16. Decisions taken by regulatory authorities shall be fully reasoned and justified to allow for judicial review. The decisions shall be available to the public while preserving the confidentiality of commercially sensitive information.

17. **Contracting Parties** shall ensure that suitable mechanisms exist at national level under which a party affected by a decision of a regulatory authority has a right of appeal to a body independent of the parties involved and of any government.

Article 42

Regulatory regime for cross-border issues

1. Regulatory authorities shall closely consult and cooperate with each other, and shall provide each other and the **Energy Community Regulatory Board** with any information necessary for the fulfillment of their tasks under this Directive. In respect of the information exchanged, the receiving authority shall ensure the same level of confidentiality as that required of the originating authority.

2. Regulatory authorities shall cooperate at least at a regional level to:

(a) foster the creation of operational arrangements in order to enable an optimal management of

⁷ In the Energy Community Treaty, Article 82 of the EC Treaty is incorporated through Article 18 and Annex III.

the network, promote joint gas exchanges and the allocation of cross-border capacity, and to enable an adequate level of interconnection capacity, including through new interconnections, within the region and between regions to allow for development of effective competition and improvement of security of supply without discriminating between supply undertakings in different **Contracting Parties**;

(b) coordinate the development of all network codes for the relevant transmission system operators and other market actors; and

(c) coordinate the development of the rules governing the management of congestion.

3. National regulatory authorities shall have the right to enter into cooperative arrangements with each other to foster regulatory cooperation.

4. The actions referred to in paragraph 2 shall be carried out, as appropriate, in close consultation with other relevant national authorities and without prejudice to their specific competencies.

5. <...>

Article 43

Compliances with the Guidelines⁸

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

These Guidelines, which may need to be adapted to the institutional framework of the Energy Community, shall be adopted by the Permanent High Level Group, following the procedure laid down in Article 79 of the Treaty.

The Permanent High Level Group shall adopt a Procedural Act on application of this article.⁹

Article 44

Record keeping

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

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

3. The regulatory authority may decide to make available to market participants elements of this

⁸ Not applicable according to Article 21 of Decision 2011/02/MC-EnC. The following text corresponds to Article 27 of Decision 2011/02/MC-EnC.

⁹ Procedural Act 01/2012/PHLG-EnC of Permanent High Level Group of 21 June 2012 laying down the rules governing the adoption of Guidelines and Network Codes in the Energy Community was adopted on 21 June 2012, see page 803.

information provided that commercially sensitive information on individual market players or individual transactions is not released. This paragraph shall not apply to information about financial instruments which fall within the scope of Directive 2004/39/EC.

4. <...>

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

6. <...>

7. <...>

CHAPTER IX

RETAIL MARKETS

Article 45

Retail markets

In order to facilitate the emergence of well functioning and transparent retail markets in the **Energy Community, Contracting Parties** shall ensure that the roles and responsibilities of transmission system operators, distribution system operators, supply undertakings and customers and if necessary other market parties are defined with respect to contractual arrangements, commitment to customers, data exchange and settlement rules, data ownership and metering responsibility.

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

CHAPTER X

FINAL PROVISIONS

Article 46

Safeguard measures

1. In the event of a sudden crisis in the energy market or where the physical safety or security of persons, apparatus or installations or system integrity is threatened, a Contracting Party may temporarily take the necessary safeguard measures.

Instead of the second and third subparagraphs, Articles 36 to 39 of the Energy Community Treaty apply.

Article 47**Level playing field**

1. Measures that the **Contracting Parties** may take pursuant to this Directive in order to ensure a level playing field shall be compatible with the Treaty, notably Article 30 thereof,¹⁰ and with **Energy Community law**.
2. The measures referred to in paragraph 1 shall be proportionate, non-discriminatory and transparent. Those measures may be put into effect only **following notification to the Secretariat, which shall issue an opinion**.
3. The **Energy Community Secretariat** shall act on the notification referred to in paragraph 2 within two months of the receipt of the notification. That period shall begin on the day following receipt of the complete information. In the event that the **Energy Community Secretariat** has not acted within that two-month period, it shall be deemed not to have raised objections to the notified measures.

Article 48**Derogations in relation to take-or-pay commitments**

1. If a natural gas undertaking encounters, or considers it would encounter, serious economic and financial difficulties because of its take-or-pay commitments accepted in one or more gas-purchase contracts, it may send an application for a temporary derogation from Article 32 to the **Contracting Party** concerned or the designated competent authority. Applications shall, in accordance with the choice of **Contracting Parties**, be presented on a case-by-case basis either before or after refusal of access to the system. **Contracting Parties** may also give the natural gas undertaking the choice of presenting an application either before or after refusal of access to the system. Where a natural gas undertaking has refused access, the application shall be presented without delay. The applications shall be accompanied by all relevant information on the nature and extent of the problem and on the efforts undertaken by the natural gas undertaking to solve the problem.

If alternative solutions are not reasonably available, and taking into account paragraph 3, the **Contracting Party** or the designated competent authority may decide to grant a derogation.

2. The **Contracting Party**, or the designated competent authority, shall notify the **Energy Community Secretariat** without delay of its decision to grant a derogation, together with all the relevant information with respect to the derogation. That information may be submitted to the **Energy Community Secretariat** in an aggregated form, enabling the **Energy Community Secretariat** to reach a well-founded decision. Within eight weeks of receipt of that notification, the **Secretariat shall issue an opinion, inviting, as the case may be, the Contracting Party** or the designated competent authority concerned to amend or withdraw the decision to grant a derogation.

<...>

The **Energy Community Secretariat** shall preserve the confidentiality of commercially sensitive information.

¹⁰ Procedural Act 01/2012/PHLG-EnC of Permanent High Level Group of 21 June 2012 laying down the rules governing the adoption of Guidelines and Network Codes in the Energy Community was adopted on 21 June 2012, see page 803.

3. When deciding on the derogations referred to in paragraph 1, the **Contracting Party**, or the designated competent authority, and the **Energy Community Secretariat** shall take into account, in particular, the following criteria:

- (a) the objective of achieving a competitive gas market;
- (b) the need to fulfill public-service obligations and to ensure security of supply;
- (c) the position of the natural gas undertaking in the gas market and the actual state of competition in that market;
- (d) the seriousness of the economic and financial difficulties encountered by natural gas undertakings and transmission undertakings or eligible customers;
- (e) the dates of signature and terms of the contract or contracts in question, including the extent to which they allow for market changes;
- (f) the efforts made to find a solution to the problem;
- (g) the extent to which, when accepting the take-or-pay commitments in question, the undertaking could reasonably have foreseen, having regard to the provisions of this Directive, that serious difficulties were likely to arise;
- (h) the level of connection of the system with other systems and the degree of interoperability of those systems; and
- (i) the effects the granting of a derogation would have on the correct application of this Directive as regards the smooth functioning of the internal market in natural gas.

A decision on a request for a derogation concerning take-or-pay contracts concluded **before 1 July 2006** should not lead to a situation in which it is impossible to find economically viable alternative outlets. Serious difficulties shall in any case be deemed not to exist when the sales of natural gas do not fall below the level of minimum offtake guarantees contained in gas-purchase take-or-pay contracts or in so far as the relevant gas-purchase take-or-pay contract can be adapted or the natural gas undertaking is able to find alternative outlets.

4. Natural gas undertakings which have not been granted a derogation as referred to in paragraph 1 of this Article shall not refuse, or shall no longer refuse, access to the system because of take-or-pay commitments accepted in a gas purchase contract. **Contracting Parties** shall ensure that the relevant provisions of Articles 32 to 44 are complied with.

5. Any derogation granted under the above provisions shall be duly substantiated. The **Energy Community Secretariat** shall publish the decision **in a dedicated section of the website of the Energy Community**.

6. <...>

Article 49

Emergent and isolated markets

<...>

Article 50**Review procedure**

<...>

Article 51**Committee**

<...>

Article 52¹¹**Reporting**

1. The Secretariat shall monitor and review application of this Decision in the Contracting Parties.

2. The Secretariat shall submit an overall progress report to the Ministerial Council for the first time by 30 June 2012, and thereafter on an annual basis. The progress report shall reflect the progress made on creating a complete and fully operational internal market in electricity and gas and the obstacles that remain in this respect, including aspects of market dominance, market concentration, predatory or anti-competitive behaviour and the effect thereof in terms of market distortion. It shall in particular consider:

- the implementation by each Contracting Party of the provisions on unbundling, certification and on independence of the national regulatory authorities and application of these provisions in practice,
- the existence of non-discriminatory network access,
- effective regulation,
- the development of interconnection infrastructure and the security of supply situation in the Energy Community,
- the extent to which the full benefits of the opening of markets are accruing to small enterprises and household customers, notably with respect to public service and universal service standards,
- the extent to which markets are in practice open to effective competition, including aspects of market dominance, market concentration and predatory or anti-competitive behaviour,
- the extent to which customers are actually switching suppliers and renegotiating tariffs,
- price developments, including supply prices, in relation to the degree of opening of the markets, and
- the experience gained from application of this Decision as far as effective independence of system operators in vertically integrated undertakings is concerned and whether other measures in addition to functional independence and separation of accounts have been developed which have effects equivalent to legal unbundling.

¹¹ The text displayed here corresponds to Article 31 of Decision 2011/02/MC-EnC.

3. The Secretariat shall present a report to the Ministerial Council for the first time by 30 June 2012, and thereafter on an annual basis, summarising the opinions issued by the Secretariat in application of the acts referred to in Article 1, as adapted by this Decision.

Article 53

Repeal

<...>

Article 54¹²

Implementation of the energy acquis

1. Each Contracting Party shall bring into force the laws, regulations and administrative provisions necessary to comply with <...> Directive 2009/73/EC, <...> and Regulation (EC) No 715/2009, as adapted by this Decision, by 1 January 2015.¹³ They shall forthwith inform the Energy Community Secretariat thereof.

The Contracting Parties shall apply the measures referred to in the previous paragraph with effect from 1 January 2015 with the following exceptions:

– <...>;

– Article 11 of Directive 2009/73/EC, which they shall apply from 1 January 2017.

2. The Contracting Parties shall communicate to the Energy Community Secretariat the text of the main provisions of national law which they adopt in the field covered by this Decision.

Articles 55 and 56¹⁴

Entry into force and Addressees

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

¹² The text displayed here corresponds to Article 3 of Decision 2011/02/MC-EnC.

¹³ In accordance with the Accession Protocol, the corresponding date for Georgia is 31 December 2020.

¹⁴ The text displayed here corresponds to Article 32 of Decision 2011/02/MC-EnC.

ANNEX I

MEASURES ON CONSUMER PROTECTION

1. Without prejudice to Energy Community rules on consumer protection <...> the measures referred to in Article 3 are to ensure that customers:

(a) have a right to a contract with their gas service provider that specifies:

- the identity and address of the supplier,
- the services provided, the service quality levels offered, as well as the time for the initial connection,
- the types of maintenance service offered,
- the means by which up-to-date information on all applicable tariffs and maintenance charges may be obtained,
- the duration of the contract, the conditions for renewal and termination of services and of the contract, and whether withdrawal from the contract without charge is permitted,
- any compensation and the refund arrangements which apply if contracted service quality levels are not met including inaccurate and delayed billing,
- the method of initiating procedures for settlement of disputes in accordance with point (f); and,
- information relating to consumer rights, including on the complaint handling and all of the information referred to in this point, clearly communicated through billing or the natural gas undertaking's web site,

Conditions shall be fair and well-known in advance. In any event, that information should be provided prior to the conclusion or confirmation of the contract. Where contracts are concluded through intermediaries, the information relating to the matters set out in this point shall also be provided prior to the conclusion of the contract;

(b) are given adequate notice of any intention to modify contractual conditions and are informed about their right of withdrawal when the notice is given. Service providers shall notify their subscribers directly of any increase in charges, at an appropriate time no later than one normal billing period after the increase comes into effect in a transparent and comprehensible manner. **Contracting Parties** shall ensure that customers are free to withdraw from contracts if they do not accept the new conditions notified to them by their gas service provider;

(c) receive transparent information on applicable prices and tariffs and on standard terms and conditions, in respect of access to and use of gas services;

(d) are offered a wide choice of payment methods, which do not unduly discriminate between customers. Prepayment systems shall be fair and adequately reflect likely consumption. Any difference in terms and conditions shall reflect the costs to the supplier of the different payment systems. General terms and conditions shall be fair and transparent. They shall be given in clear and comprehensible language and shall not include non-contractual barriers to the exercise of customers' rights, for example excessive contractual documentation. Customers shall be protected against unfair or misleading selling methods;

(e) are not charged for changing supplier;

(f) benefit from transparent, simple and inexpensive procedures for dealing with their complaints. In

particular, all consumers shall have the right to a good standard of service and complaint handling by their gas service provider. Such out-of-court dispute settlements procedures shall enable disputes to be settled fairly and promptly, preferably within three months, with provision, where warranted, for a system of reimbursement and/or compensation. They should, wherever possible, be in line with the principles set out in Commission Recommendation 98/257/EC of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes;

(g) connected to the gas system are informed about their rights to be supplied, under the national legislation applicable, with natural gas of a specified quality at reasonable prices;

(h) have at their disposal their consumption data, and shall be able to, by explicit agreement and free of charge, give any registered supply undertaking access to its metering data. The party responsible for data management shall be obliged to give those data to the undertaking. **Contracting Parties** shall define a format for the data and a procedure for suppliers and consumers to have access to the data. No additional costs shall be charged to the consumer for that service;

(i) are properly informed of actual gas consumption and costs frequently enough to enable them to regulate their own gas consumption. That information shall be given by using a sufficient time frame, which takes account of the capability of customer's metering equipment. Due account shall be taken of the cost-efficiency of such measures. No additional costs shall be charged to the consumer for that service;

(j) receive a final closure account following any change of natural gas supplier no later than six weeks after the change of supplier has taken place.

2. **Contracting Parties** shall ensure the implementation of intelligent metering systems that shall assist the active participation of consumers in the gas supply market. The implementation of those metering systems may be subject to an economic assessment of all the long-term costs and benefits to the market and the individual consumer or which form of intelligent metering is economically reasonable and cost-effective and which timeframe is feasible for their distribution.

Such assessment shall take place by **1 January 2014**.

Subject to that assessment, **Contracting Parties** or any competent authority they designate, shall prepare a timetable for the implementation of intelligent metering systems.

The **Contracting Parties** or any competent authority they designate, shall ensure the interoperability of those metering systems to be implemented within their territories and shall have due regard to the use of appropriate standards and best practice and the importance of the development of the internal market in natural gas.

REGULATION (EC) 715/2009 of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) 1775/2005

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

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

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 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 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 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 (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 op-

erate 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.

(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.

Article 1

Subject matter and scope

This Regulation aims at:

- (a) setting non-discriminatory rules for access conditions to natural gas transmission systems taking into account the special characteristics of national and regional markets with a view to ensuring the proper functioning of the internal market in gas;
- (b) setting non-discriminatory rules for access conditions to LNG facilities and storage facilities taking into account the special characteristics of national and regional markets; and
- (c) facilitating the emergence of a well-functioning and transparent wholesale market with a high level of security of supply in gas and providing mechanisms to harmonise the network access rules for cross-border exchanges in gas.

The objectives referred to in the first subparagraph shall include the setting of harmonised principles for tariffs, or the methodologies underlying their calculation, for access to the network, but not to storage facilities, the establishment of third-party access services and harmonised principles for capacity-allocation and congestion-management, the determination of transparency requirements, balancing rules and imbalance charges, and the facilitation of capacity trading.

This Regulation, with the exception of Article 19(4), shall apply only to storage facilities falling under Article 33(3) or (4) of Directive 2009/73/EC.

The **Contracting Parties** may establish an entity or body set up in compliance with Directive 2009/73/EC for the purpose of carrying out one or more functions typically attributed to the transmission system operator, which shall be subject to the requirements of this Regulation. That entity or body shall be subject to certification in accordance with Article 3 of this Regulation and shall be subject to designation in accordance with Article 10 of Directive 2009/73/EC.

Article 2

Definitions

1. For the purpose of this Regulation, the following definitions apply:

- (1) “transmission” means the transport of natural gas through a network, which mainly contains high-pressure pipelines, other than an upstream pipeline network and other than the part of high-pressure pipelines primarily used in the context of local distribution of natural gas, with a view to its delivery to customers, but not including supply;
- (2) “transport contract” means a contract which the transmission system operator has concluded with a network user with a view to carrying out transmission;
- (3) “capacity” means the maximum flow, expressed in normal cubic meters per time unit or in energy unit per time unit, to which the network user is entitled in accordance with the provisions of the transport contract;
- (4) “unused capacity” means firm capacity which a network user has acquired under a transport contract but which that user has not nominated by the deadline specified in the contract;

- (5) “congestion management” means management of the capacity portfolio of the transmission system operator with a view to optimal and maximum use of the technical capacity and the timely detection of future congestion and saturation points;
- (6) “secondary market” means the market of the capacity traded otherwise than on the primary market;
- (7) “nomination” means the prior reporting by the network user to the transmission system operator of the actual flow that the network user wishes to inject into or withdraw from the system;
- (8) “re-nomination” means the subsequent reporting of a corrected nomination;
- (9) “system integrity” means any situation in respect of a transmission network including necessary transmission facilities in which the pressure and the quality of the natural gas remain within the minimum and maximum limits laid down by the transmission system operator, so that the transmission of natural gas is guaranteed from a technical standpoint;
- (10) “balancing period” means the period within which the off-take of an amount of natural gas, expressed in units of energy, must be offset by every network user by means of the injection of the same amount of natural gas into the transmission network in accordance with the transport contract or the network code;
- (11) “network user” means a customer or a potential customer of a transmission system operator, and transmission system operators themselves in so far as it is necessary for them to carry out their functions in relation to transmission;
- (12) “interruptible services” means services offered by the transmission system operator in relation to interruptible capacity;
- (13) “interruptible capacity” means gas transmission capacity that may be interrupted by the transmission system operator in accordance with the conditions stipulated in the transport contract;
- (14) “long-term services” means services offered by the transmission system operator with a duration of one year or more;
- (15) “short-term services” means services offered by the transmission system operator with a duration of less than one year;
- (16) “firm capacity” means gas transmission capacity contractually guaranteed as uninterruptible by the transmission system operator;
- (17) “firm services” mean services offered by the transmission system operator in relation to firm capacity;
- (18) “technical capacity” means the maximum firm capacity that the transmission system operator can offer to the network users, taking account of system integrity and the operational requirements of the transmission network;
- (19) “contracted capacity” means capacity that the transmission system operator has allocated to a network user by means of a transport contract;
- (20) “available capacity” means the part of the technical capacity that is not allocated and is still available to the system at that moment;
- (21) “contractual congestion” means a situation where the level of firm capacity demand exceeds the technical capacity;
- (22) “primary market” means the market of the capacity traded directly by the transmission system

operator;

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

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

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

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

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

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

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

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

Article 3

Certification of transmission system operators

1. The **Energy Community Secretariat** shall examine any notification of a decision on the certification of a transmission system operator as laid down in Article 10(6) of Directive 2009/73/EC as soon as it is received. Within **four months** of the day of receipt of such notification, the **Energy Community Secretariat** shall deliver its opinion to the relevant national regulatory authority in regard to its compatibility with Article 10(2) or Article 11, and Article 9 of Directive 2009/73/EC.

When preparing the opinion referred to in the first subparagraph, the Energy Community Secretariat shall request the Energy Community Regulatory Board to provide its opinion on the national regulatory authority’s decision.

In the absence of an opinion by the **Energy Community Secretariat** within the periods referred to in the first subparagraph, the **Energy Community Secretariat** shall be deemed not to raise objections against the regulatory authority’s decision.

2. Within two months of receiving an opinion of the **Energy Community Secretariat**, the national regulatory authority shall adopt its final decision regarding the certification of the transmission system operator, taking the utmost account of that opinion. The regulatory authority’s decision and the **Energy Community Secretariat’s** opinion shall be published together.

3. At any time during the procedure regulatory authorities and/or the **Energy Community Secretariat** may request from a transmission system operator and/or an undertaking performing any of the functions of production or supply any information relevant to the fulfillment of their tasks under this Article.

4. Regulatory authorities and the **Energy Community Secretariat** shall preserve the confidentiality

of commercially sensitive information.

5. <...>

6. Where the **Energy Community Secretariat** has received notification of the certification of a transmission system operator under Article 9(10) of Directive 2009/73/EC, the **Secretariat shall issue an opinion** relating to certification. **The regulatory authority shall take the utmost account of that opinion. Where the final decision diverges from the Secretariat's opinion, the regulatory authority concerned shall provide and publish, together with that decision, the reasoning underlying its decision. Diverging decisions shall be included in the agenda of the first meeting of the Ministerial Council following the date of the decision, for information and discussion.**

Article 4

European network of transmission system operators for gas

<...>

Article 5

Establishment of the ENTSO for Gas

<...>

Article 6

Establishment of network codes¹

1. The Energy Community shall endeavour to apply the network codes developed at European Union level <...>.

2. The relevant network codes shall be adopted by the Permanent High Level Group, following the procedure laid down in Article 79 of the Treaty. Before taking a decision, the Permanent High Level Group shall seek the opinion of the Energy Community Regulatory Board.

3. The Permanent High Level Group shall adopt a procedural act on application of this Article.²

Article 7

Amendments of network codes

<...>

¹ The following text corresponds to Article 28 of Decision 2011/02/MC-EnC.

² Procedural Act 01/2012/PHLG-EnC of Permanent High Level Group of 21 June 2012 laying down the rules governing the adoption of Guidelines and Network Codes in the Energy Community was adopted on 21 June 2012, see page 803.

Article 8

Tasks of the ENTSO for Gas

<...>

Article 9

Monitoring by the Agency

<...>

Article 10

Consultations

<...>

Article 11

Costs

<...>

Article 12³

Regional cooperation of transmission system operators

Transmission system operators shall promote operational arrangements in order to ensure the optimum management of the Energy Community network and shall promote the development of energy exchanges, the coordinated allocation of cross-border capacity through non-discriminatory market-based solutions, paying due attention to the specific merits of implicit auctions for short-term allocations, and the integration of balancing and reserve power mechanisms.

Article 13

Tariffs for access to networks

1. Tariffs, or the methodologies used to calculate them, applied by the transmission system operators and approved by the regulatory authorities pursuant to Article 41(6) of Directive 2009/73/EC, as well as tariffs published pursuant to Article 32(1) of that Directive, shall be transparent, take into account the need for system integrity and its improvement and reflect the actual costs incurred, insofar as such costs correspond to those of an efficient and structurally comparable network operator and are transparent, whilst including an appropriate return on investments, and, where appropriate, taking account of the benchmarking of tariffs by the regulatory authorities. Tariffs, or the methodologies used to calculate them, shall be applied in a non-discriminatory manner.

Contracting Parties may decide that tariffs may also be determined through market-based arrange-

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

ments, such as auctions, provided that such arrangements and the revenues arising there from are approved by the regulatory authority.

Tariffs, or the methodologies used to calculate them, shall facilitate efficient gas trade and competition, while at the same time avoiding cross-subsidies between network users and providing incentives for investment and maintaining or creating interoperability for transmission networks.

Tariffs for network users shall be non-discriminatory and set separately for every entry point into or exit point out of the transmission system. Cost-allocation mechanisms and rate setting methodology regarding entry points and exit points shall be approved by the national regulatory authorities. By 3 September 2011, the **Contracting Parties** shall ensure that, after a transitional period, network charges shall not be calculated on the basis of contract paths.

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

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.

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

Article 16

Principles of capacity-allocation mechanisms and congestion-management procedures concerning transmission system operators

1. The maximum capacity at all relevant points referred to in Article 18(3) shall be made available to market participants, taking into account system integrity and efficient network operation.

2. The transmission system operator shall implement and publish non-discriminatory and transparent capacity-allocation mechanisms, which shall:

(a) provide appropriate economic signals for the efficient and maximum use of technical capacity, facilitate investment in new infrastructure and facilitate cross-border exchanges in natural gas;

(b) be compatible with the market mechanisms including spot markets and trading hubs, while being flexible and capable of adapting to evolving market circumstances; and

(c) be compatible with the network access systems of the **Contracting Parties**.

3. The transmission system operator shall implement and publish non-discriminatory and transparent congestion-management procedures which facilitate cross-border exchanges in natural gas on a non-discriminatory basis and which shall be based on the following principles:

(a) in the event of contractual congestion, the transmission system operator shall offer unused capacity on the primary market at least on a day-ahead and interruptible basis; and

(b) network users who wish to re-sell or sublet their unused contracted capacity on the secondary market shall be entitled to do so.

In regard to point (b) of the first subparagraph, a **Contracting Party** may require notification or information of the transmission system operator by network users.

4. In the event that physical congestion exists, non-discriminatory, transparent capacity-allocation mechanisms shall be applied by the transmission system operator or, as appropriate, by the regulatory authorities.

5. Transmission system operators shall regularly assess market demand for new investment. When planning new investments, transmission system operators shall assess market demand and take into account security of supply.

Article 17

Principles of capacity-allocation mechanisms and congestion-management procedures concerning storage and LNG facilities

1. The maximum storage and LNG facility capacity shall be made available to market participants, taking into account system integrity and operation.

2. LNG and storage system operators shall implement and publish non-discriminatory and transparent capacity-allocation mechanisms which shall:

(a) provide appropriate economic signals for the efficient and maximum use of capacity and facilitate investment in new infrastructure;

(b) be compatible with the market mechanism including spot markets and trading hubs, while being flexible and capable of adapting to evolving market circumstances; and

(c) be compatible with the connected network access systems.

3. LNG and storage facility contracts shall include measures to prevent capacity-hoarding, by taking into account the following principles, which shall apply in cases of contractual congestion:

(a) the system operator must offer unused LNG facility and storage capacity on the primary market without delay; for storage facilities this must be at least on a day-ahead and interruptible basis;

(b) LNG and storage facility users who wish to re-sell their contracted capacity on the secondary market must be entitled to do so.

Article 18

Transparency requirements concerning transmission system operators

1. The transmission system operator shall make public detailed information regarding the services it offers and the relevant conditions applied, together with the technical information necessary for network users to gain effective network access.
2. In order to ensure transparent, objective and non-discriminatory tariffs and facilitate efficient utilisation of the gas network, transmission system operators or relevant national authorities shall publish reasonably and sufficiently detailed information on tariff derivation, methodology and structure.
3. For the services provided, each transmission system operator shall make public information on technical, contracted and available capacities on a numerical basis for all relevant points including entry and exit points on a regular and rolling basis and in a user-friendly and standardised manner.
4. The relevant points of a transmission system on which the information is to be made public shall be approved by the competent authorities after consultation with network users.
5. The transmission system operator shall always disclose the information required by this Regulation in a meaningful, quantifiably clear and easily accessible manner and on a non-discriminatory basis.
6. The transmission system operator shall make public *ex-ante* and *ex-post* supply and demand information, based on nominations, forecasts and realised flows in and out of the system. The national regulatory authority shall ensure that all such information is made public. The level of detail of the information that is made public shall reflect the information available to the transmission system operator.

The transmission system operator shall make public measures taken as well as costs incurred and revenue generated to balance the system.

The market participants concerned shall provide the transmission system operator with the data referred to in this Article.

Article 19

Transparency requirements concerning storage facilities and LNG facilities

1. LNG and storage system operators shall make public detailed information regarding the services it offers and the relevant conditions applied, together with the technical information necessary for LNG and storage facility users to gain effective access to the LNG and storage facilities.
2. For the services provided, LNG and storage system operators shall make public information on contracted and available storage and LNG facility capacities on a numerical basis on a regular and rolling basis and in a user-friendly standardised manner.
3. LNG and storage system operators shall always disclose the information required by this Regulation in a meaningful, quantifiably clear and easily accessible way and on a non-discriminatory basis.
4. LNG and storage system operators shall make public the amount of gas in each storage or LNG facility, or group of storage facilities if that corresponds to the way in which the access is offered to system users, inflows and outflows, and the available storage and LNG facility capacities, including for those facilities exempted from third-party access. That information shall also be communicated

to the transmission system operator, which shall make it public on an aggregated level per system or subsystem defined by the relevant points. The information shall be updated at least daily.

In cases in which a storage system user is the only user of a storage facility, the storage system user may submit to the national regulatory authority a reasoned request for confidential treatment of the data referred to in the first subparagraph. Where the national regulatory authority comes to the conclusion that such a request is justified, taking into account, in particular, the need to balance the interest of legitimate protection of business secrets, the disclosure of which would negatively affect the overall commercial strategy of the storage user, with the objective of creating a competitive internal gas market, it may allow the storage system operator not to make public the data referred to in the first subparagraph, for a duration of up to one year.

The second subparagraph shall apply without prejudice to the obligations of communication to and publication by the transmission system operator referred to in the first subparagraph, unless the aggregated data are identical to the individual storage system data for which the national regulatory authority has approved non-publication.

5. In order to ensure transparent, objective and non-discriminatory tariffs and facilitate efficient utilisation of the infrastructures, the LNG and storage facility operators or relevant regulatory authorities shall make public sufficiently detailed information on tariff derivation, the methodologies and the structure of tariffs for infrastructure under regulated third-party access.

Article 20

Record keeping by system operators

Transmission system operators, storage system operators and LNG system operators shall keep at the disposal of the national authorities, including the national regulatory authority, the national competition authority and of the **Energy Community Secretariat**, all information referred to in Articles 18 and 19, and in Part 3 of Annex I for a period of five years.

Article 21

Balancing rules and imbalance charges

1. Balancing rules shall be designed in a fair, non-discriminatory and transparent manner and shall be based on objective criteria. Balancing rules shall reflect genuine system needs taking into account the resources available to the transmission system operator. Balancing rules shall be market-based.

2. In order to enable network users to take timely corrective action, the transmission system operator shall provide sufficient, well-timed and reliable on-line based information on the balancing status of network users.

The information provided shall reflect the level of information available to the transmission system operator and the settlement period for which imbalance charges are calculated.

No charge shall be made for the provision of information under this paragraph.

3. Imbalance charges shall be cost-reflective to the extent possible, whilst providing appropriate incentives on network users to balance their input and off-take of gas. They shall avoid cross-subsidi-

sation between network users and shall not hamper the entry of new market entrants.

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

4. **Contracting Parties** shall ensure that transmission system operators endeavour to harmonise balancing regimes and streamline structures and levels of balancing charges in order to facilitate gas trade.

Article 22

Trading of capacity rights

Each transmission, storage and LNG system operator shall take reasonable steps to allow capacity rights to be freely tradable and to facilitate such trade in a transparent and non-discriminatory manner. Every such operator shall develop harmonised transport, LNG facility and storage contracts and procedures on the primary market to facilitate secondary trade of capacity and shall recognise the transfer of primary capacity rights where notified by system users.

The harmonised transport, LNG facility and storage contracts and procedures shall be notified to the regulatory authorities.

Article 23

Guidelines⁴

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

2. These Guidelines, which may need to be adapted to the institutional framework of the Energy Community, shall be adopted by the Permanent High Level Group, following the procedure laid down in Article 79 of the Treaty.

3. The Permanent High Level Group shall adopt a Procedural Act on application of this article.⁵

Article 24

Regulatory authorities

When carrying out their responsibilities under this Regulation, the regulatory authorities shall ensure compliance with this Regulation and the Guidelines adopted pursuant to Article 18.⁶

Where appropriate, they shall cooperate with each other, **with the Energy Community Secretariat and the Energy Community Regulatory Board** in compliance with Chapter VIII of Directive

⁴ The text displayed here corresponds to Article 27 of Decision 2011/02/MC-EnC.

⁵ Procedural Act 01/2012/PHLG-EnC of Permanent High Level Group of 21 June 2012 laying down the rules governing the adoption of Guidelines and Network Codes in the Energy Community was adopted on 21 June 2012, see page 803.

⁶ As adopted by the Permanent High Level Group under Procedural Act 01/2012/PHLG-EnC.

2009/73/EC.

Article 25

Provision of information

Contracting Parties and the regulatory authorities shall, on request, provide to the **Energy Community Secretariat** all information necessary for the purposes of Article 23.⁷

The **Energy Community Secretariat** shall set a reasonable time limit within which the information is to be provided, taking into account the complexity of the information required and the urgency with which the information is needed.

Article 26

Right of Contracting Parties to provide for more detailed measures

This Regulation shall be without prejudice to the rights of **Contracting Parties** to maintain or introduce measures that contain more detailed provisions than those set out herein or in the Guidelines referred to in Article 23.⁸

Article 27

Penalties⁹

1. Contracting Parties shall lay down rules on penalties applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that those provisions are implemented. The penalties provided for must be effective, proportionate and dissuasive. Contracting Parties shall notify these provisions to the Secretariat by 1 January 2015 and shall notify the Secretariat without delay of any subsequent amendment affecting them.

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

Article 28

Committee procedure

<...>

⁷ As adopted by the Permanent High Level Group under Procedural Act 01/2012/PHLG-EnC.

⁸ As adopted by the Permanent High Level Group under Procedural Act 01/2012/PHLG-EnC.

⁹ As adapted by Article 19 of Decision 2011/02/MC-EnC.

Article 29

Secretariat report¹⁰

1. The Secretariat shall monitor and review application of this Decision in the Contracting Parties.

2. The Secretariat shall submit an overall progress report to the Ministerial Council for the first time by 30 June 2012, and thereafter on an annual basis. The progress report shall reflect the progress made on creating a complete and fully operational internal market in electricity and gas and the obstacles that remain in this respect, including aspects of market dominance, market concentration, predatory or anti-competitive behaviour and the effect thereof in terms of market distortion. It shall in particular consider:

- the implementation by each Contracting Party of the provisions on unbundling, certification and on independence of the national regulatory authorities and application of these provisions in practice,
- the existence of non-discriminatory network access,
- effective regulation,
- the development of interconnection infrastructure and the security of supply situation in the Energy Community,
- the extent to which the full benefits of the opening of markets are accruing to small enterprises and household customers, notably with respect to public service and universal service standards,
- the extent to which markets are in practice open to effective competition, including aspects of market dominance, market concentration and predatory or anti-competitive behaviour,
- the extent to which customers are actually switching suppliers and renegotiating tariffs,
- price developments, including supply prices, in relation to the degree of opening of the markets, and
- the experience gained from application of this Decision as far as effective independence of system operators in vertically integrated undertakings is concerned and whether other measures in addition to functional independence and separation of accounts have been developed which have effects equivalent to legal unbundling.

3. The Secretariat shall present a report to the Ministerial Council for the first time by 30 June 2012, and thereafter on an annual basis, summarising the opinions issued by the Secretariat in application of the acts referred to in Article 1, as adapted by this Decision.

¹⁰ The text displayed here corresponds to Article 31 of Decision 2011/02/MC-EnC.

Article 30**Derogations and exemptions**

This Regulation shall not apply to:

(a) <...>¹¹

(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.

<...>¹²

Article 31**Repeal**

<...>

Article 32¹³**Entry into force**

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

Article 3 of Decision 2011/02/MC-EnC

Each Contracting Party shall bring into force the laws, regulations and administrative provisions necessary to comply with <...> Regulation (EC) 715/2009, as adapted by this Decision, by 1 January 2015.¹⁴ They shall forthwith inform the Energy Community Secretariat thereof.

<...>

The Contracting Parties shall communicate to the Energy Community Secretariat the text of the main provisions of national law which they adopt in the field covered by this Decision.

¹¹ Not applicable in accordance with Article 24(4) of Decision 2011/02/MC-EnC.

¹² Not applicable in accordance with Article 24(4) of Decision 2011/02/MC-EnC.

¹³ The text displayed here corresponds to Article 32 of Decision 2011/02/MC-EnC.

¹⁴ In accordance with the Accession Protocol, the corresponding date for Georgia, is 31 December 2020.

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

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

Amendments to Annex I to Regulation (EC) No 715/2009 incorporated by Permanent High Level Group Decision 2018/01/PHLG-EnC are highlighted in **bold**. The adaptations made by to Annex I to Regulation 715/ 2009 by Decision 2018/01/PHLG-EnC are highlighted in **bold and blue**.¹⁵

GUIDELINES ON

1. THIRD-PARTY ACCESS SERVICES CONCERNING TRANSMISSION SYSTEM OPERATORS

1. Transmission system operators shall offer firm and interruptible services down to a minimum period of one day.
2. Harmonised transport contracts and common network codes shall be designed in a manner that facilitates trading and re-utilisation of capacity contracted by network users without hampering capacity release.
3. Transmission system operators shall develop network codes and harmonised contracts following proper consultation with network users.
4. Transmission system operators shall implement standardised nomination and re-nomination procedures. They shall develop information systems and electronic communication means to provide adequate data to network users and to simplify transactions, such as nominations, capacity contracting and transfer of capacity rights between network users.
5. Transmission system operators shall harmonise formalised request procedures and response times according to best industry practice with the aim of minimising response times. They shall provide for online screen-based capacity booking and confirmation systems and nomination and re-nomination procedures no later than 1 January 2010 after consultation with the relevant network users.
6. Transmission system operators shall not separately charge network users for information requests and transactions associated with their transport contracts and which are carried out according to standard rules and procedures.
7. Information requests that require extraordinary or excessive expenses such as feasibility studies may be charged separately, provided the charges can be duly substantiated.
8. Transmission system operators shall cooperate with other transmission system operators in coordinating the maintenance of their respective networks in order to minimise any disruption of transmission services to network users and transmission system operators in other areas and in order to ensure equal benefits with respect to security of supply including in relation to transit.

¹⁵ According to Article 1(1) of Decision 2018/01/PHLG-EnC each Contracting Party shall transpose the amendments into national legislation no later than 1 October 2018.

9. Transmission system operators shall publish at least annually, by a predetermined deadline, all planned maintenance periods that might affect network users' rights from transport contracts and corresponding operational information with adequate advance notice. This shall include publishing on a prompt and non-discriminatory basis any changes to planned maintenance periods and notification of unplanned maintenance, as soon as that information becomes available to the transmission system operator. During maintenance periods, transmission system operators shall publish regularly updated information on the details of and expected duration and effect of the maintenance.

10. Transmission system operators shall maintain and make available to the competent authority upon request a daily log of the actual maintenance and flow disruptions that have occurred. Information shall also be made available on request to those affected by any disruption.

2. PRINCIPLES OF CAPACITY-ALLOCATION MECHANISMS AND CONGESTION-MANAGEMENT PROCEDURES CONCERNING TRANSMISSION SYSTEM OPERATORS AND THEIR APPLICATION IN THE EVENT OF CONTRACTUAL CONGESTION

2.1. Principles of capacity-allocation mechanisms and congestion-management procedures concerning transmission system operators

1. Capacity-allocation mechanisms and congestion-management procedures shall facilitate the development of competition and liquid trading of capacity and shall be compatible with market mechanisms including spot markets and trading hubs. They shall be flexible and capable of adapting to evolving market circumstances.

2. Those mechanisms and procedures shall take into account the integrity of the system concerned as well as security of supply.

3. Those mechanisms and procedures shall neither hamper the entry of new market participants nor create undue barriers to market entry. They shall not prevent market participants, including new market entrants and companies with a small market share, from competing effectively.

4. Those mechanisms and procedures shall provide appropriate economic signals for efficient and maximum use of technical capacity and facilitate investment in new infrastructure.

5. Network users shall be advised about the type of circumstance that could affect the availability of contracted capacity. Information on interruption should reflect the level of information available to the transmission system operator.

6. Should difficulties in meeting contractual delivery obligations arise due to system integrity reasons, transmission system operators should notify network users and seek a non-discriminatory solution without delay.

Transmission system operators shall consult network users regarding procedures prior to their implementation and agree them with the regulatory authority.

2.2. Congestion management procedures in the event of contractual congestion

2.2.1. General Provisions

1. The provisions of point 2.2 shall apply to interconnection points between adjacent entry-exit systems, irrespective of whether they are physical or virtual, between two or more

Contracting Parties or within the same **Contracting Party** in so far as the points are subject to booking procedures by users **and subject to the decision of the relevant Contracting Party's national regulatory authority**. They may also apply to entry points from and exit points to third countries, subject to the decision of the relevant national regulatory authority. Exit points to end-consumers and distribution networks, entry points from LNG terminals and production facilities, and entry-exit points from and to storage facilities are not subject to the provisions of point 2.2.¹⁶

2. On the basis of the information published by the transmission system operators pursuant to Section 3 of this Annex and, where appropriate, validated by national regulatory authorities, **the Energy Community Regulatory Board** shall publish by 1 **June** of every year, commencing with the year **2020**, a monitoring report on congestion at interconnection points with respect to firm capacity products sold in the preceding year, taking into consideration to the extent possible capacity trading on the secondary market and the use of interruptible capacity.¹⁷

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

4. The measures provided for in points 2.2.2, 2.2.4 and 2.2.5 shall be implemented as of 1 October **2018**. Points 2.2.3(1) to 2.2.3(5) shall apply as of 1 July **2020**.¹⁸

2.2.2. Capacity increase through oversubscription and buy-back scheme

1. Transmission system operators shall propose and, after approval by the national regulatory authority, implement an incentive-based oversubscription and buy-back scheme in order to offer additional capacity on a firm basis. Before implementation, the national regulatory authority shall consult with the national regulatory authorities of adjacent **Contracting Parties and the Member States of the European Union** and take account of the adjacent national regulatory authorities' opinions. Additional capacity is defined as the firm capacity offered in addition to the technical capacity of an interconnection point calculated on the basis of Article 16(1) of this Regulation.¹⁹

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

3. The oversubscription and buy-back scheme shall be based on an incentive regime reflecting the risks of transmission system operators in offering additional capacity. The scheme shall

¹⁶ As adapted by Article 3(1) of Decision 2018/01/PHLG-EnC.

¹⁷ As adapted by Article 3(2) of Decision 2018/01/PHLG-EnC.

¹⁸ As adapted by Article 3(3) and (4) of Decision 2018/01/PHLG-EnC.

¹⁹ As adapted by Article 3(5) of Decision 2018/01/PHLG-EnC.

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

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

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

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

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

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

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

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

- (a) for at least three firm capacity products with a duration of one month or
- (b) for at least two firm capacity products with a duration of one quarter or
- (c) for at least one firm capacity product with a duration of one year or more or
- (d) where no firm capacity product with a duration of one month or more has been offered.

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

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

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

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

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

7. A national regulatory authority may decide to implement a firm day-ahead use-it-or-lose-it mechanism pursuant to paragraph 3 on an interconnection point. Before adopting its decision, the national regulatory authority shall consult with the national regulatory authorities of adjacent [Contracting Parties and the Member States of the European Union](#). In adopting its decision the national regulatory authority shall take account of the adjacent national regulatory authorities' opinions.²⁰

2.2.4. Surrender of contracted capacity

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

²⁰ As adapted by Article 3(6) of Decision 2018/01/PHLG-EnC.

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

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

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

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

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

3. Withdrawal shall result in the network user losing its contracted capacity partially or completely for a given period or for the remaining effective contractual term. The network user shall retain its rights and obligations under the capacity contract until the capacity is reallocated by the transmission system operator and to the extent the capacity is not reallocated by the transmission system operator.

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

3. DEFINITION OF THE TECHNICAL INFORMATION NECESSARY FOR NETWORK USERS TO GAIN EFFECTIVE ACCESS TO THE SYSTEM, THE DEFINITION OF ALL RELEVANT POINTS FOR TRANSPARENCY REQUIREMENTS AND THE INFORMATION TO BE PUBLISHED AT ALL RELEVANT POINTS AND THE TIME SCHEDULE ACCORDING TO WHICH THAT INFORMATION SHALL BE PUBLISHED

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

3.1.1. Form of publication

(1) Transmission system operators (TSOs) shall provide all information referred to under paragraph 3.1.2 and paragraph 3.3(1) to 3.3(5) in the following manner:

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

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

(c) in a user-friendly manner;

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

(e) in a downloadable format that **has been agreed between transmission system operators and the national regulatory authorities on the basis of an opinion on a harmonised format**

that shall be provided by the **Energy Community Regulatory Board** and that allows for quantitative analyses;

(f) in consistent units, in particular kWh (with a combustion reference temperature of 298,15 K) shall be the unit for energy content and m³ (at 273,15 K and 1,01325 bar) shall be the unit for volume. The constant conversion factor to energy content shall be provided. In addition to the format above, publication in other units is also possible;

(g) in the official language(s) of the Energy Community Contracting Party and in English.²¹

(h) all data shall be made available as of 1 October 2018 on the <...> central platform, established by ENTSOG on a cost-efficient basis.²²

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

3.1.2. Content of publication

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

- (a) a detailed and comprehensive description of the different services offered and their charges;
- (b) the different types of transportation contracts available for these services;
- (c) the network code and/or the standard conditions outlining the rights and responsibilities of all network users including:

1. harmonised transportation contracts and other relevant documents;
2. if relevant for access to the system, for all relevant points as defined in paragraph 3.2 of this Annex, a specification of relevant gas quality parameters, including at least the gross calorific value and the Wobbe index, and the liability or costs of conversion for network users in case gas is outside these specifications;
3. if relevant for access to the system, for all relevant points information on pressure requirements;
4. the procedure in the event of an interruption of interruptible capacity, including, where applicable, the timing, extent, and ranking of individual interruptions (for example pro-rata or first-come-last-interrupted);
- (d) the harmonised procedures applied when using the transmission system, including the definition of key terms;
- (e) provisions on capacity allocation, congestion management and anti-hoarding and reutilisation procedures;
- (f) the rules applicable for capacity trade on the secondary market vis-à-vis the transmission system operator;
- (g) rules on balancing and methodology for the calculation of imbalance charges;
- (h) if applicable, the flexibility and tolerance levels included in transportation and other services without

²¹ As adapted by Article 4(1) litera (a) of Decision 2011/02/MC-EnC.

²² As adapted by Article 3(7) and (8) of Decision 2018/01/PHLG-EnC.

separate charge, as well as any flexibility offered in addition to this and the corresponding charges;

- (i) a detailed description of the gas system of the transmission system operator and its relevant points of interconnection as defined in paragraph 3.2 of this Annex as well as the names of the operators of the interconnected systems or facilities;
- (j) the rules applicable for connection to the system operated by the transmission system operator;
- (k) information on emergency mechanisms, as far as it is the responsibility of the transmission system operator, such as measures that can lead to the disconnection of customers groups and other general liability rules that apply to the transmission system operator;
- (l) procedures agreed upon by transmission system operators at interconnection points, of relevance for access of network users to the transmission systems concerned, relating to interoperability of the network, agreed procedures on nomination and matching procedures and other agreed procedures that set out provisions in relation to gas flow allocations and balancing, including the methods used;
- (m) transmission system operators shall publish a detailed and comprehensive description of the methodology and process, including information on the parameters employed and the key assumptions, used to calculate the technical capacity.

3.2. Definition of all relevant points for transparency requirements

(1) Relevant points shall include at least:

- (a) all entry and exit points to and from a transmission network operated by a transmission system operator with the exception of exit points connected to a single final customer, and with the exception of entry points linked directly to a production facility of a single producer that is located within the Energy Community;
- (b) all entry and exit points connecting balancing zones of transmission system operators;
- (c) all points connecting the network of a transmission system operator with an LNG terminal, physical gas hubs, storage and production facilities, unless these production facilities are exempted under (a);
- (d) all points connecting the network of a given transmission system operator to infrastructure necessary for providing ancillary services as defined by Article 2(14) of Directive 2009/73/EC.

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

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

balancing zone. This aggregation of these points shall for the application of this annex be considered as one relevant point.

3.3. Information to be published at all relevant points and the time schedule according to which that information should be published

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

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

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

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

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

(e) actual physical flows;

(f) planned and actual interruption of interruptible capacity;

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

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

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

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

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

(l) points (h) to (k) shall apply from 1 October 2018.²³

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

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

²³ As adapted by Article 3(9) of Decision 2018/01/PHLG-EnC.

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

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

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

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

- (a) interconnection point where the capacity is sold;
- (b) type of capacity, i.e. entry, exit, firm, interruptible;
- (c) quantity and duration of the capacity usage rights;
- (d) type of sale, e.g. transfer or assignment;
- (e) the total number of trades/transfers;
- (f) any other conditions known to the transmission system operator as mentioned in 3.3.

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

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

- (a) a description of standardised products which can be sold on the secondary market;
- (b) lead time for the implementation/acceptation/registration of secondary trades. In case of delays the reasons have to be published;
- (c) the notification to the transmission system operator by the seller or the third party as referred to under 3.4(1) about name of seller and buyer and capacity specifications as outlined in 3.4(1).

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

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

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

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

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

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

PART II

ACQUIS COMMUNAUTAIRE

SECURITY OF SUPPLY

DIRECTIVE 2005/89/EC of 18 January 2006 concerning measures to safeguard security of electricity supply and infrastructure investment

Incorporated and adapted by Ministerial Council Decision 2007/06/MC-EnC of 18 December 2007 on the Implementation of Directive 2005/89/EC, Directive 2004/67/EC and Regulation 1775/2005.

*The adaptations made by Ministerial Council Decision 2007/06/MC-EnC are highlighted in **bold and blue**.*

Whereas:

(1) Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity, has made a very important contribution towards the creation of the internal market for electricity. The guarantee of a high level of security of electricity supply is a key objective for the successful operation of the internal market and that Directive gives the Member States the possibility of imposing public service obligations on electricity undertakings, *inter alia*, in relation to security of supply. Those public service obligations should be defined as precisely and strictly as possible, and should not result in the creation of generation capacity that goes beyond what is necessary to prevent undue interruption of distribution of electricity to final customers.

(2) Demand for electricity is usually forecast over a medium-term period on the basis of scenarios elaborated by transmission system operators or by other organisations capable of constructing them at the request of a Member State.

(3) A competitive single EU electricity market necessitates transparent and non-discriminatory policies on security of electricity supply compatible with the requirements of such a market. The absence of such policies in individual Member States, or significant differences between the policies of the Member States would lead to distortions of competition. The definition of clear roles and responsibilities of the competent authorities, as well as of Member States themselves and all relevant market actors, is therefore crucial in safeguarding security of electricity supply and the proper functioning of the internal market while at the same time avoiding creating obstacles to market entrants, such as companies generating or supplying electricity in a Member State that have recently started their operations in that Member State, and avoiding creating distortions of the internal market for electricity or significant difficulties for market actors, including companies with small market shares, such as generators or suppliers with a very small share in the relevant Community market.

(4) Decision No 1229/2003/EC of the European Parliament and of the Council, sets out a series of guidelines for Community policy on trans-European energy networks. Regulation (EC) No 1228/2003 of the European Parliament and of the Council of 26 June 2003 on conditions for access to the network for cross-border exchanges in electricity sets out, *inter alia*, the general principles and detailed rules relating to congestion management.

(5) When promoting electricity from renewable energy sources, it is necessary to ensure the availability of associated back-up capacity, where technically necessary, in order to maintain the reliability and security of the network.

(6) In order to meet the Community's environmental commitments and to reduce its dependence on imported energy, it is important to take account of the long-term effects of growth of electricity demand.

(7) Cooperation between national transmission system operators in issues relating to network security including definition of transfer capacity, information provision and network modelling is vital to the development of a well-functioning internal market and could be further improved. A lack of coordination regarding network security is detrimental to the development of equal conditions for competition.

(8) The main intention of the relevant technical rules and recommendations, such as those contained in the Union for the Coordination of Transmission of Electricity (UCTE) Operation handbook, similar rules and recommendations developed by Nordel, the Baltic Grid Code and those for the United Kingdom and Irish systems, is to provide support for the technical operation of the interconnected network, thus contributing to meeting the need for continued operation of the network in the event of system failure at an individual point or points in the network and minimising the costs related to mitigating such supply disruption.

(9) Transmission and distribution system operators should be required to deliver a high level of service to final customers in terms of the frequency and duration of interruptions.

(10) Measures which may be used to ensure that appropriate levels of generation reserve capacity are maintained should be market-based and non-discriminatory and could include measures such as contractual guarantees and arrangements, capacity options or capacity obligations. These measures could also be supplemented by other non-discriminatory instruments such as capacity payments.

(11) In order to ensure that appropriate prior information is available, Member States should publish measures taken to maintain the balance between supply and demand among actual and potential investors in generation and among electricity consumers.

(12) Without prejudice to Articles 86, 87 and 88 of the Treaty, it is important for Member States to lay down an unambiguous, appropriate and stable framework which will facilitate security of electricity supply and is conducive to investments in generation capacity and demand management techniques. It is also important that appropriate measures are taken to ensure a regulatory framework that encourages investment in new transmission interconnection, especially between Member States.

(13) The European Council in Barcelona on 15 and 16 March 2002 agreed on a level of interconnection between Member States. Low levels of interconnection have the effect of fragmenting the market and are an obstacle to the development of competition. The existence of adequate physical transmission interconnection capacity, whether cross-border or not, is crucial but it is not a sufficient condition for competition to be fully effective. In the interest of final customers, the relation between the potential benefits of new interconnection projects and the costs for such projects should be reasonably balanced.

(14) While it is important to determine the maximum available transfer capacities without breaching the requirements of secure network operation, it is also important to ensure full transparency of the capacity calculation and allocation procedure in the transmission system. In this way, it could be possible to make better use of existing capacity, and no false shortage signals will be given to the market, which will support the achievement of a fully competitive internal market as envisaged in Directive 2003/54/EC.

(15) Transmission and distribution system operators need an appropriate and stable regulatory framework for investment, and for maintenance and renewal of the networks.

(16) Article 4 of Directive 2003/54/EC requires Member States to monitor and submit a report on security of electricity supply. This report should cover short, medium and long-term factors relevant

for security of supply including transmission system operators' intention to invest in the network. In compiling such a report, Member States will be expected to refer to information and assessments already being undertaken by transmission system operators both on an individual and collective basis, including at European level.

(17) Member States should ensure the effective implementation of this Directive.

(18) Since the objectives of the proposed action, namely secure electricity supplies based on fair competition and the creation of a fully operational internal electricity market, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principles 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 Directive does not go beyond what is necessary in order to achieve those objectives.

Article 1

Scope

1. This Directive establishes measures aimed at safeguarding security of electricity supply so as to ensure the proper functioning of the internal market for electricity and to ensure:

- (a) an adequate level of generation capacity;
- (b) an adequate balance between supply and demand; and,
- (c) an appropriate level of interconnection between **Contracting Parties** for the development of the internal market.

2. It establishes a framework within which **Contracting Parties** are to define transparent, stable and non-discriminatory policies on security of electricity supply compatible with the requirements of a competitive internal market for electricity.

Article 2

Definitions

For the purposes of this Directive, the definitions contained in Article 2 of Directive 2003/54/EC shall apply. In addition, the following definitions shall apply:

- (a) "regulatory authority" means the regulatory authorities in **Contracting Parties**, as designated in accordance with Article 23 of Directive 2003/54/EC;
- (b) "security of electricity supply" means the ability of an electricity system to supply final customers with electricity, as provided for under this Directive;
- (c) "operational network security" means the continuous operation of the transmission and, where appropriate, the distribution network under foreseeable circumstances;
- (d) "balance between supply and demand" means the satisfaction of foreseeable demands of consumers to use electricity without the need to enforce measures to reduce consumption.

Article 3

General provisions

1. **Contracting Parties** shall ensure a high level of security of electricity supply by taking the necessary measures to facilitate a stable investment climate and by defining the roles and responsibilities of competent authorities, including regulatory authorities where relevant, and all relevant market actors and publishing information thereon. The relevant market actors include, *inter alia*, transmission and distribution system operators, electricity generators, suppliers and final customers.

2. In implementing the measures referred to in paragraph 1, **Contracting Parties** shall take account of:

- (a) the importance of ensuring continuity of electricity supplies;
- (b) the importance of a transparent and stable regulatory framework;
- (c) the internal market and the possibilities for cross-border cooperation in relation to security of electricity supply;
- (d) the need for regular maintenance and, where necessary, renewal of the transmission and distribution networks to maintain the performance of the network;
- (e) the importance of ensuring proper implementation of Directive 2001/77/EC of the European Parliament and of the Council of 27 September 2001 on the promotion of electricity produced from renewable energy sources in the internal electricity market and Directive 2004/8/EC of the European Parliament and of the Council of 11 February 2004 on the promotion of cogeneration based on a useful heat demand in the internal energy market, insofar as their provisions are related to security of electricity supply;
- (f) the need to ensure sufficient transmission and generation reserve capacity for stable operation; and
- (g) the importance of encouraging the establishment of liquid wholesale markets.

3. In implementing the measures referred to in paragraph 1, **Contracting Parties** may also take account of:

- (a) the degree of diversity in electricity generation at national or relevant regional level;
- (b) the importance of reducing the long-term effects of the growth of electricity demand;
- (c) the importance of encouraging energy efficiency and the adoption of new technologies, in particular demand management technologies, renewable energy technologies and distributed generation; and
- (d) the importance of removing administrative barriers to investments in infrastructure and generation capacity.

4. **Contracting Parties** shall ensure that any measures adopted in accordance with this Directive are non-discriminatory and do not place an unreasonable burden on the market actors, including market entrants and companies with small market shares. **Contracting Parties** shall also take into account, before their adoption, the impact of the measures on the cost of electricity to final customers.

5. In ensuring an appropriate level of interconnection between **Contracting Parties**, as referred to in Article 1(1)(c), special consideration shall be given:

- (a) each **Contracting Party's** specific geographical situation;
- (b) maintaining a reasonable balance between the costs of building new interconnectors and the benefit to final customers; and
- (c) ensuring that existing interconnectors are used as efficiently as possible.

Article 4

Operational network security

1. (a) **Contracting Parties** or the competent authorities shall ensure that transmission system operators set the minimum operational rules and obligations on network security.

Before setting such rules and obligations, they shall consult with the relevant actors in the countries with which interconnection exists;

(b) notwithstanding the first subparagraph of point (a), **Contracting Parties** may require transmission system operators to submit such rules and obligations to the competent authority for approval;

(c) **Contracting Parties** shall ensure that transmission and, where appropriate, distribution system operators comply with the minimum operational rules and obligations on network security;

(d) **Contracting Parties** shall require transmission system operators to maintain an appropriate level of operational network security.

To that effect, transmission system operators shall maintain an appropriate level of technical transmission reserve capacity for operational network security and cooperate with the transmission system operators concerned to which they are interconnected.

The level of foreseeable circumstances in which security shall be maintained is defined in the operational network security rules;

(e) **Contracting Parties** shall, in particular, ensure that interconnected transmission and, where appropriate, distribution system operators exchange information relating to the operation of networks in a timely and effective fashion in line with the minimum operational requirements. The same requirements shall, where appropriate, apply to transmission and distribution system operators that are interconnected with system operators outside the **Energy Community**.

2. **Contracting Parties** or the competent authorities shall ensure that transmission and, where appropriate, distribution system operators set and meet quality of supply and network security performance objectives. These objectives shall be subject to approval by the **Contracting Parties** or competent authorities and their implementation shall be monitored by them. They shall be objective, transparent and non-discriminatory and shall be published.

3. In taking the measures referred to in Article 24 of Directive 2003/54/EC and in Article 6 of Regulation (EC) No 1228/2003, **Contracting Parties** shall not discriminate between cross-border contracts and national contracts.

4. **Contracting Parties** shall ensure that curtailment of supply in emergency situations shall be based on predefined criteria relating to the management of imbalances by transmission system operators. Any safeguard measures shall be taken in close consultation with other relevant transmission system operators, respecting relevant bilateral agreements, including agreements on the exchange of information.

Article 5

Maintaining balance between supply and demand

1. **Contracting Parties** shall take appropriate measures to maintain a balance between the demand for electricity and the availability of generation capacity.

In particular, **Contracting Parties** shall:

(a) without prejudice to the particular requirements of small isolated systems, encourage the establishment of a wholesale market framework that provides suitable price signals for generation and consumption;

(b) require transmission system operators to ensure that an appropriate level of generation reserve capacity is available for balancing purposes and/or to adopt equivalent market based measures.

2. Without prejudice to Articles 87 and 88 of the Treaty, **Contracting Parties** may also take additional measures, including but not limited to the following:

(a) provisions facilitating new generation capacity and the entry of new generation companies to the market;

(b) removal of barriers that prevent the use of interruptible contracts;

(c) removal of barriers that prevent the conclusion of contracts of varying lengths for both producers and customers;

(d) encouragement of the adoption of real-time demand management technologies such as advanced metering systems;

(e) encouragement of energy conservation measures;

(f) tendering procedures or any procedure equivalent in terms of transparency and non-discrimination in accordance with Article 7(1) of Directive 2003/54/EC.

3. **Contracting Parties** shall publish the measures to be taken pursuant to this Article and shall ensure the widest possible dissemination thereof.

Article 6

Network investment

1. **Contracting Parties** shall establish a regulatory framework that:

(a) provides investment signals for both the transmission and distribution system network operators to develop their networks in order to meet foreseeable demand from the market; and

(b) facilitates maintenance and, where necessary, renewal of their networks.

2. Without prejudice to Regulation (EC) No 1228/2003, **Contracting Parties** may allow for merchant investments in interconnection.

Contracting Parties shall ensure that decisions on investments in interconnection are taken in close cooperation between relevant transmission system operators.

Article 7

Reporting

1. **Contracting Parties** shall ensure that the report referred to in Article 4 of Directive 2003/54/EC covers the overall adequacy of the electricity system to supply current and projected demands for electricity, comprising:

- (a) operational network security;
- (b) the projected balance of supply and demand for the next five-year period;
- (c) the prospects for security of electricity supply for the period between five and 15 years from the date of the report; and
- (d) the investment intentions, for the next five or more calendar years, of transmission system operators and those of any other party of which they are aware, as regards the provision of cross-border interconnection capacity.

2. **Contracting Parties** or the competent authorities shall prepare the report in close cooperation with transmission system operators. Transmission system operators shall, if appropriate, consult with neighbouring transmission system operators.

3. The section of the report relating to interconnection investment intentions, referred to in paragraph 1(d), shall take account of:

- (a) the principles of congestion management, as set out in Regulation (EC) No 1228/2003;
- (b) existing and planned transmission lines;
- (c) expected patterns of generation, supply, cross-border exchanges and consumption, allowing for demand management measures, and
- (d) regional, national and European sustainable development objectives, including those projects forming part of the Axes for priority projects set out in Annex I to Decision No 1229/2003/EC.

Contracting Parties shall ensure that transmission system operators provide information on their investment intentions or those of any other party of which they are aware as regards the provision of cross-border interconnection capacity.

Contracting Parties may also require transmission system operators to provide information on investments related to the building of internal lines that materially affect the provision of cross-border interconnection.

4. **Contracting Parties** or the competent authorities shall ensure that the necessary means for access to the relevant data are facilitated to the transmission system operators and/or to the competent authorities where relevant in the development of this task.

The non-disclosure of confidential information shall be ensured.

5. On the basis of the information referred to in paragraph 1(d), received from the competent au-

thorities, the Commission shall report to the **Contracting Parties**, the competent authorities and the European Regulators Group on Electricity and Gas established by Commission Decision 2003/796/EC on the investments planned and their contribution to the objectives set out in Article 1(1).

This report may be combined with the reporting provided for in point (c) of Article 28(1) of Directive 2003/54/EC and shall be published.

Article 8

Transposition

Each Contracting Parties shall implement Directive 2005/89/EC concerning measures to safeguard security of electricity supply and infrastructure investment before 31 December 2009.¹

<...>

When **Contracting Parties**² adopt those measures, they shall contain a reference to this Directive or be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by **Contracting Parties**.

Article 9

Reporting³

The Secretariat shall monitor and review the implementation of Directive 2005/89/EC in the Contracting Parties and shall submit a progress report to the Permanent High Level Group by 30 June 2010.

Articles 10 and 11

Entry into force and Addressees⁴

This Decision [2007/06/MC-EnC] enters into force on the day of its adoption and is addressed to the Contracting Parties.

¹ The text displayed here corresponds to Article 1(1) of Decision 2007/06/MC-EnC. For the Republic of Moldova, the corresponding date is 31 December 2010, for Ukraine 1 January 2012, and for Georgia 31 December 2019.

² Decision 2007/06/MC-EnC incorporating this Directive is addressed to the Contracting Parties.

³ The text displayed here corresponds to Article 1(3) of Decision 2007/06/MC-EnC.

⁴ The text displayed here corresponds to Article 4 of Decision 2007/06/MC-EnC.

DIRECTIVE 2004/67/EC of 26 April 2004 concerning measures to safeguard security of natural gas supply

Incorporated and adapted by Ministerial Council Decision 2007/06/MC-EnC of 18 December 2007 on the Implementation of Directive 2005/89/EC, Directive 2004/67/EC and Regulation 1775/2005.

*The adaptations made by Ministerial Council Decision 2007/06/MC-EnC are highlighted in **bold and blue**.*

Whereas:

(1) Natural gas (gas) is becoming an increasingly important component in Community energy supply, and, as indicated in the Green Paper "Towards a European strategy for the security of energy supply", the European Union is expected in the longer term to become increasingly dependent on gas imported from non-EU sources of supply.

(2) Following 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 and 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 and repealing Directive 98/30/EC, the Community gas market is being liberalised. Consequently, regarding security of supply, any difficulty having the effect of reducing gas supply could cause serious disturbances in the economic activity of the Community; for this reason, there is a growing need to ensure security of gas supply.

(3) The completion of the internal gas market necessitates a minimum common approach to security of supply, in particular through transparent and non-discriminatory security of supply policies compatible with the requirements of such a market, in order to avoid market distortions. Definition of clear roles and responsibilities of all market players is therefore crucial in safeguarding security of gas supply and the well-functioning of the internal market.

(4) Security of supply obligations imposed on companies should not impede the well functioning of the internal market and should not impose unreasonable and disproportionate burden on gas market players, including new market entrants and small market players.

(5) In view of the growing gas market in the Community, it is important that the security of gas supply is maintained, in particular as regards household customers.

(6) A large choice of instruments are available for the industry and, if appropriate, for Member States, to comply with the security of supply obligations. Bilateral agreements between Member States could be one of the means to contribute to the achievement of the minimum security of supply standards, having due regard to the Treaty and secondary legislation, in particular Article 3(2) of Directive 2003/55/EC.

(7) Indicative minimum targets for gas storage could be set either at national level or by the industry. It is understood that this should not create any additional investment obligations.

(8) Considering the importance of securing gas supply, i.e. on the basis of long-term contracts, the Commission should monitor the developments on the gas market on the basis of reports from Member States.

(9) In order to meet growing demand for gas and diversify gas supplies as a condition for a compet-

itive internal gas market, the Community will need to mobilise significant additional volumes of gas over the coming decades much of which will have to come from distant sources and transported over long distances.

(10) The Community has a strong common interest with gas supplying and transit countries in ensuring continued investments in gas supply infrastructure.

(11) Long-term contracts have played a very important role in securing gas supplies for Europe and will continue to do so. The current level of long term contracts is adequate on the Community level, and it is believed that such contracts will continue to make a significant contribution to overall gas supplies as companies continue to include such contracts in their overall supply portfolio.

(12) Considerable progress has been made in developing liquid trading platforms and through gas release programmes at national level. This trend is expected to continue.

(13) The establishment of genuine solidarity between Member States in major emergency supply situations is essential, even more so as Member States become increasingly interdependent regarding security of supply.

(14) The sovereign rights of Member States over their own natural resources are not affected by this Directive.

(15) A Gas Coordination Group should be established, which should facilitate coordination of security of supply measures at Community level in the event of a major supply disruption, and may also assist member States in coordinating measures taken at a national level. In addition, it should exchange information on security of gas supply on a regular basis, and should consider aspects relevant in the context of a major supply disruption.

(16) Member States should adopt and publish national emergency provisions.

(17) This Directive should provide rules applicable in the event of a major supply disruption; the foreseeable length of such a supply disruption should cover a significant period of time of at least eight weeks.

(18) Regarding the handling of a major supply disruption, this Directive should provide for a mechanism based on a three step approach. The first step would involve the reactions of the industry to the supply disruption; if this were not sufficient, Member States should take measures to solve the supply disruption. Only if the measures taken at stage one and two have failed should appropriate measures be taken at Community level.

(19) Since the objective of this Directive, namely ensuring an adequate level for the security of gas supply, in particular in the event of a major supply disruption, whilst contributing to the proper functioning of the internal gas market, cannot, in all circumstances, be sufficiently achieved by the Member States, particularly in light of the increasing interdependency of the Member States regarding security of gas supply, and can therefore, by reason of the scale and effects of the action, 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 Directive does not go beyond what is necessary in order to achieve that objective.

Article 1

Objective

This Directive establishes measures to safeguard an adequate level for the security of gas supply. These measures also contribute to the proper functioning of the internal gas market. It establishes a common framework within which **Contracting Parties** shall define general, transparent and non-discriminatory security of supply policies compatible with the requirements of a competitive internal gas market; clarify the general roles and responsibilities of the different market players and implement specific non-discriminatory procedures to safeguard security of gas supply.

Article 2

Definitions

For the purpose of this Directive:

1. "long-term gas supply contract" means a gas supply contract with a duration of more than 10 years;
2. "major supply disruption" shall mean a situation where the Community would risk to lose more than 20% of its gas supply from third countries and the situation at Community level is not likely to be adequately managed with national measures.

Article 3

Policies for securing gas supply

1. In establishing their general policies with respect to ensuring adequate levels of security of gas supply, **Contracting Parties** shall define the roles and responsibilities of the different gas market players in achieving these policies, and specify adequate minimum security of supply standards that must be complied with by the players on the gas market of the **Contracting Party** in question. The standards shall be implemented in a non-discriminatory and transparent way and shall be published.
2. **Contracting Parties** shall take the appropriate steps to ensure that the measures referred to in this Directive do not place an unreasonable and disproportionate burden on gas market players and are compatible with the requirements of a competitive internal gas market.
3. A non-exhaustive list of instruments for the security of gas supply is given in the Annex.

Article 4

Security of supply for specific customers

1. **Contracting Parties** shall ensure that supplies for household customers inside their territory are protected to an appropriate extent at least in the event of:
 - (a) a partial disruption of national gas supplies during a period to be determined by **Contracting**

Parties taking into account national circumstances;

(b) extremely cold temperatures during a nationally determined peak period;

(c) periods of exceptionally high gas demand during the coldest weather periods statistically occurring every 20 years,

These criteria are referred to in this Directive as “security of supply standards”.

2. **Contracting Parties** may extend the scope of paragraph 1 in particular to small and medium-sized enterprises and other customers that cannot switch their gas consumption to other energy sources, including measures for the security of their national electricity system if it depends on gas supplies.

3. A non-exhaustive list in the Annex sets out examples of instruments which may be used in order to achieve the security of supply standards.

4. **Contracting Parties**, having due regard to the geological conditions of their territory and the economic and technical feasibility, may also take the necessary measures to ensure that gas storage facilities located within their territory contribute to an appropriate degree to achieving the security of supply standards.

5. If an adequate level of interconnection is available, **Contracting Parties** may take the appropriate measures in cooperation with another **Contracting Party**, including bilateral agreements, to achieve the security of supply standards using gas storage facilities located within that other **Contracting Party**. These measures, in particular bilateral agreements, shall not impede the proper functioning of the internal gas market.

6. **Contracting Parties** may set or require the industry to set indicative minimum targets for a possible future contribution of storage, either located within or outside the **Contracting Party**, to security of supply. These targets shall be published.

Article 5

Reporting

1. In the report published by **Contracting Parties** pursuant to Article 5 of Directive 2003/55/EC, **Contracting Parties** shall also cover the following:

(a) the competitive impact of the measures taken pursuant to Articles 3 and 4 on all gas market players;

(b) the levels of storage capacity;

(c) the extent of long-term gas supply contracts concluded by companies established and registered on their territory, and in particular their remaining duration, based on information provided by the companies concerned, but excluding commercially sensitive information, and the degree of liquidity of the gas market;

(d) the regulatory frameworks to provide adequate incentives for new investment in exploration and production, storage, LNG and transport of gas, taking into account Article 22 of Directive 2003/55/EC as far as implemented by the **Contracting Party**.

2. This information shall be considered by the Commission in the reports that it issues pursuant to Article 31 of Directive 2003/55/EC in the light of the consequences of that Directive for the Community

as a whole and the overall efficient and secure operation of the internal gas market.

Article 6

Monitoring

1. The Commission shall monitor, on the basis of the reports referred to in Article 5(1):
 - (a) the degree of new long-term gas supply import contracts from third countries;
 - (b) the existence of adequate liquidity of gas supplies;
 - (c) the level of working gas and of the withdrawal capacity of gas storage;
 - (d) the level of interconnection of the national gas systems of **Contracting Parties**;
 - (e) the foreseeable gas supply situation in function of demand, supply autonomy and available supply sources at Community level concerning specific geographic areas in the Community.
2. Where the Commission concludes that gas supplies in the Community will be insufficient to meet foreseeable gas demand in the long term, it may submit proposals in accordance with the Treaty.
3. By 19 May 2008 the Commission shall submit a review report to the European Parliament and the Council on the experience gained from the application of this Article.

Article 7

Gas Coordination Group¹

For the implementation of Directive 2004/67/EC in the Contracting Parties, the coordination group referred to at its Article 7 will be set up by a Procedural Act to be adopted by the Permanent High Level Group.

Article 8

National emergency measures

1. **Contracting Parties** shall prepare in advance and, if appropriate, update national emergency measures and shall communicate these to the Commission. **Contracting Parties** shall publish their national emergency measures.
2. **Contracting Parties'** emergency measures shall ensure, where appropriate, that market players are given sufficient opportunity to provide an initial response to the emergency situation.
3. Subject to Article 4(1), **Contracting Parties** may indicate to the Chair of the Group events which they consider, because of their magnitude and exceptional character, cannot be adequately managed with national measures.

¹ The text displayed here corresponds to Article 2(3) of Decision 2007/06/MC-EnC. The Procedural Act referred to in this Article is Procedural Act 2008/02/MC-EnC of the Ministerial Council of the Energy Community of 11 December 2008 on the Establishment of a Security of Supply Coordination Group, see page 799.

Article 9

Community mechanism

1. If an event occurs that is likely to develop into a major supply disruption for a significant period of time, or in the case of an event indicated by a **Contracting Party** according to Article 8(3), the Commission shall convene the Group as soon as possible, at the request of a **Contracting Party** or on its own initiative.
2. The Group shall examine, and, where appropriate, assist the **Contracting Parties** in coordinating the measures taken at national level to deal with the major supply disruption.
3. In carrying out its work, the Group shall take full account of:
 - (a) the measures taken by the gas industry as a first response to the major supply disruption;
 - (b) the measures taken by **Contracting Parties**, such as those taken pursuant to Article 4, including relevant bilateral agreements.
4. Where the measures taken at national level referred to in paragraph 3 are inadequate to deal with the effects of an event referred to in paragraph 1, the Commission may, in consultation with the Group, provide guidance to **Contracting Parties** regarding further measures to assist those **Contracting Parties** particularly affected by the major supply disruption.
5. Where the measures taken at national level pursuant to paragraph 4 are inadequate to deal with the effects of an event referred to in paragraph 1, the Commission may submit a proposal to the Council regarding further necessary measures.
6. Any measures at Community level referred to in this Article shall contain provisions aimed at ensuring fair and equitable compensation of the undertakings concerned by the measures to be taken.

Article 10

Monitoring of implementation²

The Secretariat shall monitor and review the implementation of Directive 2004/67/EC in the Contracting Parties and shall submit a progress report to the Permanent High Level Group by 30 June 2010.

Article 11

Transposition

Each Contracting Parties shall implement Directive 2004/67/EC concerning measures to safeguard security of natural gas supply before 31 December 2009.³

<...>

² The text displayed here corresponds to Article 2(4) of Decision 2007/06/MC-EnC.

³ The text displayed here corresponds to Article 2(1) of Decision 2007/06/MC-EnC. For the Republic of Moldova, the corresponding date is 31 December 2010 and for Ukraine 1 January 2012, and for Georgia 31 December 2020.

Article 12 and 13

Entry into force and Addressees⁴

This Decision [2007/06/MC-EnC] enters into force on the day of its adoption and is addressed to the Contracting Parties.

⁴ The text displayed here corresponds to Article 4 of Decision 2007/06/MC-EnC.

ANNEX

NON-EXHAUSTIVE LIST OF INSTRUMENTS TO ENHANCE THE SECURITY OF GAS SUPPLY REFERRED TO IN ARTICLE 3(3) AND ARTICLE 4(3)

- working gas in storage capacity,
- withdrawal capacity in gas storage,
- provision of pipeline capacity enabling diversion of gas supplies to affected areas,
- liquid tradable gas markets,
- system flexibility,
- development of interruptible demand,
- use of alternative back-up fuels in industrial and power generation plants,
- cross-border capacities,
- cooperation between transmission system operators of neighbouring **Contracting Parties** for coordinated dispatching,
- coordinated dispatching activities between distribution and transmission system operators,
- domestic production of gas,
- production flexibility,
- import flexibility,
- diversification of sources of gas supply,
- long term contracts,
- investments in infrastructure for gas import via regasification terminals and pipelines.

PART II

ACQUIS COMMUNAUTAIRE

OIL

DIRECTIVE 2009/119/EC of 14 September 2009 imposing an obligation on Member States to maintain minimum stocks of crude oil and/or petroleum products

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

Whereas:

(1) The supply of crude oil and petroleum products to the Community remains very important, particularly for the transport sector and the chemicals industry.

(2) The increasing concentration of production, dwindling oil reserves and growing worldwide consumption of petroleum products are all contributing to an increased risk of supply difficulties.

(3) The European Council, in its Action Plan (2007 to 2009), entitled “Energy Policy for Europe”, underlined the need to enhance security of supply for the European Union (EU) as a whole and for each Member State, *inter alia*, by reviewing the Union’s oil stocks mechanisms, with special reference to the availability of oil in the event of a crisis.

(4) That objective requires, among other things, greater convergence between the Community system and the system provided for by the International Energy Agency (hereinafter “the IEA”).

(5) Under Council Directive 2006/67/EC of 24 July 2006 imposing an obligation on Member States to maintain minimum stocks of crude oil and/or petroleum products, stocks are calculated on the basis of average daily inland consumption during the previous calendar year. However, stockholding obligations under the Agreement on an International Energy Programme of 18 November 1974 (hereinafter “the IEA Agreement”) are calculated on the basis of net imports of oil and petroleum products. For that reason, and owing to other differences in methodology, the way in which stockholding obligations and Community emergency stocks are calculated should be brought more into line with the calculation methods used under the IEA Agreement, notwithstanding the facts that the IEA calculation methods may have to be evaluated in light of technological improvements during the last decades, and that non-IEA members that are fully dependent on imports may require a longer period for adapting their stockholding obligations. Further amendments to the methods and procedures for calculating stock levels may prove necessary and beneficial in order to further increase coherence with IEA practice, including, for example, changes that lead to a lowering for certain Member States of the reduction percentage of 10% applied in the calculation of stocks, that would allow a different treatment of naphtha stocks, or that would allow the stocks held in tankers in territorial waters of a Member State to be counted.

(6) Indigenous production of oil can in itself contribute to security of supply and might therefore provide justification for oil-producing Member States to hold lower stocks than other Member States. A derogation of that kind should not, however, result in stockholding obligations that differ substantially from those that apply under Directive 2006/67/EC. It therefore follows that the stockholding obligation for certain Member States should be set on the basis of inland oil consumption and not on the basis of imports.

(7) The Presidency Conclusions of the Brussels European Council of 8 and 9 March 2007 show that it is becoming increasingly vital and pressing for the Community to put in place an integrated energy policy, combining action at European and Member State level. It is therefore essential to ensure

greater convergence in the standards secured by the stockholding mechanisms in place in the various Member States.

(8) The availability of oil stocks and the safeguarding of energy supply are essential elements of public security for Member States and for the Community. The existence of central stockholding entities (CSEs) in the Community brings those goals closer. In order to allow the Member States concerned to make optimal use of national law to define the terms of reference for their CSEs while easing the financial burden placed on final consumers as a result of such stockholding activities, it is sufficient to prohibit the use of stocks for commercial purposes, while allowing stocks to be held in any location across the Community and by any CSE set up for that purpose.

(9) Given the objectives of the Community legislation on oil stocks, possible security concerns which may be expressed by some Member States and the desire to make mechanisms for solidarity amongst Member States more rigorous and more transparent, it is necessary to focus as much as possible the operation of CSEs to their national territories.

(10) It should be possible for oil stocks to be held at any location across the Community, provided that due account is taken of their physical accessibility. Consequently, economic operators on which such stockholding obligations fall should be able to discharge their obligations by delegation to other economic operators or any one of the CSEs. Furthermore, provided those obligations can be delegated to a freely chosen CSE located within the Community on payment of an amount limited to the cost of the services provided, the risk of discriminatory practices at national level will be reduced. The right of an economic operator to delegate should not imply an obligation on the part of any actor to accept the delegation, unless this Directive requires otherwise. When Member States decide to limit operators' delegation rights, they should ensure that operators are guaranteed the right to delegate a certain minimum percentage of their obligation; those Member States should therefore ensure that their CSE will accept the delegation of the stockholding obligation in respect of the amount needed to guarantee that minimum percentage.

(11) Member States should ensure full availability of all stocks held pursuant to Community legislation. In order to guarantee that availability, there should be no restrictions or limitations on the right of ownership of those stocks that could hamper their use in case of oil supply disruption. Petroleum products owned by companies facing a significant risk of enforcement proceedings against their assets should not be taken into account. Where a stockholding obligation has been imposed on operators, initiation of bankruptcy or settlement proceedings could be considered to demonstrate the existence of such a risk.

(12) In order to allow Member States to react quickly to cases of particular urgency or to local crises it might be appropriate to allow them to use a part of their stocks for such situations. Such urgent cases or local crises would not include situations caused by price developments of crude oil or petroleum products, but could include disruptions in the supply of natural gas which require fuel switching, i.e. using crude oil or petroleum products as fuel for energy production.

(13) In view of what is required in connection with setting up emergency policies, bringing about convergence in the standards secured by national stockholding mechanisms and ensuring a better overview of stock levels, particularly in the event of a crisis, Member States and the Community should have the means for reinforced control of those stocks. Stocks held under bilateral agreements, or contractual rights to purchase certain volumes of stocks (tickets) that fulfil all obligations set by the current Directive, should form useful instruments compatible with this aim of greater

convergence.

(14) Ownership of a substantial part of those stocks by the Member States or the CSEs set up by the various national authorities should make it possible to increase the level of control and transparency, at least for that part of the stocks.

(15) To help enhance security of supply in the Community, the stocks, known as “specific stocks”, purchased by the Member States or the CSEs and constituted on the basis of decisions taken by the Member States should correspond to actual needs in the event of a crisis. They should also have separate legal status to ensure full availability should such a crisis occur. To that end, the Member States concerned should ensure that appropriate steps are taken to protect those stocks unconditionally against all enforcement measures.

(16) At this stage, the volumes to be owned by the CSEs or the Member States should be set at a level determined independently and voluntarily by each of the Member States concerned.

(17) Given the need to increase the level of control and transparency, emergency stocks that are not specific stocks should be subject to increased monitoring requirements and, in certain cases, Member States should be required to notify measures governing the availability of emergency stocks and any changes in the arrangements for maintaining them.

(18) Fluctuations in the volume of specific stocks due to individual stock replacement operations could be permissible in order to allow necessary operations such as those required for ensuring freshness of the stocks, for ensuring compliance with changed product specifications, or for issuing new tenders for storage.

(19) Where emergency stocks and specific stocks are commingled with other stocks held by economic operators, transparency of emergency stock levels should be emphasised.

(20) The frequency with which stock summaries are drawn up and the deadline for their submission, as laid down by Directive 2006/67/EC, seem to be out of step with various oil stockholding systems that have been set up in other parts of the world. In a resolution on the macroeconomic impact of the increase in the price of energy, the European Parliament voiced its support for more frequent reporting.

(21) In order to prevent double reporting with regard to the information to be provided by Member States on the different product categories, Regulation (EC) No 1099/2008 of the European Parliament and of the Council of 22 October 2008 on energy statistics should serve as a point of reference for the different categories of petroleum products referred to in this Directive.

(22) In order to enhance security of supply, provide the markets with fuller information, reassure consumers about the state of oil stocks and optimise the way in which information is transmitted, provision should be made for possible subsequent amendment or clarification of the rules for the preparation and submission of statistical summaries.

(23) With the same objectives in mind, the preparation and submission of statistical summaries should also be extended to stocks other than emergency stocks and specific stocks, with those summaries to be submitted on a monthly basis.

(24) As there may be errors or discrepancies in the summaries submitted to the Commission, the Commission's employees or authorised agents should be able to review the emergency preparedness and stockholding of Member States. Member States' national regimes should be relied upon to secure that such reviews can be conducted effectively in accordance with national procedures.

(25) Complex electronic and statistical data processing should be carried out for the data received or collected. This requires the use of integrated tools and procedures. The Commission should therefore be able to take all appropriate measures to that effect, in particular developing new computer systems.

(26) The protection of individuals with regard to the processing of personal data by the Member States is governed by Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, while the protection of individuals with regard to the processing of personal data by the Commission is governed by Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. In particular, those acts require the processing of personal data to be justified by a legitimate purpose and stipulate that any personal data gathered accidentally must be deleted immediately.

(27) Biofuels and certain additives are often blended with petroleum products. When blended or intended to be blended with those products, it should be possible to take them into account both when calculating the stockholding obligation and when calculating the stocks held.

(28) The Member States concerned should be allowed to fulfil any obligations they may be subject to as a result of a decision to release stocks taken pursuant to the IEA Agreement or its implementing measures. A proper and timely execution of IEA decisions is a key factor for efficient response to cases of supply difficulties. In order to ensure this, Member States should release part of their emergency stocks to the extent provided for in the IEA decision in question. The Commission should cooperate closely with IEA and base action at Community level on the IEA methodology. In particular, the Commission should be in a position to recommend stock releases by all Member States, as appropriate to complement, and facilitate the implementation of, the IEA decision inviting its members to release stocks. It is appropriate for Member States to respond positively to such Commission recommendations in the interest of a strong Community-wide solidarity and cohesion, between those Member States that are members of the IEA and those that are not, in response to a supply disruption.

(29) Council Directive 73/238/EEC of 24 July 1973 on measures to mitigate the effects of difficulties in the supply of crude oil and petroleum products is intended, in particular, to offset, or at least to diminish, the adverse effects of any difficulties, even temporary, having the effect of considerably reducing supplies of crude oil or petroleum products, including the serious disruption to the economic activity of the Community that such a reduction could cause. This Directive should include similar measures.

(30) Directive 73/238/EEC also aims to set up a consultative body to facilitate the coordination of practical measures taken or proposed by the Member States in this field. Such a body should be provided for in this Directive. It remains necessary for each Member State to draw up a plan that could be used in the event of difficulties arising in the supply of crude oil and petroleum products. Each Member State should also make arrangements with regard to the organisational measures to be taken in the event of a crisis.

(31) Given that this Directive introduces a number of new mechanisms, its implementation and functioning should be reviewed.

(32) This Directive replaces or covers all of the aspects dealt with in Council Decision 68/416/EEC of 20 December 1968 on the conclusion and implementation of individual agreements between Governments relating to the obligation of Member States to maintain minimum stocks of crude oil and/or petroleum products. That Decision therefore no longer serves any purpose.

(33) Since the objective of this Directive, namely to maintain a high level of security of oil supply in the Community through reliable and transparent mechanisms based on solidarity amongst Member States while complying with the internal market and competition rules, cannot be sufficiently achieved by the Member States and can therefore, by reason of its scale and effects, 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 Directive does not go beyond what is necessary in order to achieve that objective.

(34) The measures necessary for the implementation of this Directive 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.

(35) In accordance with point 34 of the Interinstitutional Agreement on better law-making, Member States are encouraged to draw up, for themselves and in the interest of the Community, their own tables, illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public.

(36) Directives 73/238/EEC and 2006/67/EC and Decision 68/416/EEC should therefore be repealed.

Article 1

Objective

This Directive lays down rules aimed at ensuring a high level of security of oil supply in the Community through reliable and transparent mechanisms based on solidarity amongst Member States¹, maintaining minimum stocks of crude oil and/or petroleum products and putting in place the necessary procedural means to deal with a serious shortage.

Article 2

Definitions

For the purposes of this Directive:

- (a) “reference year” means the calendar year of the consumption or of the net import data used to calculate either the stocks to be held or the stocks actually held at a given time;
- (b) “additives” means non-hydrocarbon compounds added to or blended with a product to modify its properties;
- (c) “biofuel” means liquid or gaseous fuel for transport produced from biomass, “biomass” being the biodegradable fraction of products, waste and residues from agriculture (including vegetable and animal substances), forestry and related industries, as well as the biodegradable fraction of

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

industrial and municipal waste;

(d) “inland consumption” means the total quantities, calculated according to Annex II, delivered within a country for both energy and non-energy use; this aggregate includes deliveries to the transformation sector and deliveries to industry, transport, households and other sectors for “final” consumption; it also includes the own consumption of the energy sector (except refinery fuel);

(e) “effective international decision to release stocks” means any decision in force taken by the Governing Board of the International Energy Agency to make crude oil or petroleum products available to the market by a release of its members’ stocks and/or additional measures;

(f) “central stockholding entity” (CSE) means the body or service upon which powers may be conferred to act to acquire, maintain or sell oil stocks, including emergency stocks and specific stocks;

(g) “major supply disruption” means a substantial and sudden drop in the supply of crude oil or petroleum products to the Community or to a Member State, irrespective of whether or not it has led to an effective international decision to release stocks;

(h) “international marine bunkers” has the meaning given in Section 2.1 of Annex A to Regulation (EC) No 1099/2008;

(i) “oil stocks” means stocks of the energy products listed in the first paragraph of Section 3.1 of Annex C to Regulation (EC) No 1099/2008;

(j) “emergency stocks” means the oil stocks that each Member State is required to maintain pursuant to Article 3;

(k) “commercial stocks” means those oil stocks held by economic operators which are not a requirement under this Directive;

(l) “specific stocks” means oil stocks that meet the criteria set out in Article 9;

(m) “physical accessibility” means arrangements for locating and transporting stocks to ensure their release or effective delivery to end users and markets within time frames and conditions conducive to alleviating the supply problems which may have arisen.

The definitions set out in this Article may be clarified or amended in accordance with the regulatory procedure referred to in Article 23(2).

Article 3

Emergency stocks - Calculating stockholding obligations

1. Member States shall adopt such laws, regulations or administrative provisions as may be appropriate in order to ensure, by 31 December 2012, that the total oil stocks maintained at all times within the Community for their benefit correspond, at the very least, to 90 days of average daily net imports or 61 days of average daily inland consumption, whichever of the two quantities is greater.

2. The average daily net imports to be taken into account shall be calculated on the basis of the crude oil equivalent of imports during the previous calendar year, determined in accordance with the method and procedures set out in Annex I.

The average daily inland consumption to be taken into account shall be calculated on the basis of the crude oil equivalent of inland consumption during the previous calendar year, established and calculated in accordance with the method and procedures set out in Annex II.

3. However, notwithstanding paragraph 2, the daily averages of net imports and inland consumption, as referred to in that paragraph, shall be determined, as regards the period from 1 January to 31 March of each calendar year, on the basis of the quantities imported or consumed during the last year but one before the calendar year in question.

4. The methods and procedures for calculating stockholding obligations, as referred to in this Article, may be amended in accordance with the regulatory procedure referred to in Article 23(2).

Article 4

Calculating stock levels

1. The levels of stocks held shall be calculated using the methods set out in Annex III. When calculating stock levels for each category held pursuant to Article 9, those methods shall apply only to the products in the category in question.

2. The levels of stocks held at a given time shall be calculated using data from the reference year determined in accordance with the rules set out in Article 3.

3. Any oil stocks may be included simultaneously in both the calculation of a Member State's emergency stocks and the calculation of its specific stocks provided that those oil stocks satisfy all the conditions laid down in this Directive for both types of stocks.

4. The methods and procedures for calculating stock levels, as referred to in paragraphs 1 and 2, may be amended in accordance with the regulatory procedure referred to in Article 23(2). In particular, it may prove necessary and beneficial to amend those methods and procedures, including the application of the reduction provided for in Annex III, in order to ensure coherence with IEA practice.

Article 5

Availability of stocks

1. At all times, Member States shall ensure that emergency stocks and specific stocks are available and physically accessible for the purposes of this Directive. They shall establish arrangements for the identification, accounting and control of those stocks so as to allow them to be verified at any time. This requirement also applies to any emergency stocks and specific stocks that are commingled with other stocks held by economic operators.

Member States shall take all necessary measures to prevent all obstacles and encumbrances that could hamper the availability of emergency stocks and specific stocks. Each Member State may set limits or additional conditions on the possibility of its emergency stocks and specific stocks being held outside its territory.

2. Where there is reason to implement the emergency procedures provided for in Article 20, Member States shall prohibit, and refrain from taking, any measure hindering the transfer, use or release of emergency stocks or specific stocks held within their territory on behalf of another Member State.

Article 6

Register of emergency stocks - Annual report

1. Each Member State shall keep a continually updated and detailed register of all emergency stocks held for its benefit which do not constitute specific stocks. That register shall contain, in particular, information needed to pinpoint the depot, refinery or storage facility where the stocks in question are located, as well as the quantities involved, the owner of the stocks and their nature, with reference to the categories identified in the first paragraph of Section 3.1 of Annex C to Regulation (EC) No 1099/2008.
2. By the 25th February each year, each Member State shall send the Commission a summary copy of the stock register referred to in paragraph 1 showing at least the quantities and nature of the emergency stocks included in the register on the last day of the preceding calendar year.
3. Member States shall also send the Commission a full copy of the register within 15 days of a request by the Commission; in this copy sensitive data relating to the location of stocks may be withheld. Such requests may be made no later than 5 years after the date to which the requested data relate, and may not bear upon data relating to any period preceding 1 January 2013.

Article 7

Central stockholding entities

1. Member States may set up CSEs.

No Member State may set up more than one CSE or any other similar body. A Member State may set up its CSE at any location within the Community.

Where a Member State sets up a CSE, it shall take the form of a body or service without profit objective and acting in the general interest and shall not be considered to be an economic operator within the meaning of this Directive.

2. The main purpose of the CSE shall be to acquire, maintain and sell oil stocks for the purposes of this Directive or for the purpose of complying with international agreements concerning the maintenance of oil stocks. It is the only body or service upon which powers may be conferred to acquire or sell specific stocks.
3. CSEs or Member States may, for a specified period, delegate tasks relating to the management of emergency stocks and, with the exception of sale and acquisition, of specific stocks, but only to:
 - (a) another Member State within whose territory such stocks are located or the CSE set up by that Member State. Tasks thus delegated may not be subdelegated to other Member States or to CSEs set up by them. The Member State that set up the CSE, as well as each Member State within whose territory the stocks will be held, has the right to make the delegation conditional upon its authorisation;
 - (b) economic operators. Tasks thus delegated may not be subdelegated. Where such a delegation, or any change or extension to that delegation, involves tasks relating to the management of emergency and specific stocks held in another Member State, it must be authorised in advance both by the Member State on whose account the stocks are held and by all Member States within whose territories the stocks will be held.

4. Each Member State having a CSE shall require it, for the purposes of Article 8(1) and (2), to publish:

- (a) on an ongoing basis, full information, broken down by product category, on the stock volumes that it can undertake to maintain for economic operators, or, where appropriate, interested CSEs;
- (b) at least 7 months in advance, the conditions subject to which it is willing to provide services related to maintaining the stocks for economic operators. The conditions under which services may be provided, including conditions relating to scheduling, may also be determined by competent national authorities or following a competitive procedure intended to determine the best bid among operators or, where appropriate, interested CSEs.

CSEs shall accept such delegations under objective, transparent and non-discriminatory conditions. Payments by the operators for the services of the CSE shall not exceed the full costs of the services rendered and may not be required until the stocks are constituted. The CSE may make its acceptance of a delegation conditional upon the operator's provision of a guarantee or some other form of security.

Article 8

Economic operators

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

- (a) the CSE of the Member State on whose account such stocks are held;
- (b) one or more other CSEs which have in advance declared themselves willing to hold such stocks, provided that such delegations have been authorised in advance both by the Member State on whose account such stocks are held and by all Member States within whose territories the stocks will be held;
- (c) other economic operators which have surplus stocks or available stockholding capacity outside of the territory of the Member State on whose account the stocks are held within the Community, provided that such delegation has been authorised in advance both by the Member State on whose account such stocks are held and by all Member States within whose territories the stocks will be held; and/or
- (d) other economic operators which have surplus stocks or available stockholding capacity within the territory of the Member State on whose account the stocks are held, provided that such delegation has been communicated in advance to the Member State. Member States may impose limits or conditions on such delegations.

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

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

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

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

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

4. Member States shall take the necessary measures to inform economic operators of the modalities to be used to calculate the stockholding obligations imposed on them no later than 200 days prior to the start of the period to which the obligation in question relates. Economic operators shall exercise their right to delegate stockholding obligations to CSEs no later than 170 days prior to the start of the period to which the obligation in question relates.

Where economic operators are informed less than 200 days before the start of the period to which the stockholding obligation relates, they may exercise their right to delegate that obligation at any time.

Article 9

Specific stocks

1. Each Member State may undertake to maintain a minimum level of oil stocks, calculated in terms of number of days of consumption, in accordance with the conditions set out in this Article.

Specific stocks shall be owned by the Member State or the CSE set up by it and shall be maintained on the territory of the Community.

2. Specific stocks can only be composed of one or more of the following product categories, as defined in Section 4 of Annex B to Regulation (EC) No 1099/2008:

- Ethane
- LPG
- Motor gasoline
- Aviation gasoline
- Gasoline-type jet fuel (naphtha-type jet fuel or JP4)
- Kerosene-type jet fuel
- Other kerosene
- Gas/diesel oil (distillate fuel oil)
- Fuel oil (high sulphur content and low sulphur content)
- White spirit and SBP
- Lubricants

- Bitumen
- Paraffin waxes
- Petroleum coke

3. Petroleum products constituting specific stocks shall be identified by each Member State on the basis of the categories listed in paragraph 2. Member States shall ensure that, for the reference year determined in accordance with the rules set out in Article 3 and concerning the products included in the categories used, the crude oil equivalent of quantities consumed in the Member State is at least equal to 75% of inland consumption calculated using the method set out in Annex II.

For each of the categories chosen by the Member State, the specific stocks it undertakes to maintain shall correspond to a given number of days of average daily consumption measured on the basis of their crude oil equivalent during the reference year determined in accordance with the rules set out in Article 3.

The crude oil equivalents referred to in the first and second subparagraphs are calculated by multiplying by a factor of 1.2 the sum of the aggregate “observed gross inland deliveries”, as defined in Section 3.2.1 of Annex C to Regulation (EC) No 1099/2008, for the products included in the categories used or concerned. International marine bunkers are not included in the calculation.

4. Each Member State that has decided to maintain specific stocks shall send the Commission a notice to be published in the Official Journal of the European Union, specifying the level of such stocks that it has undertaken to maintain and the duration of such undertaking which shall be at least 1 year. The notified minimum level shall apply equally to all categories of specific stocks used by the Member State.

The Member State shall ensure that such stocks are held the full length of the notified period without prejudice to the right of the Member State to undergo temporary reductions due solely to individual stock replacement operations.

The list of categories used by a Member State shall remain in effect for at least 1 year and may be amended only with effect on the first day of a calendar month.

5. Each Member State that has not made a commitment for the full length of a given calendar year to maintain at least 30 days of specific stocks shall ensure that at least one-third of their stockholding obligation is held in the form of products composed in accordance with paragraphs 2 and 3.

A Member State for which less than 30 days of specific stocks are held shall draw up an annual report analysing the measures taken by its national authorities to ensure and verify the availability and physical accessibility of its emergency stocks as referred to in Article 5 and shall document in the same report arrangements made to allow the Member State to control the use of these stocks in case of oil supply disruptions. That report shall be sent to the Commission by the end of the first month of the calendar year to which it relates.

Article 10

Managing specific stocks

1. Each Member State shall keep a continually updated and detailed register of all specific stocks held within its territory. That register shall contain, in particular, all information needed to pinpoint the

exact location of the stocks in question.

Member States shall also send the Commission a copy of the register within 15 days of a request by the Commission. In this copy, sensitive data relating to the location of stocks may be withheld. Such requests may be made no later than 5 years after the date to which the requested data relate.

2. Where specific stocks are commingled with other oil stocks, Member States or their CSEs shall make the necessary arrangements to prevent those commingled products from being moved, to the extent of the proportion constituting specific stocks, without prior written authorisation by the owner of the specific stocks and by the authorities of, or the CSE established by, the Member State in whose territory the stocks are located.

3. Member States shall take the necessary measures to confer unconditional immunity from enforcement action on all specific stocks maintained or transported within their territory, irrespective of whether those stocks are owned by them or by other Member States.

Article 11

The effect of delegations

The delegations referred to in Articles 7 and 8 shall in no way alter the obligations incumbent upon each Member State pursuant to this Directive.

Article 12

Statistical summaries of stocks covered by Article 3

1. With regard to the levels of stocks to be held pursuant to Article 3, each Member State shall draw up statistical summaries and submit them to the Commission in accordance with the rules set out in Annex IV².

2. The rules for drawing up the summaries referred to in paragraph 1, their scope, content and frequency and the deadlines for their submission may be amended in accordance with the regulatory procedure referred to in Article 23(2). The rules for submitting those summaries to the Commission may also be amended in accordance with the regulatory procedure referred to in Article 23(2).

3. Member States may not include quantities of crude oil or petroleum products which are subject to a seizure order or enforcement action in their statistical summaries of emergency stocks. This also applies to stocks owned by companies that are bankrupt or have entered into an arrangement with creditors.

² Pursuant to the Ministerial Council General Policy Guideline on a Roadmap on Implementation of the Certain Deadlines of the Directive 2009/119/EC, all Contracting Parties are invited to: a) "Begin regular monthly participation in the submissions of the JODI Oil Questionnaire before 1 January 2018. b) Communicate to the Secretariat by 31 March 2018 the proposed legal basis and Action Plan for collecting all oil data necessary to submit the Monthly Oil Statistics (MOS) Questionnaire".

Article 13**Statistical summaries of specific stocks**

1. Each Member State concerned shall draw up and submit to the Commission a statistical summary, for each product category, showing the specific stocks existing on the last day of each calendar month and specifying the quantities and the number of days of average consumption in the reference year which those stocks represent. If some of those specific stocks are held outside a Member State's territory, it shall provide details of the stocks maintained in or by the various Member States and CSEs concerned. It shall also provide a detailed indication of whether it owns all of those stocks or whether they are owned, in whole or in part, by its CSE.
2. Each Member State concerned shall also draw up and submit to the Commission a summary of the specific stocks located within its territory and owned by other Member States or CSEs, showing the stocks existing on the last day of each calendar month and broken down into the product categories identified pursuant to Article 9(4). In that summary, the Member State shall also indicate, in each case, the Member State or CSE concerned and the quantities involved.
3. The statistical summaries referred to in paragraphs 1 and 2 shall be submitted during the calendar month following that to which they relate.
4. Copies of the statistical summaries shall also be sent immediately upon request by the Commission. Such requests may be made no later than 5 years after the date to which the data in question relate.
5. The scope, content and frequency of the statistical summaries and the deadlines for their submission may be amended in accordance with the regulatory procedure referred to in Article 23(2). The rules for submitting those summaries to the Commission may also be amended in accordance with the regulatory procedure referred to in Article 23(2).

Article 14**Summaries of commercial stocks**

1. Member States shall send the Commission a monthly statistical summary of the levels of commercial stocks held within their national territory. When doing so, they shall ensure that sensitive data are protected and shall abstain from mentioning the names of the owners of the stocks concerned.
2. Using aggregate levels, the Commission shall publish a monthly statistical summary of the commercial stocks in the Community on the basis of the summaries submitted by the Member States.
3. The rules for submitting and publishing the statistical summaries, as well as for their frequency, may be amended in accordance with the regulatory procedure referred to in Article 23(2).

Article 15**Data processing**

The Commission shall be responsible for developing, hosting, managing and maintaining the IT

resources needed to receive, store and carry out any processing of the data provided in the statistical summaries, all other information submitted by Member States or gathered by the Commission pursuant to this Directive and any data on oil stocks gathered pursuant to Regulation (EC) No 1099/2008 and needed for the purpose of drawing up the summaries required by this Directive.

Article 16

Biofuels and additives

1. When calculating stockholding obligations under Articles 3 and 9 biofuels and additives shall be taken into account only where they have been blended with the petroleum products concerned.
2. When calculating the stock levels actually maintained, biofuels and additives shall be taken into account when:
 - (a) they have been blended with petroleum products concerned; or
 - (b) they are stored on the territory of the Member State concerned, provided that the Member State has adopted rules ensuring that they are to be blended with petroleum products held pursuant to stockholding requirements set out in this Directive and that they are to be used in transportation.
3. The rules for taking biofuels and additives into account when calculating stockholding obligations and stock levels, as laid down in paragraph 1 and 2, may be amended in accordance with the regulatory procedure referred to in Article 23(2).

Article 17

Coordination Group for oil and petroleum products

1. A Coordination Group for oil and petroleum products is hereby set up (hereinafter the "Coordination Group"). The Coordination Group is a consultative Group that shall contribute to analysing the situation within the Community with regard to security of supply for oil and petroleum products and facilitate the coordination and implementation of measures in that field.
2. The Coordination Group shall be made up of representatives of the Member States. It shall be chaired by the Commission. Representative bodies from the sector concerned may take part in the work of the Coordination Group at the invitation of the Commission.

Article 18

Reviews of emergency preparedness and stockholding

1. The Commission may, in coordination with Member States, carry out reviews to verify their emergency preparedness and, if considered appropriate by the Commission, related stockholding. When preparing for such reviews, the Commission shall take into account efforts undertaken by other institutions and international organisations and consult the Coordination Group.
2. The Coordination Group may agree on the participation of authorised agents and representatives of other Member States in the reviews. Designated national officials of the reviewed Member State

may accompany the persons performing the review. Within 1 week following the announcement of a review referred to in paragraph 1, any Member State concerned that has not provided the Commission with sensitive data relating to the location of stocks pursuant Articles 6 and 9 shall place this information at the disposal of the Commission's employees or authorised agents.

3. Member States shall ensure that their authorities and those responsible for maintaining and managing emergency and specific stocks agree to inspections and provide assistance to the persons authorised by the Commission to perform those reviews. Member States shall in particular ensure that these persons are granted the right to consult all documents and registers relating to the stocks and have right of access to all sites on which stocks are held and to all related documents.

4. The outcome of reviews carried out pursuant to this Article shall be notified to the Member State reviewed and may be forwarded to the Coordination Group.

5. Member States and the Commission shall ensure that officials, agents and other persons working under Commission supervision and members of the Coordination Group may not disclose any information which has been gathered or exchanged pursuant to this Article and which, by its nature, is covered by professional secrecy, such as the identity of the owners of stocks.

6. The objectives of the reviews referred to in paragraph 1 may not include the processing of personal data. Any personal data found or uncovered during those reviews may not be gathered or taken into consideration and, if gathered accidentally, shall be destroyed immediately.

7. Member States shall take the necessary measures to ensure that all data, records, summaries and documents relating to emergency stocks and specific stocks are kept for a period of at least 5 years.

Article 19

Protection of individuals with regard to the processing of data

This Directive is without prejudice to, and in no way affects, the level of protection of individuals with regard to the processing of personal data under the provisions of Community and national law and, in particular, does not alter Member States' obligations with regard to the processing of personal data, as laid down by Directive 95/46/EC, or the obligations incumbent upon Community institutions and bodies under Regulation (EC) No 45/2001 with regard to the processing of personal data by them in the course of their duties.

Article 20

Emergency procedures

1. Member States shall ensure that they have procedures in place and take such measures as may be necessary, in order to enable their competent authorities to release quickly, effectively and transparently some or all of their emergency stocks and specific stocks in the event of a major supply disruption, and to impose general or specific restrictions on consumption in line with the estimated shortages, *inter alia*, by allocating petroleum products to certain groups of users on a priority basis.

2. Member States shall at all times have contingency plans to be implemented in the event of a major supply disruption and shall provide for organisational measures to be taken to allow those plans to

be implemented. Upon request, Member States shall inform the Commission of their contingency plans and the corresponding organisational arrangements.

3. In the event of an effective international decision to release stocks affecting one or more Member States:

(a) the Member States concerned may use their emergency stocks and specific stocks to fulfil their international obligations under that decision. Any Member State so doing shall notify the Commission immediately, so that the Commission can call a meeting of the Coordination Group or consult its members by electronic means to assess, in particular, the impact of that release;

(b) the Commission should recommend to Member States to release some or all of their emergency stocks and specific stocks or to take other measures of equivalent effect as considered appropriate. The Commission may act only after consulting the Coordination Group.

4. In the absence of an effective international decision to release stocks but when difficulties arise in the supply of crude oil or petroleum products to the Community or to a Member State, the Commission shall inform the IEA where applicable, and coordinate with it as appropriate, and arrange a consultation of the Coordination Group as soon as possible, either at the request of a Member State or on its own initiative. When a consultation of the Coordination Group is requested by a Member State, it shall be arranged within 4 days of the request at most, unless the Member State agrees to a longer period. On the basis of the results of the examination of the situation by the Coordination Group, the Commission shall determine whether a major supply disruption has occurred.

If a major supply disruption is deemed to have occurred, the Commission shall authorise the release of some or all of the quantities of emergency stocks and specific stocks that have been put forward for that purpose by the Member States concerned.

5. Member States may release emergency and specific stocks below the compulsory minimum level set by this Directive in amounts immediately necessary for an initial response in cases of particular urgency or in order to meet local crises. In the event of such release, Member States shall inform the Commission immediately of the amount released. The Commission shall transmit this information to the members of the Coordination Group.

6. Where paragraphs 3, 4 or 5 are applied, Member States may temporarily hold stocks at levels lower than those stipulated in this Directive. In that case, the Commission shall determine, on the basis of the results of the consultation of the Coordination Group and, where applicable, in coordination with the IEA, and notably by taking into account the situation on the international oil and petroleum products markets, a reasonable time frame within which Member States must bring their stocks back up to the minimum required levels.

7. Decisions taken by the Commission by virtue of this Article shall be without prejudice to any other international obligations on the Member States concerned.

Article 21

Penalties

Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take such measures as may be necessary to ensure that they are applied. Such penalties shall be effective, proportionate and dissuasive. The

Member States shall notify those provisions to the Commission by 31 December 2012 and shall notify it without delay of any subsequent amendment affecting them.

Article 22

Review

The Secretariat shall monitor and review the preparation of the implementation of Directive 2009/119/EC in the Contracting Parties and shall submit an annual progress report to the Ministerial Council, the first of which shall be submitted in 2013.³

Article 23

Committee procedure

1. The Commission shall be assisted by a Committee.
2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply.

Article 24

Repeal

<...>

Article 25

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 January 2023⁴.

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

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

2. Member States shall communicate to the Commission the text of the main provisions of national

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

⁴ The date displayed here corresponds to Article 3 of Ministerial Council Decision 2012/03/MC. Pursuant to the Ministerial Council General Policy Guideline on a Roadmap on Implementation of the Certain Deadlines of the Directive 2009/119/EC, 'the Contracting Parties are invited to communicate to the Secretariat by 31 March 2017 the text of the main provisions of the draft national law which they intend to adopt to transpose Directive 2009/119/EC and the Action Plan on the Establishment of Oil Stocks. All Contracting Parties are invited bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 2017'.

law which they adopt in the field covered by this Directive.

Article 26
Entry into force

This Decision entered into force on 18 October 2012.⁵

Article 27
Addressees

This Directive is addressed to the Member States.

⁵ The text displayed here corresponds to Article 4 of Ministerial Council Decision 2012/03/MC.

ANNEX I

METHOD FOR CALCULATING THE CRUDE OIL EQUIVALENT OF IMPORTS OF PETROLEUM PRODUCTS

The crude oil equivalent of imports of petroleum products, as referred to in Article 3, must be calculated using the following method:

The crude oil equivalent of imports of petroleum products is obtained by calculating the sum of the net imports of crude oil, NGL, refinery feedstocks and other hydrocarbons as defined in Section 4 of Annex B to Regulation (EC) No 1099/2008, adjusting the result to take account of any stock changes, deducting 4% for naphtha yield (or, if the average naphtha yield within the national territory is greater than 7%, deducting the net actual consumption of naphtha or the average naphtha yield) and adding this to the net imports of all other petroleum products excluding naphtha, also adjusted to take account of stock changes and multiplied by a factor of 1.065.

International marine bunkers are not included in the calculation.

ANNEX II

METHOD FOR CALCULATING THE CRUDE OIL EQUIVALENT OF INLAND CONSUMPTION

For the purpose of Article 3, the crude oil equivalent of inland consumption must be calculated using the following method:

Inland consumption is the sum of the aggregate “observed gross inland deliveries”, as defined in Section 3.2.1 of Annex C to Regulation (EC) No 1099/2008, of the following products only: motor gasoline, aviation gasoline, gasoline-type jet fuel (naphtha-type jet fuel or JP4), kerosene-type jet fuel, other kerosene, gas/diesel oil (distillate fuel oil) and fuel oil (high sulphur content and low sulphur content) as defined in Section 4 of Annex B to Regulation (EC) No 1099/2008.

International marine bunkers are not included in the calculation.

The crude oil equivalent of inland consumption is calculated by multiplying by a factor of 1.2.

ANNEX III

METHODS FOR CALCULATING THE LEVEL OF STOCKS HELD

The following methods must be used to calculate stock levels:

Without prejudice to the case addressed in Article 4(3), no quantity may be counted as stock more than once.

Crude oil stocks are reduced by 4%, which corresponds to the average naphtha yield.

Stocks of naphtha and petroleum products for international marine bunkers are not included.

Other petroleum products are included in the stock count using one of the two methods set out below. Member States must continue to use the method they have chosen throughout the whole calendar year in question.

Member States may:

(a) include all other stocks of the petroleum products identified in the first paragraph of Section 3.1 of Annex C to Regulation (EC) No 1099/2008 and calculate the crude oil equivalent by multiplying the quantities by a factor of 1.065; or

(b) include stocks of only the following products: motor gasoline, aviation gasoline, gasoline-type jet fuel (naphtha-type jet fuel or JP4), kerosene-type jet fuel, other kerosene, gas/diesel oil (distillate fuel oil) and fuel oil (high sulphur content and low sulphur content) and calculate the crude oil equivalent by multiplying the quantities by a factor of 1.2.

The calculation may include quantities held:

- in refinery tanks,
- in bulk terminals,
- in pipeline tankage,
- in barges,
- in intercoastal tankers,
- in oil tankers in port,
- in inland ship bunkers,
- in storage tank bottoms,
- as working stocks,
- by large consumers as required by law or otherwise controlled by governments.

However, those quantities except for any held in refinery tanks, in pipeline tankage or in bulk terminals, may not be included when calculating levels of specific stocks where such stocks are calculated separately from emergency stocks.

The calculation may never include:

(a) crude oil not yet produced;

(b) quantities held:

- in pipelines,
- in rail tank cars,

- in seagoing ships' bunkers,
- in service stations and retail stores,
- by other consumers,
- in tankers at sea,
- as military stocks.

When calculating their stocks, Member States must reduce the quantities of stocks calculated as set out above by 10%. That reduction applies to all quantities included in a given calculation.

However, no 10% reduction is to be applied when calculating the level of specific stocks or the levels of the different categories of specific stocks where those stocks or categories are considered separately from the emergency stocks, particularly with a view to verifying compliance with the minimum levels laid down by Article 9.

ANNEX IV

RULES FOR THE PREPARATION AND SUBMISSION TO THE COMMISSION OF STATISTICAL SUMMARIES OF STOCKS TO BE HELD PURSUANT TO ARTICLE 3

Each Member State must draw up and submit to the Commission, on a monthly basis, a definitive statistical summary of the level of stocks actually held on the last day of the calendar month, calculated either on the basis of the number of days of net oil imports or on the basis of the number of days of inland oil consumption, in accordance with Article 3. The statistical summary must provide precise details of why the calculation is based on the number of days of imports or, conversely, on the number of days of consumption and must specify which of the calculation methods set out in Annex III was used.

If some of the stocks included when calculating the level of stocks held pursuant to Article 3 are held outside national territory, each summary shall give details of the stocks held by the various Member States and CSEs concerned on the last day of the period to which it relates. In its summary, each Member State must also indicate, in each case, whether the stocks are being held pursuant to a delegation request made by one or more economic operators or whether they are being held at its request or at the request of its CSE.

For any stocks held by a Member State within its territory on behalf of other Member States or CSEs, that Member State must draw up and submit to the Commission a summary showing the stocks existing on the last day of each calendar month, broken down by product category. In that summary, the Member State must also indicate, in particular, the Member State or CSE concerned and the quantities involved in each case.

The statistical summaries referred to in this Annex must be submitted to the Commission within 55 days of the end of the month to which they relate. Those same summaries must also be submitted within 2 months of a request by the Commission. Such requests may be made no later than 5 years after the date to which the data relate.

PART II

ACQUIS COMMUNAUTAIRE

INFRASTRUCTURE

REGULATION (EU) 347/2013 on guidelines for trans-European energy infrastructure and repealing Decision 1364/2006/EC and amending Regulations (EC) 713/2009, (EC) 714/2009 and (EC) 715/2009

Incorporated and adapted by Ministerial Council Decision 2015/09/MC-EnC of 16 October 2015 on the implementation of Regulation (EU) 347/2013 of the European Parliament and of the Council on guidelines for trans-European energy infrastructure.

*The adaptations made by Ministerial Council Decision 2015/09/MC-EnC are highlighted in **bold and blue**.*

Whereas:

(1) On 26 March 2010, the European Council agreed to the Commission's proposal to launch a new strategy 'Europe 2020'. One of the priorities of the Europe 2020 strategy is sustainable growth to be achieved by promoting a more resource-efficient, more sustainable and more competitive economy. That strategy put energy infrastructures at the forefront as part of the flagship initiative 'Resource efficient Europe', by underlining the need to urgently upgrade Europe's networks, interconnecting them at the continental level, in particular to integrate renewable energy sources.

(2) The target agreed in the conclusions of the March 2002 Barcelona European Council for Member States to have a level of electricity interconnections equivalent to at least to 10% of their installed production capacity has not yet been achieved.

(3) The communication from the Commission entitled 'Energy infrastructure priorities for 2020 and beyond - A Blueprint for an integrated European energy network', followed by the Council conclusions of 28 February 2011 and the European Parliament resolution, called for a new energy infrastructure policy to optimise network development at European level for the period up to 2020 and beyond, in order to allow the Union to meet its core energy policy objectives of competitiveness, sustainability and security of supply.

(4) The European Council of 4 February 2011 underlined the need to modernise and expand Europe's energy infrastructure and to interconnect networks across borders, in order to make solidarity between Member States operational, to provide for alternative supply or transit routes and sources of energy and to develop renewable energy sources in competition with traditional sources. It insisted that no Member State should remain isolated from the European gas and electricity networks after 2015 or see its energy security jeopardised by lack of the appropriate connections.

(5) Decision No 1364/2006/EC of the European Parliament and of the Council lays down guidelines for trans-European energy networks (TEN-E). Those guidelines have as objectives to support the completion of the Union internal energy market while encouraging the rational production, transportation, distribution and use of energy resources, to reduce the isolation of less-favoured and island regions, to secure and diversify the Union's energy supplies, sources and routes, including through cooperation with third countries, and to contribute to sustainable development and protection of the environment.

(6) Evaluation of the current TEN-E framework has clearly shown that this framework, while making a positive contribution to selected projects by giving them political visibility, lacks vision, focus, and flexibility to fill identified infrastructure gaps. The Union should therefore increase its efforts to meet

future challenges in this field, and due attention should be paid to identifying potential future gaps in energy demand and supply.

(7) Accelerating the refurbishment of existing energy infrastructure and the deployment of new energy infrastructure is vital to achieve the Union's energy and climate policy objectives, consisting of completing the internal market in energy, guaranteeing security of supply, in particular for gas and oil, reducing greenhouse gas emissions by 20% (30% if the conditions are right), increasing the share of renewable energy in final energy consumption to 20% and achieving a 20% increase in energy efficiency by 2020 whereby energy efficiency gains may contribute to reducing the need for construction of new infrastructures. At the same time, the Union has to prepare its infrastructure for further decarbonisation of its energy system in the longer term towards 2050. This Regulation should therefore also be able to accommodate possible future Union energy and climate policy objectives.

(8) Despite the fact that Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and 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 provide for an internal market in energy, the market remains fragmented due to insufficient interconnections between national energy networks and to the sub-optimal utilisation of existing energy infrastructure. However, Union-wide integrated networks and deployment of smart grids are vital for ensuring a competitive and properly functioning integrated market, for achieving an optimal utilisation of energy infrastructure, for increased energy efficiency and integration of distributed renewable energy sources and for promoting growth, employment and sustainable development.

(9) The Union's energy infrastructure should be upgraded in order to prevent technical failure and to increase its resilience against such failure, natural or man-made disasters, adverse effects of climate change and threats to its security, in particular as regards European critical infrastructures as set out in Council Directive 2008/114/EC of 8 December 2008 on the identification and designation of European critical infrastructures and the assessment of the need to improve their protection.

(10) Transporting oil through land pipelines rather than over water can make an important contribution to lowering the environmental risk associated with the transportation of oil.

(11) The importance of smart grids in achieving the Union's energy policy objectives has been acknowledged in the communication from the Commission of 12 April 2011 entitled 'Smart grids: from innovation to deployment'.

(12) Energy storage facilities and reception, storage and regasification or decompression facilities for liquefied natural gas (LNG) and compressed natural gas (CNG) have an increasingly important role to play in the European energy infrastructure. The expansion of such energy infrastructure facilities forms an important component of a well-functioning network infrastructure.

(13) The communication from the Commission of 7 September 2011 entitled 'The EU Energy Policy: Engaging with Partners beyond Our Borders' underlined the need for the Union to include the promotion of energy infrastructure development in its external relations with a view to supporting socio-economic development beyond the Union borders. The Union should facilitate infrastructure projects linking the Union's energy networks with third-country networks, in particular with neighbouring countries and with countries with which the Union has established specific energy cooperation.

(14) To ensure voltage and frequency stability, particular attention should be focused on the stability

of the European electricity network under the changing conditions caused by the growing inflow of energy from renewable resources that are variable in nature.

(15) The investment needs up to 2020 in electricity and gas transmission infrastructures of European relevance have been estimated at about EUR 200 billion. The significant increase in investment volumes compared to past trends and the urgency of implementing the energy infrastructure priorities requires a new approach in the way energy infrastructures, and in particular those of a cross-border nature, are regulated and financed.

(16) The Commission Staff Working Paper for the Council of 10 June 2011 entitled 'Energy infrastructure investment needs and financing requirements' stressed that approximately half of the total investments needed for the decade up to 2020 are at risk of not being delivered at all or not in time due to obstacles related to the granting of permits, regulatory issues and financing.

(17) This Regulation lays down rules for the timely development and interoperability of trans-European energy networks in order to achieve the energy policy objectives of the Treaty on the Functioning of the European Union (TFEU) to ensure the functioning of the internal energy market and security of supply in the Union, to promote energy efficiency and energy saving and the development of new and renewable forms of energy, and to promote the interconnection of energy networks. By pursuing these objectives, this Regulation contributes to smart, sustainable and inclusive growth and brings benefits to the entire Union in terms of competitiveness and economic, social and territorial cohesion.

(18) It is essential for the development of trans-European networks and their effective interoperability to ensure operational coordination between electricity transmission system operators (TSOs). In order to ensure uniform conditions for the implementation of the relevant provisions of Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity in this respect, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers. The examination procedure should be used for the adoption of the guidelines on the implementation of operational coordination between electricity TSOs at Union level, given that those guidelines will apply generally to all TSOs.

(19) The Agency for the Cooperation of Energy Regulators (the 'Agency') established by Regulation (EC) No 713/2009 of the European Parliament and of the Council is allocated important additional tasks under this Regulation and should be given the right to levy fees for some of these additional tasks.

(20) Following close consultations with all Member States and stakeholders, the Commission has identified 12 strategic trans-European energy infrastructure priorities, the implementation of which by 2020 is essential for the achievement of the Union's energy and climate policy objectives. These priorities cover different geographic regions or thematic areas in the field of electricity transmission and storage, gas transmission, storage and liquefied or compressed natural gas infrastructure, smart grids, electricity highways, carbon dioxide transport and oil infrastructure.

(21) Projects of common interest should comply with common, transparent and objective criteria in view of their contribution to the energy policy objectives. For electricity and gas, in order to be eligible for inclusion in the second and subsequent Union lists, projects should be part of the latest

available 10-year network development plan. This plan should notably take account of the conclusions of the European Council of 4 February 2011 with regard to the need to integrate peripheral energy markets.

(22) Regional groups should be established for the purpose of proposing and reviewing projects of common interest, leading to the establishment of regional lists of projects of common interest. In order to ensure broad consensus, these regional groups should ensure close cooperation between Member States, national regulatory authorities, project promoters and relevant stakeholders. The cooperation should rely as much as possible on existing regional cooperation structures of national regulatory authorities and TSOs and other structures established by the Member States and the Commission. In the context of this cooperation, national regulatory authorities should, when necessary, advise the regional groups, *inter alia* on the feasibility of the regulatory aspects of proposed projects and on the feasibility of the proposed timetable for regulatory approval.

(23) In order to ensure that the Union list of projects of common interest ('Union list') is limited to projects which contribute the most to the implementation of the strategic energy infrastructure priority corridors and areas, the power to adopt and review the Union list should be delegated to the Commission in accordance with Article 290 of the TFEU, while respecting the right of the Member States to approve projects of common interest related to their territory. According to analysis carried out in the impact assessment accompanying the proposal that has led to this Regulation, the number of such projects is estimated at some 100 in the field of electricity and 50 in the field of gas. Taking into account this estimate, and the need to ensure the achievement of the objectives of this Regulation, the total number of projects of common interest should remain manageable, and therefore should not significantly exceed 220. The Commission, when preparing and drawing up delegated acts, should ensure the simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

(24) A new Union list should be established every two years. Projects of common interest that are completed or that no longer fulfil the relevant criteria and requirements as set out in this Regulation should not appear on the next Union list. For that reason, existing projects of common interest that are to be included in the next Union list should be subject to the same selection process for the establishment of regional lists and for the establishment of the Union list as proposed projects; however, care should be taken to minimise the resulting administrative burden as much as possible, for example by using to the extent possible information submitted previously, and by taking account of the annual reports of the project promoters.

(25) Projects of common interest should be implemented as quickly as possible and should be closely monitored and evaluated, while keeping the administrative burden for project promoters to a minimum. The Commission should nominate European coordinators for projects facing particular difficulties.

(26) Permit granting processes should neither lead to administrative burdens which are disproportionate to the size or complexity of a project, nor create barriers to the development of the trans-European networks and market access. The conclusions of the Council of 19 February 2009 highlighted the need to identify and remove barriers to investment, including by means of streamlining of planning and consultation procedures. Those conclusions were reinforced by the conclusions of the European Council of 4 February 2011 which again underlined the importance of streamlining and improving permit granting processes while respecting national competences.

(27) The planning and implementation of Union projects of common interest in the areas of energy, transport and telecommunication infrastructure should be coordinated to generate synergies whenever to do so makes sense from an overall economic, technical, environmental or spatial planning point of view and with due regard to the relevant safety aspects. Thus, when the various European networks are being planned, preference could be given to integrating transport, communication and energy networks in order to ensure that as little land as possible is taken up, whilst ensuring, where possible, that existing or disused routes are reused, in order to reduce to a minimum any negative social, economic, environmental and financial impact.

(28) Projects of common interest should be given 'priority status' at national level to ensure rapid administrative treatment. Projects of common interest should be considered by competent authorities as being in the public interest. Authorisation should be given to projects which have an adverse impact on the environment, for reasons of overriding public interest, when all the conditions under Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora and Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy are met.

(29) The establishment of a competent authority or authorities integrating or coordinating all permit granting processes ('one-stop shop') should reduce complexity, increase efficiency and transparency and help enhance cooperation among Member States. Upon their designation, the competent authorities should be operational as soon as possible.

(30) Despite the existence of established standards for the participation of the public in environmental decision-making procedures, additional measures are needed to ensure the highest possible standards of transparency and public participation for all relevant issues in the permit granting process for projects of common interest.

(31) The correct and coordinated implementation of Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment, of Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment, where applicable, of the Convention on access to information, public participation in decision-making and access to justice in environmental matters, signed in Aarhus on 25 June 1998 (the 'Aarhus Convention'), and of the Espoo Convention on environmental impact assessment in a transboundary context (the 'Espoo Convention') should ensure the harmonisation of the main principles for the assessment of environmental effects, including in a cross-border context. Member States should coordinate their assessments for projects of common interest, and provide for joint assessments, where possible. Member States should be encouraged to exchange best practice and administrative capacity-building for permit granting processes.

(32) It is important to streamline and improve permit granting processes, while respecting — to the extent possible with due regard to the principle of subsidiarity — national competences and procedures for the construction of new infrastructure. Given the urgency of developing energy infrastructures, the simplification of permit granting processes should be accompanied by a clear time-limit for the decision to be taken by the respective authorities regarding the construction of the project. That time limit should stimulate a more efficient definition and handling of procedures, and should under no circumstances compromise the high standards for the protection of the environment and public participation. With regard to the maximum time limits established by this Regulation, Member States could nevertheless strive to further shorten them if feasible. The competent authorities should

ensure compliance with the time limits, and Member States should endeavour to ensure that appeals challenging the substantive or procedural legality of a comprehensive decision are handled in the most efficient way possible.

(33) Where Member States consider it appropriate, they may include in the comprehensive decision decisions taken in the context of: negotiations with individual landowners to granting access to, ownership of, or a right to occupy property; spatial planning which determines the general land use of a defined region, includes other developments such as highways, railways, buildings and nature protection areas, and is not undertaken for the specific purpose of the planned project; granting of operational permits. In the context of the permit granting processes, a project of common interest could include related infrastructure to the extent that it is essential for the construction or functioning of the project.

(34) This Regulation, in particular the provisions on permit granting, public participation and the implementation of projects of common interest, should apply without prejudice to international and Union law, including provisions to protect the environment and human health, and provisions adopted under the Common Fisheries and Maritime Policy.

(35) The costs for the development, construction, operation and maintenance of projects of common interest should in general be fully borne by the users of the infrastructure. Projects of common interest should be eligible for cross-border cost allocation when an assessment of market demand or of the expected effects on the tariffs have indicated that costs cannot be expected to be recovered by the tariffs paid by the infrastructure users.

(36) The basis for the discussion on the appropriate allocation of costs should be the analysis of the costs and benefits of an infrastructure project on the basis of a harmonised methodology for energy-system-wide analysis, in the framework of the 10-year network development plans prepared by the European Networks of Transmission System Operators under Regulation (EC) No 714/2009 and 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 reviewed by the Agency. That analysis could take into consideration indicators and corresponding reference values for the comparison of unit investment costs.

(37) In an increasingly integrated internal energy market, clear and transparent rules for cost allocation across borders are necessary in order to accelerate investment in cross-border infrastructure. The European Council of 4 February 2011 recalled the importance of promoting a regulatory framework attractive to investment in networks, with tariffs set at levels consistent with financing needs and the appropriate cost allocation for cross-border investments, while enhancing competition and competitiveness and taking account of the impact on consumers. When deciding on cross-border cost allocation, national regulatory authorities should ensure that its impact on national tariffs does not represent a disproportionate burden for consumers. The national regulatory authorities should also avoid the risks of double support for projects by taking into account actual or estimated charges and revenues. Those charges and revenues should be taken into account only insofar as they are designed to cover the costs concerned and as much as possible related to the projects. When an investment request takes into account benefits beyond the borders of the Member States concerned, the national regulatory authorities should consult the TSOs concerned on the project-specific cost-benefit analysis.

(38) The existing internal energy market law requires that tariffs for access to gas and electricity net-

works provide appropriate incentives for investment. When applying the internal energy market law, national regulatory authorities should ensure a stable and predictable regulatory framework with incentives for projects of common interest, including long-term incentives, that are commensurate with the level of specific risk of the project. This applies in particular to innovative transmission technologies for electricity allowing for large scale integration of renewable energy, of distributed energy resources or of demand response in interconnected networks, and to gas transmission infrastructure offering advanced capacity or additional flexibility to the market to allow for short-term trading or back-up supply in case of supply disruptions.

(39) This Regulation applies only to the granting of permits for, public participation in, and the regulatory treatment of projects of common interest within the meaning set out herein. Member States may nevertheless apply, by virtue of their national law, the same or similar rules to other projects which do not have the status of projects of common interest within the scope of this Regulation. As regards the regulatory incentives, Member States may apply, by virtue of their national law, the same or similar rules to projects of common interest falling under the category of electricity storage.

(40) Member States that currently do not provide for a legal status of the highest national significance possible that is attributable to energy infrastructure projects in the context of permit granting processes should consider introducing such a status, in particular by evaluating if this would lead to a quicker permit granting process.

(41) The European Energy Programme for Recovery (EEPR), established by Regulation (EC) No 663/2009 of the European Parliament and of the Council has demonstrated the added value of leveraging private funding through significant Union financial assistance to allow the implementation of projects of European significance. The European Council of 4 February 2011 recognised that some energy infrastructure projects may require limited public finance to leverage private funding. In the light of the economic and financial crisis and budgetary constraints, targeted support, through grants and financial instruments, should be developed under the next multiannual financial framework, which will attract new investors into the energy infrastructure priority corridors and areas, while keeping the budgetary contribution of the Union to a minimum. The relevant measures should draw on the experience gained during the pilot phase following the introduction of project bonds to finance infrastructure projects.

(42) Projects of common interest in the fields of electricity, gas and carbon dioxide should be eligible to receive Union financial assistance for studies and, under certain conditions, for works as soon as such funding becomes available under the relevant Regulation on a Connecting Europe Facility in the form of grants or in the form of innovative financial instruments. This will ensure that tailor-made support can be provided to those projects of common interest which are not viable under the existing regulatory framework and market conditions. It is important to avoid any distortion of competition, in particular between projects contributing to the achievement of the same Union priority corridor. Such financial assistance should ensure the necessary synergies with the Structural Funds, which will finance smart energy distribution networks of local or regional importance. A three-step logic applies to investments in projects of common interest. First, the market should have the priority to invest. Second, if investments are not made by the market, regulatory solutions should be explored, if necessary the relevant regulatory framework should be adjusted, and the correct application of the relevant regulatory framework should be ensured. Third, where the first two steps are not sufficient to deliver the necessary investments in projects of common interest, Union financial assistance could be granted if the project of common interest fulfils the applicable eligibility criteria.

(43) Since the objective of this Regulation, namely the development and interoperability of trans-European energy networks and connection to such networks, cannot be sufficiently achieved by the Member States and can therefore be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. 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.

(44) Regulations (EC) No 713/2009, (EC) No 714/2009 and (EC) No 715/2009 should therefore be amended accordingly.

(45) Decision No 1364/2006/EC should therefore be repealed,

CHAPTER I GENERAL PROVISIONS

Article 1

Subject matter and scope

1. This Regulation lays down guidelines for the timely development and interoperability of projects of Energy Community Interest.

2. In particular, this Regulation:

(a) **addresses the identification of projects of Energy Community interest falling under energy infrastructure categories in electricity, gas and oil as well as the thematic area ,smart grid deployment’ set out in Annex I (,energy infrastructure categories and area’);**

(b) facilitates the timely implementation of projects of **Energy Community** interest by streamlining, coordinating more closely, and accelerating permit granting processes and by enhancing public participation;

(c) provides rules and guidance for the cross-border allocation of costs and risk-related incentives for projects of **Energy Community** interest;

(d) **determines the conditions for eligibility of projects of Energy Community interest for Union technical and financial assistance from the Instrument for Pre-Accession Assistance (IPA) and the Neighbourhood Investment Facility.**

Article 2

Definitions

For the purpose of this Regulation, in addition to the definitions provided for in Directives 2009/28/EC, 2009/72/EC and 2009/73/EC, Regulations (EC) No 713/2009, (EC) No 714/2009, and (EC) No 715/2009, the following definitions shall apply:

1. ‘energy infrastructure’ means any physical equipment or facility under the energy infrastructure categories which is located within the Contracting Parties or linking Contracting Parties, or linking Contracting Parties and Member States;

2. 'comprehensive decision' means the decision or set of decisions taken by a **Contracting Party** authority or authorities not including courts or tribunals, that determines whether or not a project promoter is to be granted authorisation to build the energy infrastructure to realise a project without prejudice to any decision taken in the context of an administrative appeal procedure;
3. 'project' means one or several lines, pipelines, facilities, equipments or installations falling under the energy infrastructure categories;
4. **'project of Energy Community interest' means a project necessary to implement the energy infrastructure and which is part of the list of projects of Energy Community interest referred to in Article 3;**
5. 'energy infrastructure bottleneck' means limitation of physical flows in an energy system due to insufficient transmission capacity, which includes *inter alia* the absence of infrastructure;
6. 'project promoter' means one of the following:
 - (a) a TSO, distribution system operator or other operator or investor developing a project of **Energy Community** interest;
 - (b) where there are several TSOs, distribution system operators, other operators, investors, or any group thereof, the entity with legal personality under the applicable national law, which has been designated by contractual arrangement between them and which has the capacity to undertake legal obligations and assume financial liability on behalf of the parties to the contractual arrangement;
7. 'smart grid' means an electricity network that can integrate in a cost efficient manner the behaviour and actions of all users connected to it, including generators, consumers and those that both generate and consume, in order to ensure an economically efficient and sustainable power system with low losses and high levels of quality, security of supply and safety;
8. 'works' means the purchase, supply and deployment of components, systems and services including software, the carrying out of development and construction and installation activities relating to a project, the acceptance of installations and the launching of a project;
9. 'studies' means activities needed to prepare project implementation, such as preparatory, feasibility, evaluation, testing and validation studies, including software, and any other technical support measure including prior action to define and develop a project and decide on its financing, such as reconnaissance of the sites concerned and preparation of the financial package;
10. 'national regulatory authority' means a national regulatory authority designated in accordance with Article 35(1) of Directive 2009/72/EC or Article 39(1) of Directive 2009/73/EC, **as incorporated and adapted by Ministerial Council Decision 2011/02/MC-EnC;**
11. 'commissioning' means the process of bringing a project into operation once it has been constructed.

CHAPTER II

PROJECTS OF ENERGY COMMUNITY INTEREST

Article 3

List of projects of Energy Community interest

1. **This Regulation establishes two Groups as set out in Annex II.1. The membership of each Group shall be based on the categories as set out in Annex I. Decision-making powers in the Groups shall be restricted to the Parties to the Treaty who shall, for those purposes, be referred to as the decision-making body of the Groups.**
2. Each Group shall adopt its own rules of procedure, having regard to the provisions set out in **Annex II.**
3. **The decision-making body of each Group shall adopt a preliminary list of proposed projects of Energy Community interest drawn up according to the process set out in Annex II.2, according to their fulfilment of the criteria set out in Article 4.**

When a Group draws up its **preliminary** list:

- (a) each individual proposal for a project of **Energy Community** interest **shall require the approval of the Contracting Parties or Member States**, to whose territory the project relates; **if a Contracting Party or a Member State decides not to give its approval**, it shall present its substantiated reasons for doing so to the Group concerned;
- (b) it shall take into account advice from the **Energy Community Secretariat** that is aimed at having a manageable total number of projects of **Energy Community** interest.
4. **The Ministerial Council shall establish the list of projects of Energy Community interest ('Energy Community list') by way of a Decision under Title III of the Treaty.**

In exercising its power, the **Ministerial Council** shall ensure that the **Energy Community** list is established every two years, on the basis of the **preliminary** lists adopted by the decision-making bodies of the Groups as established in **Annex II.1(2)**, following the procedure set out in paragraph 3 of this Article.

The next Energy Community list following the one adopted by the Ministerial Council on 24 October 2013 shall be adopted by 31 December 2016.

5. The **Ministerial Council** shall, when adopting the **Energy Community** list on the basis of the **preliminary** lists:
 - (a) ensure that only those projects that fulfil the criteria referred to in Article 4 are included;
 - (b) ensure cross-regional consistency, taking into account the opinion of the **Regulatory Board** as referred to in **Annex II.2(10)**;
 - (c) **take into account any opinions of Contracting Parties and Member States concerned, as referred to in Annex II.2(7); and**
 - (d) aim for a manageable total number of projects of **Energy Community** interest on the **Energy Community** list.
6. Projects of **Energy Community** interest included on the **Energy Community** list pursuant to

paragraph 4 of this Article **shall be submitted with the view to become** an integral part of the relevant regional investment plans under Article 12 of Regulations (EC) No 714/2009 and (EC) No 715/2009 and of the relevant national 10-year network development plans under Article 22 of Directives 2009/72/EC and 2009/73/EC and other national infrastructure plans concerned, as appropriate. Those projects shall be conferred the highest possible priority within each of those plans.

Article 4

Criteria for projects of **Energy Community** interest

1. Projects of **Energy Community** interest shall meet the following general criteria:

(a) **the project falls in at least one of the energy infrastructure categories and area as described in Annex I;**

(b) the potential overall benefits of the project, assessed according to the respective specific criteria in paragraph 2, outweigh its costs, including in the longer term; and

(c) the project meets any of the following criteria:

(i) **involves at least two Contracting Parties or a Contracting Party and a Member State by directly crossing the border of two or more Contracting Parties, or of one Contracting Party and one or more Member States;**

(ii) is located on the territory of one **Contracting Party** and has a significant cross-border impact as set out in **Annex III.1**;

(iii) <...>¹

2. The following specific criteria shall apply to projects of **Energy Community** interest falling within specific energy infrastructure categories:

(a) for electricity transmission and storage projects falling under the energy infrastructure categories set out in **Annex I.1(a), (b) and (c)**, the project is to contribute significantly to at least one of the following specific criteria:

(i) market integration <...> and reducing energy infrastructure bottlenecks; competition and system flexibility;

(ii) sustainability, *inter alia* through the integration of renewable energy into the grid and the transmission of renewable generation to major consumption centres and storage sites;

(iii) security of supply, *inter alia* through interoperability, appropriate connections and secure and reliable system operation;

(b) for gas projects falling under the energy infrastructure categories set out in **Annex I.2**, the project is to contribute significantly to at least one of the following specific criteria:

(i) market integration <...> and reducing energy infrastructure bottlenecks; interoperability and system flexibility;

(ii) security of supply, *inter alia* through appropriate connections and diversification of supply sources, supplying counterparts and routes;

(iii) competition, *inter alia* through diversification of supply sources, supplying counterparts and

¹ Not applicable according to Article 8(1)(a)(c) of Ministerial Council Decision 2015/09/MC-EnC.

routes;

(iv) sustainability, *inter alia* through reducing emissions, supporting intermittent renewable generation and enhancing deployment of renewable gas;

(c) for electricity smart grid projects falling under the energy infrastructure category set out in **Annex I.1(d)**, the project is to contribute significantly to all of the following specific criteria:

(i) integration and involvement of network users with new technical requirements with regard to their electricity supply and demand;

(ii) efficiency and interoperability of electricity transmission and distribution in day-to-day network operation;

(iii) network security, system control and quality of supply;

(iv) optimised planning of future cost-efficient network investments;

(v) market functioning and customer services;

(vi) involvement of users in the management of their energy usage;

(d) for oil transport projects falling under the energy infrastructure categories set out in **Annex I.3**, the project is to contribute significantly to all of the following specific criteria:

(i) security of supply reducing single supply source or route dependency;

(ii) efficient and sustainable use of resources through mitigation of environmental risks;

(iii) interoperability;

(e) <...>²

3. For projects falling under the energy infrastructure categories set out in **Annex I.1** to 3, the criteria listed in this Article shall be assessed in accordance with the indicators set out in **Annex III.2** to 5.

4. In order to facilitate the assessing of all projects that could be eligible as projects of **Energy Community** interest and that could be included in a **preliminary** list, each Group shall assess each **project's benefits** in a transparent and objective manner. Each Group shall determine its assessment method on the basis of the aggregated contribution to the criteria referred to in paragraph 2; this assessment shall lead to a ranking of projects for internal use of the Group. Neither the **preliminary** list nor the **Energy Community** list shall contain any ranking, nor shall the ranking be used for any subsequent purpose except as described in **Annex II.2(12)**.

When assessing projects, each Group shall furthermore give due consideration to:

(a) the urgency of each proposed project in order to meet the Union energy policy targets of market integration and competition, sustainability and security of supply;

(b) the number of **Contracting Parties and Member States** affected by each project, whilst ensuring equal opportunities for projects involving peripheral **Contracting Parties and Member States**;

(c) the contribution of each project to territorial cohesion; and

(d) complementarity with regard to other proposed projects.

For smart grids projects falling under the energy infrastructure category set out in **Annex I.1(d)**, ranking shall be carried out for those projects that affect the same two **Contracting Parties**, and due consideration shall also be given to the number of users affected by the project, the annual energy consumption and the share of generation from non-dispatchable resources in the area covered

² Not applicable according to Article 8(2) of Ministerial Council Decision 2015/09/MC-EnC.

by these users.

5.³ **When the project directly crosses the border of one or more Contracting Parties and one or more Member States, in order to be considered to be a project of Energy Community interest, it shall be first granted a status of project of the common interest within the European Union.**

6.⁴ **Project that directly crosses the border of one or more Contracting Parties and one or more Member States which is not granted a status of project of the common interest within the European Union may be developed on voluntary basis as a project of Mutual Interest.**

Article 5

Implementation and monitoring

1. Project promoters shall draw up an implementation plan for projects of **Energy Community** interest, including a timetable for each of the following:

- (a) feasibility and design studies;
- (b) approval by the national regulatory authority or by any other authority concerned;
- (c) construction and commissioning;
- (d) the permit granting schedule referred to in Article 10(4)(b).

2. TSOs, distribution system operators and other operators shall co-operate with each other in order to facilitate the development of projects of **Energy Community** interest in their area.

3. The **Energy Community Secretariat** and the Groups concerned shall monitor the progress achieved in implementing the projects of **Energy Community** interest and, if necessary, make recommendations to facilitate the implementation of projects of **Energy Community** interest. The Groups may request that additional information be provided in accordance with paragraphs 4, 5 and 6, convene meetings with the relevant parties and invite the **Energy Community Secretariat** to verify the information provided on site.

4. By 31 March of each year following the year of inclusion of a project of **Energy Community** interest on the **Energy Community** list pursuant to Article 3, project promoters shall submit an annual report, for each project falling under the categories set out in **Annex I.1** and 2, to the competent authority referred to in Article 8 and either to the **Regulatory Board** or, for projects falling under the categories set out in **Annex I.3**, to the respective Group. That report shall give details of:

- (a) the progress achieved in the development, construction and commissioning of the project, in particular with regard to permit granting and consultation procedures;
- (b) where relevant, delays compared to the implementation plan, the reasons for such delays and other difficulties encountered;
- (c) where relevant, a revised plan aiming at overcoming the delays.

5. Within three months of the receipt of the annual reports referred to in paragraph 4 of this Article, the **Energy Community Secretariat** shall submit to the Groups a consolidated report for the proj-

³ The text displayed here corresponds to Article 8(4) of Ministerial Council Decision 2015/09/MC-EnC.

⁴ The text displayed here corresponds to Article 8(4) of Ministerial Council Decision 2015/09/MC-EnC.

ects of **Energy Community** interest falling under the categories set out in **Annex I.1** and 2, evaluating the progress achieved and make, where appropriate, recommendations on how to overcome the delays and difficulties encountered. <...>

6. Each year, the competent authorities referred to in Article 8 shall report to the respective Group on the progress and, where relevant, on delays in the implementation of projects of **Energy Community** interest located on their respective territory with regard to the permit granting processes, and on the reasons for such delays.

7. If the commissioning of a project of **Energy Community** interest is delayed compared to the implementation plan, other than for overriding reasons beyond the control of the project promoter:

(a) **in so far as measures referred to in Article 22(7)(a), (b) or (c) of Directives 2009/72/EC and 2009/73/EC, as incorporated and adapted by the Ministerial Council Decision 2011/02/MC-EnC, are applicable according to respective national laws, national regulatory authorities shall ensure that the investment is carried out;**

(b) if the measures of national regulatory authorities according to point (a) are not applicable, the project promoter shall choose a third party to finance or construct all or part of the project. The project promoter shall do so before the delay compared to the date of commissioning in the implementation plan exceeds two years;

(c) if a third party is not chosen according to point (b), the **Contracting Party** or, when the **Contracting Party** has so provided, the national regulatory authority may, within two months of the expiry of the period referred to in point (b), designate a third party to finance or construct the project which the project promoter shall accept;

(d) <...>⁵

(d) when **point (c)** is applied, the system operator in whose area the investment is located shall provide the implementing operators or investors or third party with all the information needed to realise the investment, shall connect new assets to the transmission network and shall generally make its best efforts to facilitate the implementation of the investment and the secure, reliable and efficient operation and maintenance of the project of **Energy Community** interest.

8. A project of **Energy Community** interest may be removed from the **Energy Community** list according to the procedure set out in Article 3(4) if its inclusion in that list was based on incorrect information which was a determining factor for that inclusion, or the project does not comply with **Energy Community** law.

9. Projects which are no longer on the **Energy Community** list shall lose all rights and obligations linked to the status of project of **Energy Community** interest arising from this Regulation.

However, a project which is no longer on the **Energy Community** list but for which an application file has been accepted for examination by the competent authority shall maintain the rights and obligations arising from Chapter III, except where the project is no longer on the list for the reasons set out in paragraph 8.

10. <...>⁶

⁵ Not applicable according to Article 9(3)(b) of Ministerial Council Decision 2015/09/MC-EnC.

⁶ Not applicable according to Article 9(4) of Ministerial Council Decision 2015/09/MC-EnC.

Article 6

PECI coordinators

1. Where a project of **Energy Community** interest encounters significant implementation difficulties, the **Energy Community Secretariat may propose and Permanent High Level Group may designate in agreement with Contracting Parties and Member States** concerned, a **PECI** coordinator for a period of up to one year renewable twice.
2. The **PECI** coordinator shall:
 - (a) promote the projects, for which he has been designated **PECI** coordinator and the cross-border dialogue between the project promoters and all concerned stakeholders;
 - (b) assist all parties as necessary in consulting concerned stakeholders and obtaining necessary permits for the projects;
 - (c) if appropriate, advise project promoters on the financing of the project;
 - (d) ensure that appropriate support and strategic direction by the **Contracting Parties** concerned are provided for the preparation and implementation of the projects;
 - (e) submit every year, and if appropriate, upon completion of their mandate, a report to the **Energy Community Secretariat** on the progress of the projects and on any difficulties and obstacles which are likely to significantly delay the commissioning date of the projects. **The Secretariat shall transmit the report to the Permanent High Level Group and the Groups concerned. The Permanent High Level Group may bring the report also to the attention of the Ministerial Council.**
3. The **PECI** coordinator shall be chosen on the basis of his experience with regard to the specific tasks assigned to him for the projects concerned.
4. The decision designating the **PECI** coordinator shall specify the terms of reference, detailing the duration of the mandate, the specific tasks and corresponding deadlines, and the methodology to be followed. The coordination effort shall be proportionate to the complexity and estimated costs of the projects.
5. The **Contracting Parties** concerned shall fully cooperate with the **PECI** coordinator in his execution of the tasks referred to in paragraphs 2 and 4.

CHAPTER III

PERMIT GRANTING AND PUBLIC PARTICIPATION

Article 7

'Priority status' of projects of **Energy Community** interest

1. The adoption of the **Energy Community** list shall establish, for the purposes of any decisions issued in the permit granting process, the necessity of these projects from an energy policy perspective, without prejudice to the exact location, routing or technology of the project.
2. For the purpose of ensuring efficient administrative processing of the application files related to projects of **Energy Community** interest, project promoters and all authorities concerned shall en-

sure that the most rapid treatment legally possible is given to these files.

3. Where such status exists in national law, projects of **Energy Community** interest shall be allocated the status of the highest national significance possible and be treated as such in permit granting processes — and if national law so provides, in spatial planning — including those relating to environmental assessments, in the manner such treatment is provided for in national law applicable to the corresponding type of energy infrastructure.

4. <...>⁷

4. Contracting Parties shall assess, taking due account of the guidance **issued by the Commission under Article 7(4) of the Regulation (EU) No 347/2013**, which measures to streamline the environmental assessment procedures and to ensure their coherent application are possible, and shall inform the **Energy Community Secretariat** of the result.

5. By 4 years from the date of issue of the guidance referred to in paragraph 4, **Contracting Parties** shall take the non-legislative measures that they have identified under **paragraph 4**.

6. By 5 years from the date of issue of the guidance referred to in paragraph 4, **Contracting Parties** shall take the legislative measures that they have identified under **paragraph 4**. These measures shall be without prejudice to obligations resulting from **Energy Community** law.

7. With regard to the environmental impacts addressed in Article 6(4) of Directive 92/43/EEC and Article 4(7) of Directive 2000/60/EC, to the extent applicable to a Contracting Party under bilateral arrangements with the European Union, projects of **Energy Community** interest shall be considered as being of public interest from an energy policy perspective, and may be considered as being of overriding public interest, provided that all the conditions set out in these Directives are fulfilled.

<...>

Article 8

Organisation of the permit granting process

1. By **30 June 2017**, each **Contracting Party** shall designate one national competent authority which shall be responsible for facilitating and coordinating the permit granting process for projects of **Energy Community** interest.

2. The responsibility of the competent authority referred to in paragraph 1 and/or the tasks related to it may be delegated to, or carried out by, another authority, per project of **Energy Community** interest or per particular category of projects of **Energy Community** interest, provided that:

(a) the competent authority notifies the **Energy Community Secretariat** of that delegation and the information therein is published by either the competent authority or the project promoter on the website referred to in Article 9(7);

(b) only one authority is responsible per project of **Energy Community** interest, is the sole point of contact for the project promoter in the process leading to the comprehensive decision for a given project of **Energy Community** interest, and coordinates the submission of all relevant documents and information.

⁷ Not applicable according to Article 11(1) of Ministerial Council Decision 2015/09/MC-EnC.

The competent authority may retain the responsibility to establish time limits, without prejudice to the time limits set in accordance with Article 10.

3. Without prejudice to relevant requirements under international and **Energy Community** law, the competent authority shall take actions to facilitate the issuing of the comprehensive decision. The comprehensive decision shall be issued within the time limit referred to in Article 10(1) and (2) and according to one of the following schemes:

(a) integrated scheme: the comprehensive decision shall be issued by the competent authority and shall be the sole legally binding decision resulting from the statutory permit granting procedure. Where other authorities are concerned by the project, they may, in accordance with national law, give their opinion as input to the procedure, which shall be taken into account by the competent authority;

(b) coordinated scheme: the comprehensive decision comprises multiple individual legally binding decisions issued by several authorities concerned, which shall be coordinated by the competent authority. The competent authority may establish a working group where all concerned authorities are represented in order to draw up a permit granting schedule in accordance with Article 10(4)(b), and to monitor and coordinate its implementation. The competent authority shall, in consultation with the other authorities concerned, where applicable in accordance with national law, and without prejudice to time limits set in accordance with Article 10, establish on a case-by-case basis a reasonable time limit within which the individual decisions shall be issued. The competent authority may take an individual decision on behalf of another national authority concerned, if the decision by that authority is not delivered within the time limit and if the delay cannot be adequately justified; or, where provided under national law, and to the extent that this is compatible with **Energy Community** law, the competent authority may consider that another national authority concerned has either given its approval or refusal for the project if the decision by that authority is not delivered within the time limit. Where provided under national law, the competent authority may disregard an individual decision of another national authority concerned if it considers that the decision is not sufficiently substantiated with regard to the underlying evidence presented by the national authority concerned; when doing so, the competent authority shall ensure that the relevant requirements under international and **Energy Community** law are respected and shall duly justify its decision;

(c) collaborative scheme: the comprehensive decision shall be coordinated by the competent authority. The competent authority shall, in consultation with the other authorities concerned, where applicable in accordance with national law, and without prejudice to time limits set in accordance with Article 10, establish on a case-by-case basis a reasonable time limit within which the individual decisions shall be issued. It shall monitor compliance with the time limits by the authorities concerned.

If an individual decision by an authority concerned is not expected to be delivered within the time limit, that authority shall inform the competent authority without delay and include a justification for the delay. Subsequently, the competent authority shall reset the time limit within which that individual decision shall be issued, whilst still complying with the overall time limits set in accordance with Article 10.

Acknowledging the national specificities in planning and permit granting processes, **Contracting Parties** may choose among the three schemes referred to in points (a), (b) and (c) of the first subparagraph to facilitate and coordinate their procedures and shall opt to implement the most effective scheme. Where a **Contracting Party** chooses the collaborative scheme, it shall inform the **Energy**

Community Secretariat of its reasons therefor. The **Energy Community Secretariat** shall undertake an evaluation of the effectiveness of the schemes in the report referred to in Article 17.

4. **Contracting Party** may apply different schemes as set out in paragraph 3 to onshore and off-shore projects of **Energy Community** interest.

5. If a project of **Energy Community** interest requires decisions to be taken in two or more **Contracting Parties**, the respective competent authorities shall take all necessary steps for efficient and effective cooperation and coordination among themselves, including as regards the provisions referred to in Article 10(4). **Contracting Parties** shall endeavour to provide for joint procedures, particularly with regard to the assessment of environmental impacts.

6.⁸ If a project of Energy Community interest requires decisions to be taken in one or more Contracting Parties and one or more Member States, the respective competent authorities are encouraged to take all necessary steps for efficient and effective cooperation and coordination among themselves, including as regards the provisions referred to in Article 10(4). Contracting Parties and Member States concerned are encouraged to provide for joint procedures, particularly with regard to the assessment of environmental impacts.

Article 9

Transparency and public participation

1. By **31 December 2017**, the **Contracting Party** or competent authority shall, where applicable in collaboration with other authorities concerned, publish a manual of procedures for the permit granting process applicable to projects of **Energy Community** interest. The manual shall be updated as necessary and made available to the public. The manual shall at least include the information specified in **Annex V.1**. The manual shall not be legally binding, but it may refer to or quote relevant legal provisions.

2. Without prejudice to any requirements under the Aarhus and Espoo Conventions and relevant **Energy Community** law, all parties involved in the permit granting process shall follow the principles for public participation set out in of **Annex V.3**.

3. The project promoter shall, within an indicative period of three months of the start of the permit granting process pursuant to Article 10(1)(a), draw up and submit a concept for public participation to the competent authority, following the process outlined in the manual referred to in paragraph 1 and in line with the guidelines set out in **Annex V**. The competent authority shall request modifications or approve the concept for public participation within three months; in so doing, the competent authority shall take into consideration any form of public participation and consultation that took place before the start of the permit granting process, to the extent that such public participation and consultation has fulfilled the requirements of this Article.

Where the project promoter intends to make significant changes to an approved concept, it shall inform the competent authority thereof. In that case the competent authority may request modifications.

4. At least one public consultation shall be carried out by the project promoter, or, where required by national law, by the competent authority, before submission of the final and complete applica-

⁸ The text displayed here corresponds to Article 12(2) of Ministerial Council Decision 2015/09/MC-EnC.

tion file to the competent authority pursuant to Article 10(1)(a). This shall be without prejudice to any public consultation to be carried out after submission of the request for development consent according to Article 6(2) of Directive 2011/92/EU. The public consultation shall inform stakeholders referred to in **Annex V.3(a)** about the project at an early stage and shall help to identify the most suitable location or trajectory and the relevant issues to be addressed in the application file. The minimum requirements applicable to this public consultation are specified in **Annex V.5**.

The project promoter shall prepare a report summarising the results of activities related to the participation of the public prior to the submission of the application file, including those activities that took place before the start of the permit granting process. The project promoter shall submit that report together with the application file to the competent authority. Due account shall be taken of these results in the comprehensive decision.

5. For projects crossing the border of two or more **Contracting Parties**, the public consultations pursuant to paragraph 4 in each of the **Contracting Parties** concerned shall take place within a period of no more than two months from the date on which the first public consultation started.

For projects crossing the border of two or more Contracting Parties, or one or more Contracting Parties and one or more Member States, the public consultations pursuant to paragraph 4 in each of the Contracting Parties and the Member States concerned may take place within a period of no more than two months from the date on which the first public consultation started.⁹

6. For projects likely to have significant adverse cross-border impacts in one or more neighbouring **Contracting Parties or** Member States, where Article 7 of Directive 2011/92/EU and the Espoo Convention are applicable, the relevant information shall be made available to the competent authority of the neighbouring **Contracting Parties or** Member States. The competent authority of the neighbouring **Contracting Parties or** Member States shall indicate, in the notification process where appropriate, whether it, or any other authority concerned, wishes to participate in the relevant public consultation procedures.

7. The project promoter, or, where national law so provides, the competent authority, shall establish and regularly update a website with relevant information about the project of **Energy Community** interest, which shall be linked to the **Energy Community** website and which shall meet the requirements specified in **Annex V.6**. Commercially sensitive information shall be kept confidential.

Project promoters shall also publish relevant information by other appropriate information means to which the public has open access.

⁹ The text displayed here corresponds to Article 13(2) of Ministerial Council Decision 2015/09/MC-EnC.

Article 10

Duration and implementation of the permit granting process

1. The permit granting process shall consist of two procedures:

(a) The pre-application procedure, covering the period between the start of the permit granting process and the acceptance of the submitted application file by the competent authority, shall take place within an indicative period of two years.

This procedure shall include the preparation of any environmental reports to be prepared by the project promoters.

For the purpose of establishing the start of the permit granting process, the project promoters shall notify the project to the competent authority of the **Contracting Parties** concerned in written form, and shall include a reasonably detailed outline of the project. No later than three months following the receipt of the notification, the competent authority shall, including on behalf of other authorities concerned, acknowledge or, if it considers the project as not mature enough to enter the permit granting process, reject the notification in written form. In the event of a rejection, the competent authority shall justify its decision, including on behalf of other authorities concerned. The date of signature of the acknowledgement of the notification by the competent authority shall serve as the start of the permit granting process. Where **two or more Contracting Parties, and/or Member States are concerned**, the date of the acceptance of the last notification by the competent authority concerned shall serve as the date of the start of the permit granting process.

(b) The statutory permit granting procedure, covering the period from the date of acceptance of the submitted application file until the comprehensive decision is taken, shall not exceed one year and six months. **Contracting Parties** may set an earlier date for the time-limit, if considered appropriate.

2. The combined duration of the two procedures referred to in paragraph 1 shall not exceed a period of three years and six months. However, where the competent authority considers that one or both of the two procedures of the permit granting process will not be completed before the time limits as set out in paragraph 1, it may decide, before their expiry and on a case by case basis, to extend one or both of those time limits by a maximum of nine months for both procedures combined.

In that case, the competent authority shall inform the Group concerned and present to the Group concerned the measures taken or to be taken to conclude the permit granting process with the least possible delay. The Group may request the competent authority to report regularly on progress achieved in this regard.

3. In **Contracting Parties** where the determination of a route or location undertaken solely for the specific purpose of a planned project, <...> cannot be included in the process leading to the comprehensive decision, the corresponding decision shall be taken within a separate period of six months, starting on the date of submission of the final and complete application documents by the promoter.

In that case, the extension period referred to in paragraph 2 shall be reduced to six months, including for the procedure referred to in this paragraph.

4. The pre-application procedure shall comprise the following steps:

(a) upon the acknowledgement of the notification pursuant to paragraph 1(a), the competent authority shall identify, in close cooperation with the other authorities concerned, and where appropriate on the basis of a proposal by the project promoter, the scope of material and level of detail of informa-

tion to be submitted by the project promoter, as part of the application file, to apply for the comprehensive decision. The checklist referred to in **Annex V.1(e)** shall serve as a basis for this identification; (b) the competent authority shall draw up, in close cooperation with the project promoter and other authorities concerned and taking into account the results of the activities carried out under point (a), a detailed schedule for the permit granting process in line with the guidelines set out in **Annex V.(2)**; For projects crossing the border between two or more **Contracting Parties**, the competent authorities of the **Contracting Parties** concerned shall prepare a joint schedule, in which they endeavour to align their timetables;

For projects crossing the border between one or more Contracting Parties and one or more Member States, the competent authorities of the Contracting Parties and Member States concerned are encouraged to prepare a joint schedule, in which they endeavour to align their timetables;¹⁰

(c) upon receipt of the draft application file, the competent authority shall, if necessary, and including on behalf of other authorities concerned, make further requests regarding missing information to be submitted by the project promoter, which may only address subjects identified under point (a). Within three months of the submission of the missing information, the competent authority shall accept for examination the application in written form. Requests for additional information may only be made if they are justified by new circumstances.

5. The project promoter shall ensure the completeness and adequate quality of the application file and seek the competent authority's opinion on this as early as possible during the pre-application procedure. The project promoter shall cooperate fully with the competent authority to meet deadlines and comply with the detailed schedule as defined in paragraph 4(b).

6. The time limits laid down in this Article shall be without prejudice to obligations arising from international and **Energy Community** law, and without prejudice to administrative appeal procedures and judicial remedies before a court or tribunal.

CHAPTER IV REGULATORY TREATMENT

Article 11

Energy system wide cost-benefit analysis

1. The methodologies published by the European Network of Transmission System Operators (ENTSO) for Electricity and the ENTSO for Gas respectively under Article 11 of Regulation (EU) No 347/2013 shall be applied for projects falling under the categories set out in Annex I.(1) and (2).

2. <...>

3. <...>

4. <...>

¹⁰ The text displayed here corresponds to Article 14(3) of Ministerial Council Decision 2015/09/MC-EnC.

5. <...>

6. <...>¹¹

2. By **30 June 2018**, national regulatory authorities cooperating in the framework of the **Regulatory Board** shall establish and make publicly available a set of indicators and corresponding reference values for the comparison of unit investment costs for comparable projects of the infrastructure categories included in **Annex I.1** and 2. **Those reference values may be used by the project promoters for the cost-benefit analyses carried out for their projects.**

A set of indicators and corresponding reference values for the comparison of unit investment costs, referred to in first subparagraph shall be consistent with those established under Article 11 (7) of Regulation (EU) No 347/2013. The Agency is invited to include in a set of indicators and corresponding reference values, established under that Article, unit investment costs submitted by national regulatory authorities from Contracting Parties.¹²

3. **The Secretariat shall prepare and submit for endorsement to the Permanent High Level Group an electricity and gas market and network model including both electricity transmission infrastructure, and gas transmission infrastructure as well as storage and LNG facilities, covering the energy infrastructure in the Energy Community, and drawn up in line with the principles laid down in Annex IV. These models shall be in line with those proposed by ENTSO E and ENTSO G under Article 11(8) of Regulation (EU) No 347/2013.**

Article 12

Enabling investments with cross-border impacts

1. **The efficiently incurred investment costs, which excludes maintenance costs, related to a project of Energy Community interest falling under the categories set out in Annex I.(1) and Annex I.(2), and concerning only Contracting Parties, shall be borne by the relevant TSO or the project promoters of the transmission infrastructure of the Contracting Parties to which the project provides a net positive impact, and, to the extent not covered by congestion rents or other charges, be paid for by network users through tariffs for network access in that or those Contracting Parties.**

The efficiently incurred investment costs, which excludes maintenance costs, related to a project of Energy Community interest falling under the categories set out in Annex I.(1) and Annex I.(2), and concerning Member States and Contracting Parties, may be borne by the relevant TSO or the project promoters of the transmission infrastructure of the Contracting Parties and Member States, to which the project provides a net positive impact, and, to the extent not covered by congestion rents or other charges, be paid for by network users through tariffs for network access in that or those Contracting Parties and Member States concerned.¹³

2. For a project of **Energy Community** interest falling under the categories set out in **Annex I.1(a), and (c)** and **Annex I.2**, paragraph 1 shall apply only if at least one project promoter requests the rel-

¹¹ Paragraphs 2, 3, 4, 5 and 6 are not applicable according to Article 15(2) of Ministerial Council Decision 2015/09/MC-EnC.

¹² The text displayed here corresponds to Article 15(3)(c) of Ministerial Council Decision 2015/09/MC-EnC.

¹³ The text displayed here corresponds to Article 16(1)(b) of Ministerial Council Decision 2015/09/MC-EnC.

evant national authorities to apply this Article for all or parts of the costs of the project. For a project of **Energy Community** interest falling under the categories set out in **Annex I.2**, paragraph 1 shall apply only where an assessment of market demand has already been carried out and indicated that the efficiently incurred investment costs cannot be expected to be covered by the tariffs.

Where a project has several project promoters, the relevant national regulatory authorities shall without delay request all project promoters to submit the investment request jointly in accordance with paragraph 3.

3. For a project of **Energy Community** interest to which paragraph 1 applies, the project promoters shall keep all concerned national regulatory authorities regularly informed, at least once per year, and until the project is commissioned, of the progress of that project and the identification of costs and impacts associated with it.

As soon as such a project has reached sufficient maturity, the project promoters, after having consulted the TSOs **from the Contracting Parties and Member States concerned** to which the project provides a significant net positive impact, shall submit an investment request. That investment request shall include a request for a cross-border cost allocation and shall be submitted to all the national regulatory authorities concerned, accompanied by the following:

(a) a project-specific cost-benefit analysis consistent with the methodology drawn up pursuant to Article 11 and taking into account benefits beyond the borders of the **Contracting Party and Member State concerned**;

(b) a business plan evaluating the financial viability of the project, including the chosen financing solution, and, for a project of **Energy Community** interest falling under the category referred to in **Annex I.2**, the results of market testing; and

(c) if the project promoters agree, a substantiated proposal for a cross-border cost allocation.

If a project is promoted by several project promoters, they shall submit their investment request jointly.

For projects included in the Energy Community list approved by the Ministerial Council in 2013, project promoters shall submit their investment request by 30 September 2016. A copy of each investment request shall be transmitted for information without delay by the national regulatory authorities to the Regulatory Board on receipt.

The national regulatory authorities and the **Regulatory Board** shall preserve the confidentiality of commercially sensitive information.

4. Within six months of the date on which the last investment request was received by the national regulatory authorities concerned, the national regulatory authorities shall, after consulting the project promoters concerned, take coordinated decisions on the allocation of investment costs to be borne by each system operator for the project, as well as their inclusion in tariffs. The national regulatory authorities may decide to allocate only part of the costs, or may decide to allocate costs among a package of several projects of **Energy Community** interest.

When allocating the costs, the national regulatory authorities shall take into account actual or estimated:

— congestion rents or other charges,

— **revenues stemming from the inter-transmission system operator compensation mechanism established under Article 13 of Regulation (EC) No 714/2009, as incorporated and**

adapted by the Ministerial Council Decision 2011/02/MC-EnC and by Decision 2013/01/PHLG.

In deciding to allocate costs across borders, the economic, social and environmental costs and benefits of the projects **in the Contracting Parties and Member States concerned** and the possible need for financial support shall be taken into account.

In deciding to allocate costs across borders, the relevant national regulatory authorities, in consultation with the TSOs concerned, shall seek a mutual agreement based on, but not limited to, the information specified in paragraph 3(a) and (b).

If a project of **Energy Community** interest mitigates negative externalities, such as loop flows, and that project of **Energy Community** interest is implemented in the **Contracting Party or the Member State** at the origin of the negative externality, such mitigation shall not be regarded as a cross-border benefit and shall therefore not constitute a basis for allocating costs to **the TSO of the Contracting Parties and Member States affected** by those negative externalities.

5. National regulatory authorities shall, based on the cross-border cost allocation as referred to in paragraph 4 of this Article, take into account actual costs incurred by a TSO or other project promoter as a result of the investments when fixing or approving tariffs in accordance with Article 37(1)(a) of Directive 2009/72/EC and Article 41(1)(a) of Directive 2009/73/EC as incorporated and adapted by Ministerial Council Decision 2011/02/MC-EnC, insofar as these costs correspond to those of an efficient and structurally comparable operator.

The cost allocation decision shall be notified, without delay, by the national regulatory authorities **to the Regulatory Board and the Agency**, together with all the relevant information with respect to the decision. In particular, the information shall contain detailed reasons on the basis of which costs were allocated **among Contracting Parties, and Member States concerned**, such as the following:

- (a) an evaluation of the identified impacts, including concerning network tariffs, on each of **the concerned Contracting Parties and Member States;**
- (b) an evaluation of the business plan referred to in paragraph 3(b);
- (c) regional or Union-wide positive externalities, which the project would generate;
- (d) the result of the consultation of the project promoters concerned.

The cost allocation decision shall be published.

6. Where the national regulatory authorities concerned have not reached an agreement on the investment request within six months of the date on which the request was received by the last of the national regulatory authorities concerned, they shall inform the Regulatory Board, the Energy Community Secretariat and the Commission without delay.

In this case or upon a joint request from the national regulatory authorities concerned, the decision on the investment request including cross-border cost allocation referred to in paragraph 3 as well as the way the cost of the investments are reflected in the tariffs shall be taken by the **Regulatory Board** within three months of the date of referral to the **Regulatory Board**.

Before taking such a decision, the **Regulatory Board shall consult the Energy Community Secretariat, the national regulatory authorities concerned** and the project promoters. The three-month period referred to in the second subparagraph may be extended by an additional period of

two months where further information is sought by the **Regulatory Board**. That additional period shall begin on the day following receipt of the complete information.

The cost allocation decision shall be published. **Procedure referred to in this paragraph shall be applicable to projects having cross-border impacts only between Contracting Parties. Issues concerning allocation of costs across borders between Member States and Contracting Parties shall be deemed to be solved only by means of mutual agreement.**

7. A copy of all cost allocation decisions, together with all the relevant information with respect to each decision, shall be notified, without delay, by the **Regulatory Board** to the **Energy Community Secretariat**. That information may be submitted in aggregate form. The **Energy Community Secretariat** shall preserve the confidentiality of commercially sensitive information.

8. **This cost allocation decision shall not affect the right of TSOs to apply and national regulatory authorities to approve charges for access to networks in accordance with Article 32 of Directive 2009/72/EC and of Directive 2009/73/EC, Article 14 of Regulation (EC) No 714/2009, and Article 13 of Regulation (EC) No 715/2009, as incorporated and adapted by Ministerial Council Decision 2011/02/MC-EnC.**

9. This Article shall not apply to projects of **Energy Community** interest having received:

(a) **an exemption from Articles 32, 33, 34 and Article 41(6), (8) and (10) of Directive 2009/73/EC pursuant to Article 36 of Directive 2009/73/EC, as incorporated and adapted by Ministerial Council Decision 2011/02/MC-EnC;**

(b) **an exemption from Article 16(6) of Regulation (EC) No 714/2009 or an exemption from Article 32 and Article 37(6) and (10) of Directive 2009/72/EC pursuant to Article 17 of Regulation (EC) No 714/2009, as incorporated and adapted by Ministerial Council Decision 2011/02/MC-EnC;**

(c) an exemption under Article 22 of Directive 2003/55/EC; or

(d) an exemption under Article 7 of Regulation (EC) No 1228/2003.

Article 13

Incentives

1. Where a project promoter incurs higher risks for the development, construction, operation or maintenance of a project of **Energy Community** interest falling under the categories set out in **Annex I.1(a), and (c) and Annex I.2**, compared to the risks normally incurred by a comparable infrastructure project, **Contracting Parties** and national regulatory authorities shall ensure that appropriate incentives are granted to that project in accordance with Article 37(8) of Directive 2009/72/EC, Article 41(8) of Directive 2009/73/EC, Article 14 of Regulation (EC) No 714/2009, and Article 13 of Regulation (EC) No 715/2009, **as incorporated and adapted by Ministerial Council Decision 2011/02/MC-EnC.**

The first subparagraph shall not apply where the project of **Energy Community** interest has received:

(a) an exemption from Articles 32, 33, 34 and Article 41(6), (8) and (10) of Directive 2009/73/EC pursuant to Article 36 of Directive 2009/73/EC, **as incorporated and adapted by Ministerial Council**

Decision 2011/02/MC-EnC;

(b) an exemption from Article 16(6) of Regulation (EC) No 714/2009 or an exemption from Article 32 and Article 37(6) and (10) of Directive 2009/72/EC pursuant to Article 17 of Regulation (EC) No 714/2009, **as incorporated and adapted by Ministerial Council Decision 2011/02/MC-EnC;**

(c) an exemption under Article 22 of Directive 2003/55/EC; or

(d) an exemption under Article 7 of Regulation (EC) No 1228/2003.

2. The decision of the national regulatory authorities for granting the incentives referred to in paragraph 1 shall consider the results of the cost-benefit analysis on the basis of the methodology drawn up pursuant to Article 11 and in particular the regional or **Energy Community**-wide positive externalities generated by the project. The national regulatory authorities shall further analyse the specific risks incurred by the project promoters, the risk mitigation measures taken and the justification of this risk profile in view of the net positive impact provided by the project, when compared to a lower-risk alternative. Eligible risks shall notably include risks related to new transmission technologies, both onshore and offshore, risks related to under-recovery of costs and development risks.

3. The incentive granted by the decision shall take account of the specific nature of the risk incurred and may cover *inter alia*:

(a) the rules for anticipatory investment; or

(b) the rules for recognition of efficiently incurred costs before commissioning of the project; or

(c) the rules for providing additional return on the capital invested for the project; or

(d) the any other measure deemed necessary and appropriate.

4. By **30 June 2017**, each national regulatory authority shall submit to the **Regulatory Board** its methodology and the criteria used to evaluate investments in electricity and gas infrastructure projects and the higher risks incurred by them, where available.

5. **Good practices and recommendations referred to in Article 13 of the Regulation (EU) 347/2013 shall be applied accordingly.**

6. By **31 December 2017**, each national regulatory authority shall publish its methodology and the criteria used to evaluate investments in electricity and gas infrastructure projects and the higher risks incurred by them.

7. **Where the measures referred to in paragraphs 5 and 6 are not sufficient to ensure the timely implementation of projects of Energy Community interest, the Commission guidelines referred to in Article 13 paragraph 7 of the Regulation (EU) 347/2013 shall be applied accordingly.**

CHAPTER V

FINANCING

Article 14

Eligibility of projects for Union **technical and financial** assistance

1. **Projects of Energy Community interest falling under the categories set out in Annex I.(1), (2) are eligible for Union technical and financial assistance in the form of grants for studies and financial instruments from the Instrument for Pre-Accession Assistance (IPA) and the Neighbourhood Investment Facility.**

2. **Projects of Energy Community interest falling under the categories set out in Annex I.(1) and (2), except for hydro-pumped electricity storage projects, are also eligible for financial assistance in the form of grants for works from the Instrument for Pre-Accession Assistance (IPA) and the Neighbourhood Investment Facility if they fulfil all of the following criteria:**

(a) the project specific cost-benefit analysis pursuant to Article 12(3)(a) provides evidence concerning the existence of significant positive externalities, such as security of supply, solidarity or innovation;

(b) the project has received a cross-border cost allocation decision pursuant to Article 12; or, for projects of **Energy Community** interest falling under the category set out in **Annex I.1(b)** and that therefore do not receive a cross-border cost allocation decision, the project shall aim to provide services across borders, bring technological innovation and ensure the safety of cross-border grid operation;

(c) the project is commercially not viable according to the business plan and other assessments carried out, notably by possible investors or creditors or the national regulatory authority. The decision on incentives and its justification referred to in Article 13(2) shall be taken into account when assessing the project's commercial viability.

3. Projects of **Energy Community** interest carried out in accordance with the procedure referred to in Article 5(7)(d) shall also be eligible for Union financial assistance in the form of grants for works if they fulfil the criteria set out in paragraph 2 of this Article.

4.<...>¹⁴

Article 15

Guidance for the award criteria of Union **technical and financial** assistance

The specific criteria set out in Article 4(2) and the parameters set out in Article 4(4) shall also fulfil the role of objectives for the purpose of establishing award criteria for Union technical and financial assistance from the Instrument for Pre-Accession Assistance (IPA) and the Neighbourhood Investment Facility.

¹⁴ Not applicable according to Article 18(3) of Ministerial Council Decision 2015/09/MC-EnC.

Article 16**Exercise of the delegation**<...>¹⁵**CHAPTER VI****FINAL PROVISIONS****Article 17****Reporting and evaluation**

Not later than **2018**, the **Energy Community Secretariat** shall publish a report on the implementation of projects of **Energy Community** interest and submit it to the **Ministerial Council**. This report shall provide an evaluation of:

- (a) the progress achieved for the planning, development, construction and commissioning of projects of **Energy Community** interest selected pursuant to Article 3, and, where relevant, delays in implementation and other difficulties encountered;
- (b) the funds engaged and disbursed by the Union for projects of **Energy Community** interest, compared to the total value of funded projects of **Energy Community** interest;
- (c) for the electricity and gas sectors, the evolution of the interconnection level **between Contracting Parties, and with Member States concerned**, the corresponding evolution of energy prices, as well as the number of network system failure events, their causes and related economic cost;
- (d) permit granting and public participation, in particular:
 - (i) the average and maximum total duration of permit granting processes for projects of **Energy Community** interest, including the duration of each step of the pre-application procedure, compared to the timing foreseen by the initial major milestones referred to in Article 10(4);
 - (ii) the level of opposition faced by projects of **Energy Community** interest (notably number of written objections during the public consultation process, number of legal recourse actions);
 - (iii) an overview of best and innovative practices with regard to stakeholder involvement and mitigation of environmental impact during permit granting processes and project implementation;
 - (iv) the effectiveness of the schemes foreseen in Article 8(3) regarding compliance with the time limits set under Article 10;
- (e) regulatory treatment, in particular:
 - (i) the number of projects of **Energy Community** interest having been granted a cross-border cost allocation decision pursuant to Article 12;
 - (ii) the number and type of projects of **Energy Community** interest having received specific incentives pursuant to Article 13;
- (f) **the effectiveness of this Regulation in contributing to the goals for market integration by 2016 and 2017, to the Treaty objectives and Contracting Parties' targets for renewable**

¹⁵ Not applicable according to Article 20 of Ministerial Council Decision 2015/09/MC-EnC.

energy and energy efficiency, as stipulated in Energy Community law and endorsed in the Energy Strategy.

Article 18

Information and publicity

The **Energy Community Secretariat** shall establish by six months **after the date of adoption of the first Energy Community list** an infrastructure transparency platform easily accessible to the general public, including via the internet. This platform shall contain the following information:

- (a) general, updated information, including geographic information, for each project of **Energy Community** interest;
- (b) the implementation plan as set out in Article 5(1) for each project of **Energy Community** interest;
- (c) the main results of the cost-benefit analysis on the basis of the methodology drawn up pursuant Article 11 for the projects of **Energy Community** interest concerned, except for any commercially sensitive information;
- (d) the **Energy Community** list;
- (e) the funds allocated and disbursed by the Union for each project of **Energy Community** interest.

Article 19

Transitional provisions

1. For projects of Energy Community interest in the permit granting process for which a project promoter has submitted an application file before 16 October 2016, the provisions of Chapter III shall not apply.

2. As regards the next Energy Community list following the one adopted by the Ministerial Council on 24 October 2013, articles of this Regulation which do not require the Contracting Parties to implement domestic transposition measures, may be applied from the day of the adoption of this Regulation by the Ministerial Council.

Article 20

Amendments to Regulation (EC) No 713/2009

<...>

Article 21

Amendments to Regulation (EC) No 714/2009

<...>

Article 22

Amendments to Regulation (EC) No 715/2009

<...>

Article 23

Repeal

<...>¹⁶

Article 24

Entry into force

This Regulation shall enter into force upon adoption by the Ministerial Council. This Regulation shall be implemented by the Contracting Parties within the deadlines specified in the adapted Regulation. Domestic transposition measures shall be notified to the Secretariat within these deadlines.

Implementation of the energy acquis

1. Each Contracting Party shall bring into force the laws, regulations and administrative provisions necessary to comply with Regulation (EU) No 347/2013, as adapted by this Decision, by 31 December 2016. They shall forthwith inform the Energy Community Secretariat thereof.

The Contracting Parties shall apply those measures from 1 January 2017.

2. The Contracting Parties shall communicate to the Energy Community Secretariat the text of the main provisions of national law which they adopt in the field covered by this Decision.¹⁷

Reporting

1. The Secretariat shall monitor and review the application of this Decision in the Contracting Parties.

2. The Secretariat shall present a report to the Ministerial Council for the first time by 30 November 2016, and thereafter on an annual basis, summarising the opinions issued by the Secretariat in application of the acts referred to in Article 1, as adapted by this Decision.¹⁸

¹⁶ Articles 20, 21, 22, and 23 are not applicable according to Article 24 of Ministerial Council Decision 2015/09/MC-EnC.

¹⁷ The text displayed here corresponds to Article 3 of Decision 2015/09/MC-EnC.

¹⁸ The text displayed here corresponds to Article 28 of Decision 2015/09/MC-EnC.

ANNEX I

ENERGY INFRASTRUCTURE CATEGORIES AND AREA

The energy infrastructure categories to be developed are the following:

(1) concerning electricity:

(a) high-voltage overhead transmission lines, if they have been designed for a voltage of 220 kV or more, and underground and submarine transmission cables, if they have been designed for a voltage of 150 kV or more;

(b) <...>¹⁹

(b) electricity storage facilities used for storing electricity on a permanent or temporary basis in above-ground or underground infrastructure or geological sites, provided they are directly connected to high-voltage transmission lines designed for a voltage of 110 kV or more;

(c) any equipment or installation essential for the systems defined in (a) and (b) to operate safely, securely and efficiently, including protection, monitoring and control systems at all voltage levels and substations;

(d) any equipment or installation, both at transmission and medium voltage distribution level, aiming at two-way digital communication, real-time or close to real-time, interactive and intelligent monitoring and management of electricity generation, transmission, distribution and consumption within an electricity network in view of developing a network efficiently integrating the behaviour and actions of all users connected to it — generators, consumers and those that do both — in order to ensure an economically efficient, sustainable electricity system with low losses and high quality and security of supply and safety;

(2) concerning gas:

(a) transmission pipelines for the transport of natural gas and bio gas that form part of a network which mainly contains high-pressure pipelines, excluding high-pressure pipelines used for upstream or local distribution of natural gas;

(b) underground storage facilities connected to the above-mentioned high-pressure gas pipelines;

(c) reception, storage and regasification or decompression facilities for liquefied natural gas (LNG) or compressed natural gas (CNG);

(d) any equipment or installation essential for the system to operate safely, securely and efficiently or to enable bi-directional capacity, including compressor stations;

(3) concerning oil:

(a) pipelines used to transport crude oil;

(b) pumping stations and storage facilities necessary for the operation of crude oil pipelines;

(c) any equipment or installation essential for the system in question to operate properly, securely and efficiently, including protection, monitoring and control systems and reverse-flow devices;

(4) <...>²⁰

¹⁹ Not applicable according to Article 26(2)(a)(ii) of Ministerial Council Decision 2015/09/MC-EnC.

²⁰ Not applicable according to Article 26(2)(a)(ii) of Ministerial Council Decision 2015/09/MC-EnC.

The priority thematic area to be developed:

Smart grids deployment: adoption of smart grid technologies across the Energy Community to efficiently integrate the behaviour and actions of all users connected to the electricity network, in particular the generation of large amounts of electricity from renewable or distributed energy sources and demand response by consumers.²¹

²¹ The text displayed here corresponds to Article 26(2)(a)(iii) of Ministerial Council Decision 2015/09/MC-EnC.

ANNEX II

PRELIMINARY LISTS OF PROJECTS OF ENERGY COMMUNITY INTEREST

1. RULES FOR GROUPS

(1) For electricity projects falling under the categories set out in Annex I.(1) (a), (b) and (c), the Group includes representatives of the Contracting Parties and Member States concerned, the Commission, national regulatory authorities, TSOs, as well as the Energy Community Secretariat, and upon invitation the ENTSO for Electricity. For gas projects falling under the categories set out in Annex I.(2) (a), (b) and (c), the Group includes representatives of the Contracting Parties and Member States concerned, the Commission, national regulatory authorities, TSOs, as well as the Energy Community Secretariat, and upon the invitation the ENTSO for Gas. For oil transport projects falling under the categories set out in Annex I.(3) (a), (b) and (c), the same Group shall be used as for gas projects, and in addition it will include, project promoters concerned.

(2) The decision-making bodies of the Groups may merge. All Groups or decision-making bodies shall meet together, when relevant, to discuss matters common to all Groups; such matters may include issues relevant to cross-regional consistency or the number of proposed projects included on the draft **preliminary** lists at risk of becoming unmanageable.

(3) Each Group shall organise its work in line with regional cooperation efforts pursuant Article 6 of Directive 2009/72/EC, Article 7 of Directive 2009/73/EC, Article 12 of Regulation (EC) No 714/2009, and Article 12 of Regulation (EC) No 715/2009, **as incorporated and adapted by Ministerial Council Decision 2011/02/MC-EnC**, and other existing regional cooperation structures.

(4) Each Group shall invite, promoters of a project potentially eligible for selection as a project of **Energy Community** interest as well as representatives of national administrations, of regulatory authorities, and TSOs from <...> the member countries of the European Economic Area and the European Free Trade Association, representatives from the Energy Community institutions and bodies, countries covered by the European Neighbourhood policy and countries, with which the Union has established specific energy cooperation **as well as European Union institutions**. The decision to invite third country-representatives shall be based on consensus.

(5) Each Group shall consult the organisations representing relevant stakeholders — and, if deemed appropriate, stakeholders directly — including producers, distribution system operators, suppliers, consumers, and organisations for environmental protection. The Group may organise hearings or consultations, where relevant for the accomplishments of its tasks.

(6) The internal rules, an updated list of member organisations, regularly updated information on the progress of work, meeting agendas, as well as final conclusions and decisions of each Group shall be published by the **Energy Community Secretariat** on the transparency platform referred to in Article 18.

(7) The **Energy Community Secretariat** shall strive for consistency between the different Groups.

<...>

2. PROCESS FOR ESTABLISHING PRELIMINARY LISTS

(1) Promoters of a project potentially eligible for selection as a project of **Energy Community** interest wanting to obtain the status of projects of **Energy Community** interest shall submit an application for selection as project of **Energy Community** interest to the Group that includes:

— an assessment of their projects with regard to the contribution to **implementing the objectives of the Energy Community, as set in the Treaty, Energy Community law and the Energy Strategy of the Energy Community**,

— an analysis of the fulfilment of the relevant criteria defined in Article 4,

— for projects having reached a sufficient degree of maturity, a project-specific cost-benefit analysis <...> based on the methodologies developed by the ENTSO for electricity or the ENTSO for gas pursuant to Article 11, and

— any other relevant information for the evaluation of the project.

(2) All recipients shall preserve the confidentiality of commercially sensitive information.

(3) After adoption of the first **Energy Community** list, for all subsequent **Energy Community** lists adopted, proposed electricity transmission and storage projects falling under the categories set out in **Annex I.1(a), and (c)** shall be part of the latest available 10-year network development plan for electricity, developed by the ENTSO for Electricity pursuant Article 8 of Regulation (EC) No 714/2009, **with the exception of those located in a Contracting Party the TSO of which is not a member of ENTSO E. For those, the relevant projects shall be part of national ten year network development plans.**

(4) After adoption of the first **Energy Community** list, for all subsequent **Energy Community** lists adopted, proposed gas infrastructure projects falling under the categories set out in **Annex I.2** shall be part of the latest available 10-year network development plan for gas, developed by the ENTSO for Gas pursuant Article 8 of Regulation (EC) No 715/2009, **with the exception of those located in a Contracting Party the TSO of which is not a member of ENTSO G. For those, the relevant projects shall be part of national ten year network development plans.**

(5) <...>

(6) <...>²²

(5) For proposed projects falling under the categories set out in **Annex I.1** and 2, national regulatory authorities, and if necessary the **Regulatory Board**, shall, where possible in the context of regional cooperation (Article 6 of Directive 2009/72/EC, Article 7 of Directive 2009/73/EC, **as incorporated and adapted by Ministerial Council Decision 2011/02/MC-EnC**), check the consistent application of the criteria/ cost-benefit analysis methodology and evaluate their cross-border relevance. They shall present their assessment to the Group.

(6) For proposed oil transport projects falling under the categories set out in **Annex I.3**, the **Energy Community Secretariat** shall evaluate the application of the criteria set out in Article 4.

<...>

(7) **Each Contracting Party or the Member State** to whose territory a proposed project does not relate, but on which the proposed project may have a potential net positive impact or a potential significant effect, such as on the environment or on the operation of the energy infrastructure on its

²² Points (5) and (6) are not applicable according to Article 26(3)(b)(iv) of Ministerial Council Decision 2015/09/MC-EnC.

territory, may present an opinion to the Group specifying its concerns.

(8) The decision-making body of the Group shall examine, **at the request of a Contracting Party or the Member State concerned**, the substantiated reasons presented by a **Contracting Party** pursuant to Article 3(3) for not approving a project of **Energy Community** interest related to its territory.

(9) The Group shall meet to examine and rank the proposed projects taking into account the assessment of the regulators, or the assessment of the **Energy Community Secretariat** for oil transport projects.

(10) The draft **preliminary** lists of proposed projects falling under the categories set out in **Annex I.1** and **2** drawn up by the Groups, together with any opinions as specified in point (7), **shall be submitted to the Energy Community Secretariat, the Regulatory Board and the Agency** six months before the adoption date of the **Energy Community** list. The draft **preliminary** lists and the accompanying opinions shall be assessed by the **Regulatory Board** within three months of the date of receipt. **The Regulatory Board seeking cooperation with the Agency and with the support of the Energy Community Secretariat shall provide an opinion on the draft preliminary lists, in particular on the consistent application of the criteria and cost-benefit analysis.**

<...>

(11) Within one month of the date of receipt of the **Regulatory Board's** opinion, the decision-making body of each Group shall adopt its final **preliminary** list, respecting the provisions set out in Article 3(3), based on the Groups' proposal and taking into account the opinion of the **Regulatory Board** and the assessment of the national regulatory authorities submitted in accordance with point (5), or the assessment of the **Energy Community Secretariat** for oil transport projects proposed in accordance with point (6). The Groups shall submit the final **preliminary** lists to the **Energy Community Secretariat**, together with any opinions as specified in point (7).

(12) If, based on the **preliminary** lists received, and after having taken into account the **Regulatory Board** opinion, the total number of proposed projects of **Energy Community** interest on the **Energy Community** list would exceed a manageable number, **the Permanent High Level Group shall consider**, after having consulted each Group concerned, not to include in the **Energy Community** list projects that were ranked lowest by the Group concerned according to the ranking established pursuant to Article 4(4).

ANNEX III

RULES AND INDICATORS CONCERNING CRITERIA FOR PROJECTS OF ENERGY COMMUNITY INTEREST

(1) A project with significant cross-border impact is a project on the territory of a **Contracting Party**, which fulfils the following conditions:

(a) for electricity transmission, the project increases the grid transfer capacity, or the capacity available for commercial flows, at the border of that **Contracting Party with one or several other Contracting Parties and/or Member States**, or at any other relevant cross-section of the same transmission corridor having the effect of increasing this cross-border grid transfer capacity, by at least 500 Megawatt compared to the situation without commissioning of the project;

(b) for electricity storage, the project provides at least 225 MW installed capacity and has a storage capacity that allows a net annual electricity generation of 250 Gigawatt-hours/year;

(c) for gas transmission, the project concerns investment in reverse flow capacities or changes the capability to transmit gas across the **borders of the Contracting Parties and/or Member States** concerned by at least 10% compared to the situation prior to the commissioning of the project;

(d) for gas storage or liquefied/compressed natural gas, the project aims at supplying directly or indirectly **at least two Contracting Parties, and/or one or more Member States** or at fulfilling the infrastructure standard (N-1 rule) at regional level in accordance with Article 6(3) of Regulation (EU) No 994/2010 of the European Parliament and of the Council, **once incorporated in the Energy Community**;

(e) for smart grids, the project is designed for equipments and installations at high-voltage and medium-voltage level designed for a voltage of 10 kV or more. It involves transmission and distribution system operators from at least two **Contracting Parties**, which cover at least 50 000 users that generate or consume electricity or do both in a consumption area of at least 300 Gigawatthours/year, of which at least 20% originate from renewable resources that are variable in nature.

(2) Concerning projects falling under the categories set out in Annex I.1(a) to (c), the criteria listed in Article 4 shall be evaluated as follows:

(a) Market integration, competition and system flexibility shall be measured in line with the analysis made in the latest available Union-wide 10-year network development plan in electricity, notably by:

— calculating, for cross-border projects, the impact on the grid transfer capability in both power flow directions, measured in terms of amount of power (in megawatt), and their contribution to reaching the minimum interconnection capacity of 10% installed production capacity or, for projects with significant cross-border impact, the impact on grid transfer capability at borders **between relevant Contracting Parties and/or with Member States, or within relevant Contracting Parties** and on demand-supply balancing and network operations in relevant **Contracting Parties**,

— assessing the impact, for the area of analysis as defined in Annex IV.6, in terms of energy system-wide generation and transmission costs and evolution and convergence of market prices provided by a project under different planning scenarios, notably taking into account the variations induced on the merit order.

(b) Transmission of renewable energy generation to major consumption centres and storage sites

shall be measured in line with the analysis made in the latest available 10-year network development plan in electricity, notably by:

— for electricity transmission, by estimating the amount of generation capacity from renewable energy sources (by technology, in megawatts), which is connected and transmitted due to the project, compared to the amount of planned total generation capacity from these types of renewable energy sources in the concerned **Contracting Party** in 2020 according to the national renewable energy action plans as defined in Article 4 of Directive 2009/28/EC, **as incorporated and adapted by Ministerial Council Decision 2012/04/MC-EnC**,

— for electricity storage, by comparing new capacity provided by the project with total existing capacity for the same storage technology in the area of analysis as defined in Annex IV.6.

(c) Security of supply, interoperability and secure system operation shall be measured in line with the analysis made in the latest available 10-year network development plan in electricity, notably by assessing the impact of the project on the loss of load expectation for the area of analysis as defined in **Annex IV.6** in terms of generation and transmission adequacy for a set of characteristic load periods, taking into account expected changes in climate-related extreme weather events and their impact on infrastructure resilience. Where applicable, the impact of the project on independent and reliable control of system operation and services shall be measured.

(3) Concerning projects falling under the categories set out in **Annex I.2**, the criteria listed in Article 4 shall be evaluated as follows:

(a) Market integration and interoperability shall be measured by calculating the additional value of the project to the integration of market areas and price convergence, to the overall flexibility of the system, including the capacity level offered for reverse flows under various scenarios.

(b) Competition shall be measured on the basis of diversification, including the facilitation of access to indigenous sources of supply, taking into account, successively: diversification of sources; diversification of counterparts; diversification of routes; the impact of new capacity on the Herfindahl-Hirschmann index (HHI) calculated at capacity level for the area of analysis as defined in **Annex IV.6**.

(c) Security of gas supply shall be measured by calculating the additional value of the project to the short and long-term resilience of the Union's gas system and to enhancing the remaining flexibility of the system to cope with supply disruptions to **Contracting Parties** under various scenarios as well as the additional capacity provided by the project measured in relation to the infrastructure standard (N-1 rule) at regional level in accordance with Article 6(3) of Regulation (EU) No 994/2010, **once incorporated in the Energy Community**.

(d) Sustainability shall be measured as the contribution of a project to reduce emissions, to support the back-up of renewable electricity generation or power-to-gas and biogas transportation, taking into account expected changes in climatic conditions.

(4) Concerning projects falling under the category set out in **Annex I.1(d)**, each function listed in Article 4 shall be evaluated against the following criteria:

(a) Level of sustainability: This criterion shall be measured by assessing the reduction of greenhouse gas emissions, and the environmental impact of electricity grid infrastructure.

(b) Capacity of transmission and distribution grids to connect and bring electricity from and to users: This criterion shall be measured by estimating the installed capacity of distributed energy resources

in distribution networks, the allowable maximum injection of electricity without congestion risks in transmission networks, and the energy not withdrawn from renewable sources due to congestion or security risks.

(c) Network connectivity and access to all categories of network users: This criterion shall be measured by assessing the methods adopted to calculate charges and tariffs, as well as their structure, for generators, consumers and those that do both, and the operational flexibility provided for dynamic balancing of electricity in the network.

(d) Security and quality of supply: This criterion shall be measured by assessing the ratio of reliably available generation capacity and peak demand, the share of electricity generated from renewable sources, the stability of the electricity system, the duration and frequency of interruptions per customer, including climate related disruptions, and the voltage quality performance.

(e) Efficiency and service quality in electricity supply and grid operation: This criterion shall be measured by assessing the level of losses in transmission and in distribution networks, the ratio between minimum and maximum electricity demand within a defined time period, the demand side participation in electricity markets and in energy efficiency measures, the percentage utilisation (i.e. average loading) of electricity network components, the availability of network components (related to planned and unplanned maintenance) and its impact on network performances, and the actual availability of network capacity with respect to its standard value.

(f) Contribution to cross-border electricity markets by load-flow control to alleviate loop-flows and increase interconnection capacities: This criterion shall be estimated by assessing the ratio between interconnection capacity of a **Contracting Party** and its electricity demand, the exploitation of interconnection capacities, and the congestion rents across interconnections.

(5) Concerning oil transport projects falling under the categories set out in **Annex I.3**, the criteria listed in Article 4 shall be evaluated as follows:

(a) Security of oil supply shall be measured by assessing the additional value of the new capacity offered by a project for the short and long-term resilience of the system and the remaining flexibility of the system to cope with supply disruptions under various scenarios.

(b) Interoperability shall be measured by assessing to what extent the project improves the operation of the oil network, in particular by providing the possibility of reverse flows.

(c) Efficient and sustainable use of resources shall be measured by assessing the extent to which the project makes use of already existing infrastructure and contributes to minimising environmental and climate change burden and risks.

ANNEX IV

ENERGY SYSTEM-WIDE COST-BENEFIT ANALYSIS

The methodology for a harmonised energy system-wide cost-benefit analysis for projects of **Energy Community** interest shall satisfy the following principles laid down in this Annex.

(1) The methodology shall be based on a common input data set representing the Union's electricity and gas systems in the years $n+5$, $n+10$, $n+15$, and $n+20$, where n is the year in which the analysis is performed. This data set shall comprise at least:

(a) in electricity: scenarios for demand, generation capacities by fuel type (biomass, geothermal, hydro, gas, nuclear, oil, solid fuels, wind, solar photovoltaic, concentrated solar, other renewable technologies) and their geographical location, fuel prices (including biomass, coal, gas and oil), carbon dioxide prices, the composition of the transmission and, if relevant, the distribution network, and its evolution, taking into account all new significant generation (including capacity equipped for capturing carbon dioxide), storage and transmission projects for which a final investment decision has been taken and that are due to be commissioned by the end of year $n+5$;

(b) in gas: scenarios for demand, imports, fuel prices (including coal, gas and oil), carbon dioxide prices, the composition of the transmission network and its evolution, taking into account all new projects for which a final investment decision has been taken and that are due to be commissioned by the end of year $n+5$.

(2) The data set shall reflect Union and national law in force at the date of analysis. The data sets used for electricity and gas respectively shall be compatible, notably with regard to assumptions on prices and volumes in each market. The data set shall be elaborated after formally consulting **Contracting Parties** and the organisations representing all relevant stakeholders. The **Energy Community Secretariat** and the **Regulatory Board** shall ensure access to the required commercial data from third parties when applicable.

(3) The methodology shall give guidance for the development and use of network and market modelling necessary for the cost-benefit analysis.

(4) The cost-benefit analysis shall be based on a harmonised evaluation of costs and benefits for the different categories of projects analysed and cover at least the period of time referred to in point (1).

(5) The cost-benefit analysis shall at least take into account the following costs: capital expenditure, operational and maintenance expenditure over the technical lifecycle of the project and decommissioning and waste management costs, where relevant. The methodology shall give guidance on discount rates to be used for the calculations.

(6) <...>

(7) <...>

(8) <...>

(9) <...>²³

(6) The methodology shall define the analysis to be carried out, based on the relevant input data set, by determining the impacts with and without each project. The area for the analysis of an individual

²³ Points (6), (7), (8) and (9) are not applicable according to Article 26(5)(a) of Ministerial Council Decision 2015/09/MC-EnC.

project shall cover **all Contracting Parties and Member States, on whose territory the project shall be built, all directly neighbouring Contracting Parties and Member States and all other Contracting Parties and Member States significantly impacted by the project.**

(7) The analysis shall identify the **Contracting Parties and Member States** on which the project has net positive impacts (beneficiaries) and those **Contracting Parties and Member States** on which the project has a net negative impact (cost bearers). Each cost-benefit analysis shall include sensitivity analyses concerning the input data set, the commissioning date of different projects in the same area of analysis and other relevant parameters.

(8) Transmission, storage system and compressed and liquefied natural gas terminal operators and distribution system operators shall exchange the information necessary for the elaboration of the methodology, including the relevant network and market modelling. Any transmission or distribution system operator collecting information on behalf of other transmission or distribution system operators shall give back to the participating transmission and distribution system operators the results of the collection of data.

(9) For the common electricity and gas market and network model set out in **paragraph 3** of Article 11, the input data set referred to in point (1) shall cover the years $n+10$, $n+20$ and $n+30$ and the model shall allow for a full assessment of economic, social and environmental impacts, notably including external costs such as those related to greenhouse gas and conventional air pollutant emissions or security of supply.

ANNEX V

GUIDELINES FOR TRANSPARENCY AND PUBLIC PARTICIPATION

(1) The manual of procedures referred to in Article 9(1) shall at least specify:

- (a) the relevant law upon which decisions and opinions are based for the different types of relevant projects of **Energy Community** interest, including environmental law;
- (b) the relevant decisions and opinions to be obtained;
- (c) the names and contact details of the Competent Authority, other authorities and major stakeholders concerned;
- (d) the work flow, outlining each stage in the process, including an indicative time frame and a concise overview of the decision-making process;
- (e) information about the scope, structure and level of detail of documents to be submitted with the application for decisions, including a checklist;
- (f) the stages and means for the general public to participate in the process.

(2) The detailed schedule referred to in Article 10(4)(b) shall specify as a minimum the following:

- (a) the decisions and opinions to be obtained;
- (b) the authorities, stakeholders, and the public likely to be concerned;
- (c) the individual stages of the procedure and their duration;
- (d) major milestones to be accomplished and their deadlines in view of the comprehensive decision to be taken;
- (e) the resources planned by the authorities and possible additional resource needs.

(3) To increase public participation in the permit granting process and ensure in advance information and dialogue with the public, the following principles shall be applied:

(a) The stakeholders affected by a project of **Energy Community** interest, including relevant national, regional and local authorities, landowners and citizens living in the vicinity of the project, the general public and their associations, organisations or groups, shall be extensively informed and consulted at an early stage, when potential concerns by the public can still be taken into account and in an open and transparent manner. Where relevant, the competent authority shall actively support the activities undertaken by the project promoter.

(b) Competent authorities shall ensure that public consultation procedures for projects of **Energy Community** interest are grouped together where possible. Each public consultation shall cover all subject matters relevant to the particular stage of the procedure, and one subject matter relevant to the particular stage of the procedure shall not be addressed in more than one public consultation; however, one public consultation may take place in more than one geographical location. The subject matters addressed by a public consultation shall be clearly indicated in the notification of the public consultation.

(c) Comments and objections shall be admissible from the beginning of the public consultation until the expiry of the deadline only.

(4) The concept for public participation shall at least include information about:

- (a) the stakeholders concerned and addressed;
 - (b) the measures envisaged, including proposed general locations and dates of dedicated meetings;
 - (c) the timeline;
 - (d) the human resources allocated to the respective tasks.
- (5) In the context of the public consultation to be carried out before submission of the application file, the relevant parties shall at least:
- (a) publish an information leaflet of no more than 15 pages, giving, in a clear and concise manner, an overview of the purpose and preliminary timetable of the project, the national grid development plan, alternative routes considered, expected impacts, including of cross-border nature, and possible mitigation measures, which shall be published prior to the start of the consultation; The information leaflet shall furthermore list the web addresses of the transparency platform referred to in Article 18 and of the manual of procedures referred to in point (1);
 - (b) inform all stakeholders affected about the project through the website referred to in Article 9(7) and other appropriate information means;
 - (c) invite in written form relevant affected stakeholders to dedicated meetings, during which concerns shall be discussed.
- (6) The project website shall make available as a minimum the following:
- (a) the information leaflet referred to in point (5);
 - (b) a non-technical and regularly updated summary of no more than 50 pages reflecting the current status of the project and clearly indicating, in case of updates, changes to previous versions;
 - (c) the project and public consultation planning, clearly indicating dates and locations for public consultations and hearings and the envisaged subject matters relevant for those hearings;
 - (d) contact details in view of obtaining the full set of application documents;
 - (e) contact details in view of conveying comments and objections during public consultations.

PART II

ACQUIS COMMUNAUTAIRE

ENVIRONMENT

DIRECTIVE 2011/92/EU of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment with amendments introduced by Directive 2014/52/EU of 16 April 2014

Incorporated and adapted by Ministerial Council Decision 2016/12/MC-EnC of 14 October 2016 on adapting and implementing Directive 2011/92/EU of the European Parliament and of the Council, and amending the Treaty establishing the Energy Community.

*The adaptations made by Ministerial Council Decision 2016/12/MC-EnC are highlighted in **bold and blue**, the changes to Directive 2011/92/EU introduced by Directive 2014/52/EU are highlighted in **bold**.*

Whereas:

- (1) Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment has been substantially amended several times. In the interests of clarity and rationality the said Directive should be codified.
- (2) Pursuant to Article 191 of the Treaty on the Functioning of the European Union, Union policy on the environment is based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should, as a priority, be rectified at source and that the polluter should pay. Effects on the environment should be taken into account at the earliest possible stage in all the technical planning and decision-making processes.
- (3) The principles of the assessment of environmental effects should be harmonised, in particular with reference to the projects which should be subject to assessment, the main obligations of the developers and the content of the assessment. The Member States may lay down stricter rules to protect the environment.
- (4) In addition, it is necessary to achieve one of the objectives of the Union in the sphere of the protection of the environment and the quality of life.
- (5) The environmental legislation of the Union includes provisions enabling public authorities and other bodies to take decisions which may have a significant effect on the environment as well as on personal health and well-being.
- (6) General principles for the assessment of environmental effects should be laid down with a view to supplementing and coordinating development consent procedures governing public and private projects likely to have a major effect on the environment.
- (7) Development consent for public and private projects which are likely to have significant effects on the environment should be granted only after an assessment of the likely significant environmental effects of those projects has been carried out. That assessment should be conducted on the basis of the appropriate information supplied by the developer, which may be supplemented by the authorities and by the public likely to be concerned by the project in question.
- (8) Projects belonging to certain types have significant effects on the environment and those projects should, as a rule, be subject to a systematic assessment.
- (9) Projects of other types may not have significant effects on the environment in every case and those projects should be assessed where the Member States consider that they are likely to have

significant effects on the environment.

(10) Member States may set thresholds or criteria for the purpose of determining which of such projects should be subject to assessment on the basis of the significance of their environmental effects. Member States should not be required to examine projects below those thresholds or outside those criteria on a case-by-case basis.

(11) When setting such thresholds or criteria or examining projects on a case-by-case basis, for the purpose of determining which projects should be subject to assessment on the basis of their significant environmental effects, Member States should take account of the relevant selection criteria set out in this Directive. In accordance with the subsidiarity principle, the Member States are in the best position to apply those criteria in specific instances.

(12) For projects which are subject to assessment, a certain minimal amount of information should be supplied, concerning the project and its effects.

(13) It is appropriate to lay down a procedure in order to enable the developer to obtain an opinion from the competent authorities on the content and extent of the information to be elaborated and supplied for the assessment. Member States, in the framework of this procedure, may require the developer to provide, *inter alia*, alternatives for the projects for which it intends to submit an application.

(14) The effects of a project on the environment should be assessed in order to take account of concerns to protect human health, to contribute by means of a better environment to the quality of life, to ensure maintenance of the diversity of species and to maintain the reproductive capacity of the ecosystem as a basic resource for life.

(15) It is desirable to lay down strengthened provisions concerning environmental impact assessment in a transboundary context to take account of developments at international level. The European Community signed the Convention on Environmental Impact Assessment in a Transboundary Context on 25 February 1991, and ratified it on 24 June 1997.

(16) Effective public participation in the taking of decisions enables the public to express, and the decision-maker to take account of, opinions and concerns which may be relevant to those decisions, thereby increasing the accountability and transparency of the decision-making process and contributing to public awareness of environmental issues and support for the decisions taken.

(17) Participation, including participation by associations, organisations and groups, in particular non-governmental organisations promoting environmental protection, should accordingly be fostered, including, *inter alia*, by promoting environmental education of the public.

(18) The European Community signed the UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Aarhus Convention) on 25 June 1998 and ratified it on 17 February 2005.

(19) Among the objectives of the Aarhus Convention is the desire to guarantee rights of public participation in decision-making in environmental matters in order to contribute to the protection of the right to live in an environment which is adequate for personal health and well-being.

(20) Article 6 of the Aarhus Convention provides for public participation in decisions on the specific activities listed in Annex I thereto and on activities not so listed which may have a significant effect on the environment.

(21) Article 9(2) and (4) of the Aarhus Convention provides for access to judicial or other procedures

for challenging the substantive or procedural legality of decisions, acts or omissions subject to the public participation provisions of Article 6 of that Convention.

(22) However, this Directive should not be applied to projects the details of which are adopted by a specific act of national legislation, since the objectives of this Directive, including that of supplying information, are achieved through the legislative process.

(23) Furthermore, it may be appropriate in exceptional cases to exempt a specific project from the assessment procedures laid down by this Directive, subject to appropriate information being supplied to the Commission and to the public concerned.

(24) Since the objectives of this Directive cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the action, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

(25) This Directive should be without prejudice to the obligations of the Member States relating to the time limits for transposition into national law of the Directives set out in Annex V, Part B.

Article 1

1. This Directive shall apply to the assessment of the environmental effects of those public and private projects which are likely to have significant effects on the environment.

2. For the purposes of this Directive, the following definitions shall apply:

(a) 'project' means:

- the execution of construction works or of other installations or schemes,
- other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources;

(b) 'developer' means the applicant for authorisation for a private project or the public authority which initiates a project;

(c) 'development consent' means the decision of the competent authority or authorities which entitles the developer to proceed with the project;

(d) 'public' means one or more natural or legal persons and, in accordance with national legislation or practice, their associations, organisations or groups;

(e) 'public concerned' means the public affected or likely to be affected by, or having an interest in, the environmental decision-making procedures referred to in Article 2(2). For the purposes of this definition, non-governmental organisations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest;

(f) 'competent authority or authorities' means that authority or those authorities which the **Contracting Parties** designate as responsible for performing the duties arising from this Directive.

(g) 'environmental impact assessment' means a process consisting of:

- (i) the preparation of an environmental impact assessment report by the developer, as referred to in Article 5(1) and (2);**

(ii) the carrying out of consultations as referred to in Article 6 and, where relevant, Article 7;

(iii) the examination by the competent authority of the information presented in the environmental impact assessment report and any supplementary information provided, where necessary, by the developer in accordance with Article 5(3), and any relevant information received through the consultations under Articles 6 and 7;

(iv) the reasoned conclusion by the competent authority on the significant effects of the project on the environment, taking into account the results of the examination referred to in point (iii) and, where appropriate, its own supplementary examination; and

(v) the integration of the competent authority's reasoned conclusion into any of the decisions referred to in Article 8a.

3. **Contracting Parties** may decide, on a case-by-case basis if so provided under national law, not to apply this Directive to projects, **or parts of projects, having defence as their sole purpose, or to projects having the response to civil emergencies as their sole purpose**, if they deem that such application would have an adverse effect on those purposes.

Article 2

1. **Contracting Parties** shall adopt all measures necessary to ensure that, before **development** consent is given, projects likely to have significant effects on the environment by virtue, *inter alia*, of their nature, size or location are made subject to a requirement for development consent and an assessment with regard to their effects **on the environment**. Those projects are defined in Article 4.

2. The environmental impact assessment may be integrated into the existing procedures for **development** consent to projects in the **Contracting Parties**, or, failing this, into other procedures or into procedures to be established to comply with the aims of this Directive.

3. **In the case of projects for which the obligation to carry out assessments of the effects on the environment arises simultaneously from this Directive and from Council Directive 92/43/EEC and/or Directive 2009/147/EC of the European Parliament and the Council, Contracting Parties shall, where appropriate, ensure that coordinated and/or joint procedures fulfilling the requirements of that Union legislation are provided for.**

In the case of projects for which the obligation to carry out assessments of the effects on the environment arises simultaneously from this Directive and Union legislation other than the Directives listed in the first subparagraph, Contracting Parties may provide for coordinated and/or joint procedures.

Under the coordinated procedure referred to in the first and second subparagraphs, Contracting Parties shall endeavour to coordinate the various individual assessments of the environmental impact of a particular project, required by the relevant Union legislation, by designating an authority for this purpose, without prejudice to any provisions to the contrary contained in other relevant Union legislation.

Under the joint procedure referred to in the first and second subparagraphs, Contracting Parties shall endeavour to provide for a single assessment of the environmental impact of a particular project required by the relevant Union legislation, without prejudice to any

provisions to the contrary contained in other relevant Union legislation.

The **Secretariat** shall provide guidance regarding the setting up of any coordinated or joint procedures for projects that are simultaneously subject to assessments under this Directive and Directives 92/43/EEC, 2000/60/EC, 2009/147/EC or 2010/75/EU.

4. Without prejudice to Article 7, **Contracting Parties** may, in exceptional cases, exempt a specific project from the provisions laid down in this Directive, **where the application of those provisions would result in adversely affecting the purpose of the project, provided the objectives of this Directive are met.**

In that event, the **Contracting Parties** shall:

- (a) consider whether another form of assessment would be appropriate;
- (b) make available to the public concerned the information obtained under other forms of assessment referred to in point (a), the information relating to the decision granting exemption and the reasons for granting it;
- (c) inform the **Secretariat**, prior to granting consent, of the reasons justifying the exemption granted, and provide it with the information made available, where applicable, to their own nationals.

The **Secretariat** shall immediately forward the documents received to the other **Contracting Parties**.

The **Secretariat** shall report annually to the European Parliament and to the Council on the application of this paragraph.

5. Without prejudice to Article 7, in cases where a project is adopted by a specific act of national legislation, **Contracting Parties may exempt that project from the provisions relating to public consultation laid down in this Directive, provided the objectives of this Directive are met.**

Contracting Parties shall inform the **Secretariat** of any application of the exemption referred to in the first subparagraph every two years from 16 May 2017.

Article 3

The environmental impact assessment shall identify, describe and assess in an appropriate manner, in the light of each individual case and in accordance with Articles 4 to 12, the direct and **significant indirect** effects of a project on the following factors:

- (a) population and human health;**
- (b) biodiversity, with particular attention to species and habitats protected under Directive 92/43/EEC and Directive 2009/147/EC;**
- (c) land, soil, water, air and climate;**
- (d) material assets, cultural heritage and the landscape;
- (e) the interaction between the factors referred to in points (a) to (d).

2. The effects referred to in paragraph 1 on the factors set out therein shall include the expected effects deriving from the vulnerability of the project to risks of major accidents and/or disasters that are relevant to the project concerned.

Article 4

1. Subject to Article 2(4), projects listed in Annex I shall be made subject to an assessment in accordance with Articles 5 to 10.

2. Subject to Article 2(4), for projects listed in Annex II, **Contracting Parties** shall determine whether the project shall be made subject to an assessment in accordance with Articles 5 to 10. **Contracting Parties** shall make that determination through:

(a) a case-by-case examination; or

(b) thresholds or criteria set by the **Contracting Party**.

Contracting Parties may decide to apply both procedures referred to in points (a) and (b).

3. Where a case-by-case examination is carried out or thresholds or criteria are set for the purpose of paragraph 2, the relevant selection criteria set out in Annex III shall be taken into account. **Contracting Parties** may set thresholds or criteria to determine when projects need not undergo either the determination under paragraphs 4 and 5 or an environmental impact assessment, and/or thresholds or criteria to determine when projects shall in any case be made subject to an environmental impact assessment without undergoing a determination set out under paragraphs 4 and 5.

4. Where **Contracting Parties** decide to require a determination for projects listed in Annex II, the developer shall provide information on the characteristics of the project and its likely significant effects on the environment. The detailed list of information to be provided is specified in Annex IIA. The developer shall take into account, where relevant, the available results of other relevant assessments of the effects on the environment carried out pursuant to Union legislation other than this Directive. The developer may also provide a description of any features of the project and/or measures envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment.

5. The competent authority shall make its determination, on the basis of the information provided by the developer in accordance with paragraph 4 taking into account, where relevant, the results of preliminary verifications or assessments of the effects on the environment carried out pursuant to Union legislation other than this Directive. The determination shall be made available to the public and:

(a) where it is decided that an environmental impact assessment is required, state the main reasons for requiring such assessment with reference to the relevant criteria listed in Annex III; or

(b) where it is decided that an environmental impact assessment is not required, state the main reasons for not requiring such assessment with reference to the relevant criteria listed in Annex III, and, where proposed by the developer, state any features of the project and/or measures envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment.

6. **Contracting Parties** shall ensure that the competent authority makes its determination as soon as possible and within a period of time not exceeding 90 days from the date on which the developer has submitted all the information required pursuant to paragraph 4. In exceptional cases, for instance relating to the nature, complexity, location or size of the

project, the competent authority may extend that deadline to make its determination; in that event, the competent authority shall inform the developer in writing of the reasons justifying the extension and of the date when its determination is expected.

Article 5

1. Where an environmental impact assessment is required, the developer shall prepare and submit an environmental impact assessment report. The information to be provided by the developer **shall include at least:**

- (a)** a description of the project comprising information on the site, design, size **and other relevant features** of the project;
- (b)** a description of the likely significant effects of the project on the environment;
- (c)** a description of the **features of the project and/or** measures envisaged in order to avoid, prevent or reduce and, if possible, **offset likely** significant adverse effects **on the environment;**
- (d)** a description of the reasonable alternatives studied by the developer, **which are relevant to the project and its specific characteristics**, and an indication of the main reasons for the option chosen, taking into account the effects of the project on the environment;
- (e)** a non-technical summary of the information referred to in points (a) to (d); **and**
- (f)** any additional information specified in Annex IV relevant to the specific characteristics of a particular project or type of project and to the environmental features likely to be affected.

Where an opinion is issued pursuant to paragraph 2, the environmental impact assessment report shall be based on that opinion, and include the information that may reasonably be required for reaching a reasoned conclusion on the significant effects of the project on the environment, taking into account current knowledge and methods of assessment. The developer shall, with a view to avoiding duplication of assessments, take into account the available results of other relevant assessments under Union or national legislation, in preparing the environmental impact assessment report.

2. Where requested by the developer, the competent authority, taking into account the information provided by the developer **in particular on the specific characteristics of the project, including its location and technical capacity, and its likely impact on the environment**, shall issue an opinion **on the scope and level of detail of the information to be included by the developer in the environmental impact assessment report in accordance with paragraph 1 of this Article.** The competent authority shall consult the authorities referred to in Article 6(1) before it gives its opinion.

Contracting Parties may also require the competent authorities to give an opinion as referred to in the first subparagraph, irrespective of whether the developer so requests.

3. In order to ensure the completeness and quality of the environmental impact assessment report:

- (a)** the developer shall ensure that the environmental impact assessment report is prepared by competent experts;

(b) the competent authority shall ensure that it has, or has access as necessary to, sufficient expertise to examine the environmental impact assessment report; and

(c) where necessary, the competent authority shall seek from the developer supplementary information, in accordance with Annex IV, which is directly relevant to reaching the reasoned conclusion on the significant effects of the project on the environment.

4. **Contracting Parties** shall, if necessary, ensure that any authorities holding relevant information, with particular reference to Article 3, make this information available to the developer.

Article 6

1. **Contracting Parties** shall take the measures necessary to ensure that the authorities likely to be concerned by the project by reason of their specific environmental responsibilities **or local and regional competences** are given an opportunity to express their opinion on the information supplied by the developer and on the request for development consent, **taking into account, where appropriate, the cases referred to in Article 8a(3).** To that end, **Contracting Parties** shall designate the authorities to be consulted, either in general terms or on a case-by-case basis. The information gathered pursuant to Article 5 shall be forwarded to those authorities. Detailed arrangements for consultation shall be laid down by the **Contracting Parties**.

2. **In order to ensure the effective participation of the public concerned in the decision-making procedures, the public shall be informed electronically or** by public notices or by other appropriate means, of the following matters early in the environmental decision-making procedures referred to in Article 2(2) and, at the latest, as soon as information can reasonably be provided:

- (a) the request for development consent;
- (b) the fact that the project is subject to an environmental impact assessment procedure and, where relevant, the fact that Article 7 applies;
- (c) details of the competent authorities responsible for taking the decision, those from which relevant information can be obtained, those to which comments or questions can be submitted, and details of the time schedule for transmitting comments or questions;
- (d) the nature of possible decisions or, where there is one, the draft decision;
- (e) an indication of the availability of the information gathered pursuant to Article 5;
- (f) an indication of the times and places at which, and the means by which, the relevant information will be made available;
- (g) details of the arrangements for public participation made pursuant to paragraph 5 of this Article.

3. **Contracting Parties** shall ensure that, within reasonable time-frames, the following is made available to the public concerned:

- (a) any information gathered pursuant to Article 5;
- (b) in accordance with national legislation, the main reports and advice issued to the competent authority or authorities at the time when the public concerned is informed in accordance with paragraph 2 of this Article;
- (c) in accordance with the provisions of Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information other than that referred

to in paragraph 2 of this Article which is relevant for the decision in accordance with Article 8 of this Directive and which only becomes available after the time the public concerned was informed in accordance with paragraph 2 of this Article.

4. The public concerned shall be given early and effective opportunities to participate in the environmental decision-making procedures referred to in Article 2(2) and shall, for that purpose, be entitled to express comments and opinions when all options are open to the competent authority or authorities before the decision on the request for development consent is taken.

5. The detailed arrangements for informing the public for example by bill posting within a certain radius or publication in local newspapers, and for consulting the public concerned, for example by written submissions or by way of a public inquiry, shall be determined by the **Contracting Parties**. **Contracting Parties shall take the necessary measures to ensure that the relevant information is electronically accessible to the public, through at least a central portal or easily accessible points of access, at the appropriate administrative level.**

6. Reasonable time-frames for the different phases shall be provided **for**, allowing sufficient time for:

(a) informing the authorities referred to in paragraph 1 and the public; and

(b) the authorities referred to in paragraph 1 and the public concerned to prepare and participate effectively in the environmental decision-making, subject to the provisions of this Article.

7. The time-frames for consulting the public concerned on the environmental impact assessment report referred to in Article 5(1) shall not be shorter than 30 days.

Article 4 of Decision 2016/12/MC-EnC

In case of projects of Energy Community interest, the Contracting Party in whose territory the project is intended to be carried out shall send the following information to the Secretariat as soon as possible and no later than when informing its own public:

(a) a description of the project, together with any available information on its impacts on the environment;

(b) information on the nature of the decision which may be taken for authorisation of the project.

The Secretariat shall ensure that the environmental impact assessments of the projects referred to in paragraph 1 of this Article fulfil the requirements of Directive 2011/92/EU as amended by Directive 2014/52/EU.

Article 7

1. Where a **Contracting Party** is aware that a project is likely to have significant effects on the environment in another **Contracting Party** or where a **Contracting Party** likely to be significantly affected so requests, the **Contracting Party** in whose territory the project is intended to be carried out shall send to the affected **Contracting Party** as soon as possible and no later than when informing its own public, *inter alia*:

(a) a description of the project, together with any available information on its possible transboundary impact;

(b) information on the nature of the decision which may be taken.

The **Contracting Party** in whose territory the project is intended to be carried out shall give the other **Contracting Party** a reasonable time in which to indicate whether it wishes to participate in the environmental decision-making procedures referred to in Article 2(2), and may include the information referred to in paragraph 2 of this Article.

2. If a **Contracting Party** which receives information pursuant to paragraph 1 indicates that it intends to participate in the environmental decision-making procedures referred to in Article 2(2), the **Contracting Party** in whose territory the project is intended to be carried out shall, if it has not already done so, send to the affected **Contracting Party** the information required to be given pursuant to Article 6(2) and made available pursuant to points (a) and (b) of Article 6(3).

3. The **Contracting Parties** concerned, each insofar as it is concerned, shall also:

(a) arrange for the information referred to in paragraphs 1 and 2 to be made available, within a reasonable time, to the authorities referred to in Article 6(1) and the public concerned in the territory of the **Contracting Party** likely to be significantly affected; and

(b) ensure that the authorities referred to in Article 6(1) and the public concerned are given an opportunity, before development consent for the project is granted, to forward their opinion within a reasonable time on the information supplied to the competent authority in the **Contracting Party** in whose territory the project is intended to be carried out.

4. The **Contracting Parties** concerned shall enter into consultations regarding, *inter alia*, the potential transboundary effects of the project and the measures envisaged to reduce or eliminate such effects and shall agree on a reasonable time-frame for the duration of the consultation period.

Such consultations may be conducted through an appropriate joint body.

5. The detailed arrangements for implementing **paragraph 1 to 4 of this Article, including the establishment of time-frames for consultations, shall be determined by the Contracting Parties concerned, on the basis of the arrangements and time-frames referred to in Article 6(5) to (7)**, and shall be such as to enable the public concerned in the territory of the affected **Contracting Party** to participate effectively in the environmental decision-making procedures referred to in Article 2(2) for the project.

Article 8

The results of consultations and the information gathered pursuant to Articles 5 to 7 **shall be duly** taken into **account** in the development consent procedure.

Article 8a

1. The decision to grant development consent shall incorporate at least the following information:

(a) the reasoned conclusion referred to in Article 1(2)(g)(iv);

(b) any environmental conditions attached to the decision, a description of any features of the project and/or measures envisaged to avoid, prevent or reduce and, if possible, offset significant adverse effects on the environment as well as, where appropriate, monitoring measures.

2. The decision to refuse development consent shall state the main reasons for the refusal.

3. In the event **Contracting Parties** make use of the procedures referred to in Article 2(2) other than the procedures for development consent, the requirements of paragraphs 1 and 2 of this Article, as appropriate, shall be deemed to be fulfilled when any decision issued in the context of those procedures contains the information referred to in those paragraphs and there are mechanisms in place which enable the fulfilment of the requirements of paragraph 6 of this Article.

4. In accordance with the requirements referred to in paragraph 1(b), **Contracting Parties** shall ensure that the features of the project and/or measures envisaged to avoid, prevent or reduce and, if possible, offset significant adverse effects on the environment are implemented by the developer, and shall determine the procedures regarding the monitoring of significant adverse effects on the environment.

The type of parameters to be monitored and the duration of the monitoring shall be proportionate to the nature, location and size of the project and the significance of its effects on the environment.

Existing monitoring arrangements resulting from Union legislation other than this Directive and from national legislation may be used if appropriate, with a view to avoiding duplication of monitoring.

5. **Contracting Parties** shall ensure that the competent authority takes any of the decisions referred to in paragraphs 1 to 3 within a reasonable period of time.

6. The competent authority shall be satisfied that the reasoned conclusion referred to in Article 1(2)(g)(iv), or any of the decisions referred to in paragraph 3 of this Article, is still up to date when taking a decision to grant development consent. To that effect, **Contracting Parties** may set time-frames for the validity of the reasoned conclusion referred to in Article 1(2)(g)(iv) or any of the decisions referred to in paragraph 3 of this Article.

Article 9

1. When a decision to grant or refuse development consent has been taken, the competent authority or authorities shall **promptly** inform the public **and the authorities referred to in Article 6(1)** thereof, in accordance with the **national** procedures, and shall **ensure that the** following information **is available to the public and to the authorities referred to in Article 6(1), taking into account, where appropriate, the cases referred to in Article 8a(3):**

(a) the content of the decision and any conditions attached thereto **as referred to in Article 8a(1) and (2);**

(b) the main reasons and considerations on which the decision is based, including information about the public participation process. **This also includes the summary of the results of the consultations and the information gathered pursuant to Articles 5 to 7 and how those results have been incorporated or otherwise addressed, in particular the comments received from the affected Contracting Party referred to in Article 7.**

2. The competent authority or authorities shall inform any **Contracting Party** which has been consulted pursuant to Article 7, forwarding to it the information referred to in paragraph 1 of this Article.

The consulted **Contracting Parties** shall ensure that that information is made available in an appropriate manner to the public concerned in their own territory.

Article 9a

Contracting Parties shall ensure that the competent authority or authorities perform the duties arising from this Directive in an objective manner and do not find themselves in a situation giving rise to a conflict of interest.

Where the competent authority is also the developer, **Contracting Parties** shall at least implement, within their organisation of administrative competences, an appropriate separation between conflicting functions when performing the duties arising from this Directive.

Article 10

Without prejudice to Directive 2003/4/EC, the provisions of this Directive shall not affect the obligation on the competent authorities to respect the limitations imposed by national laws, regulations and administrative provisions and accepted legal practices with regard to commercial and industrial confidentiality, including intellectual property, and the safeguarding of the public interest.

Where Article 7 applies, the transmission of information to another **Contracting Party** and the receipt of information by another **Contracting Party** shall be subject to the limitations in force in the **Contracting Party** in which the project is proposed.

Article 10a

Contracting Parties shall lay down rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive. The penalties thus provided for shall be effective, proportionate and dissuasive.

Article 11

1. **Contracting Parties** shall ensure that, in accordance with the relevant national legal system, members of the public concerned:

(a) having a sufficient interest, or alternatively;

(b) maintaining the impairment of a right, where administrative procedural law of a **Contracting Party** requires this as a precondition;

have access to a review procedure before a court of law or another independent and impartial body established by law to challenge the substantive or procedural legality of decisions, acts or omissions subject to the public participation provisions of this Directive.

2. **Contracting Parties** shall determine at what stage the decisions, acts or omissions may be challenged.

3. What constitutes a sufficient interest and impairment of a right shall be determined by the **Contracting Parties**, consistently with the objective of giving the public concerned wide access to justice. To that end, the interest of any non-governmental organisation meeting the requirements referred to in Article 1(2) shall be deemed sufficient for the purpose of point (a) of paragraph 1 of this Article. Such organisations shall also be deemed to have rights capable of being impaired for the purpose of point (b) of paragraph 1 of this Article.

4. The provisions of this Article shall not exclude the possibility of a preliminary review procedure before an administrative authority and shall not affect the requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures, where such a requirement exists under national law.

Any such procedure shall be fair, equitable, timely and not prohibitively expensive.

5. In order to further the effectiveness of the provisions of this Article, **Contracting Parties** shall ensure that practical information is made available to the public on access to administrative and judicial review procedures.

Article 12

1. The **Contracting Parties** and the **Secretariat** shall exchange information on the experience gained in applying this Directive.

2. In particular, every six years from 16 May 2017 **Contracting Parties** shall inform the **Secretariat**, where such data are available, of:

(a) the number of projects referred to in Annexes I and II made subject to an environmental

impact assessment in accordance with Articles 5 to 10;

(b) the breakdown of environmental impact assessments according to the project categories set out in Annexes I and II;

(c) the number of projects referred to in Annex II made subject to a determination in accordance with Article 4(2);

(d) the average duration of the environmental impact assessment process;

(e) general estimates on the average direct costs of environmental impact assessments, including the impact from the application of this Directive to SMEs.

3. On the basis of that exchange of information, the **Secretariat** shall if necessary submit additional proposals to the European Parliament and to the Council, with a view to ensuring that this Directive is applied in a sufficiently coordinated manner.

Article 13

Contracting Parties shall communicate to the **Secretariat** the texts of the provisions of national law which they adopt in the field covered by this Directive.

Article 14

Directive 85/337/EEC, as amended by the Directives listed in Annex V, Part A, is repealed, without prejudice to the obligations of the **Contracting Parties** relating to the time limits for transposition into national law of the Directives set out in Annex V, Part B.

References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex VI.

Article 15

Contracting Parties shall bring into force the laws, regulations and administrative provisions necessary to comply with Directive 2011/92/EU as amended by Directive 2014/52/EU by 1 January 2019 with the exception of the provisions referring to Directives not covered by Article 16 of the Treaty establishing the Energy Community.^{1, 2}

Article 16

This Directive is addressed to the **Contracting Parties**.

¹ The text displayed here corresponds to Article 2(1) of Decision 2016/12/MC-EnC. Until 1 January 2019, Directive 2011/92/EU applies without the amendments enacted by Directive 2014/52/EU.

² The Accession Protocol of Georgia to the Energy Community Treaty refers to Directive 85/337/EEC and sets deadlines thereto. Directive 85/337/EEC was repealed by Decision 2016/12/MC-EnC adapting and implementing Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment. Without prejudice to commitments under EU-Georgia Association Agreement the date for the implementation of the entire Directive is 1 September 2017.

ANNEX I

PROJECTS REFERRED TO IN ARTICLE 4(1)

1. Crude-oil refineries (excluding undertakings manufacturing only lubricants from crude oil) and installations for the gasification and liquefaction of 500 tonnes or more of coal or bituminous shale per day.
2. (a) Thermal power stations and other combustion installations with a heat output of 300 megawatts or more;
- (b) Nuclear power stations and other nuclear reactors including the dismantling or decommissioning of such power stations or reactors³ (except research installations for the production and conversion of fissionable and fertile materials, whose maximum power does not exceed 1 kilowatt continuous thermal load).
3. (a) Installations for the reprocessing of irradiated nuclear fuel;
- (b) Installations designed:
 - (i) for the production or enrichment of nuclear fuel;
 - (ii) for the processing of irradiated nuclear fuel or high-level radioactive waste;
 - (iii) for the final disposal of irradiated nuclear fuel;
 - (iv) solely for the final disposal of radioactive waste;
 - (v) solely for the storage (planned for more than 10 years) of irradiated nuclear fuels or radioactive waste in a different site than the production site.
4. (a) Integrated works for the initial smelting of cast iron and steel;
- (b) Installations for the production of non-ferrous crude metals from ore, concentrates or secondary raw materials by metallurgical, chemical or electrolytic processes.
5. Installations for the extraction of asbestos and for the processing and transformation of asbestos and products containing asbestos: for asbestos-cement products, with an annual production of more than 20 000 tonnes of finished products, for friction material, with an annual production of more than 50 tonnes of finished products, and for other uses of asbestos, utilisation of more than 200 tonnes per year.
6. Integrated chemical installations, i.e. those installations for the manufacture on an industrial scale of substances using chemical conversion processes, in which several units are juxtaposed and are functionally linked to one another and which are:
 - (a) for the production of basic organic chemicals;
 - (b) for the production of basic inorganic chemicals;
 - (c) for the production of phosphorous-, nitrogen- or potassium-based fertilisers (simple or compound fertilisers);
 - (d) for the production of basic plant health products and of biocides;
 - (e) for the production of basic pharmaceutical products using a chemical or biological process;

³ Nuclear power stations and other nuclear reactors cease to be such an installation when all nuclear fuel and other radioactively contaminated elements have been removed permanently from the installation site.

(f) for the production of explosives.

7. (a) Construction of lines for long-distance railway traffic and of airports⁴ with a basic runway length of 2 100 m or more;

(b) Construction of motorways and express roads⁵;

(c) Construction of a new road of four or more lanes, or realignment and/or widening of an existing road of two lanes or less so as to provide four or more lanes, where such new road or realigned and/or widened section of road would be 10 km or more in a continuous length.

8. (a) Inland waterways and ports for inland-waterway traffic which permit the passage of vessels of over 1 350 tonnes;

(b) Trading ports, piers for loading and unloading connected to land and outside ports (excluding ferry piers) which can take vessels of over 1 350 tonnes.

9. Waste disposal installations for the incineration, chemical treatment as defined in Annex I to Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste under heading D9, or landfill of hazardous waste, as defined in point 2 of Article 3 of that Directive.

10. Waste disposal installations for the incineration or chemical treatment as defined in Annex I to Directive 2008/98/EC under heading D9 of non-hazardous waste with a capacity exceeding 100 tonnes per day.

11. Groundwater abstraction or artificial groundwater recharge schemes where the annual volume of water abstracted or recharged is equivalent to or exceeds 10 million cubic metres.

12. (a) Works for the transfer of water resources between river basins where that transfer aims at preventing possible shortages of water and where the amount of water transferred exceeds 100 million cubic metres/year;

(b) In all other cases, works for the transfer of water resources between river basins where the multi-annual average flow of the basin of abstraction exceeds 2 000 million cubic metres/year and where the amount of water transferred exceeds 5% of that flow.

In both cases transfers of piped drinking water are excluded.

13. Waste water treatment plants with a capacity exceeding 150 000 population equivalent as defined in point 6 of Article 2 of Council Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment.

14. Extraction of petroleum and natural gas for commercial purposes where the amount extracted exceeds 500 tonnes/day in the case of petroleum and 500 000 cubic metres/day in the case of gas.

15. Dams and other installations designed for the holding back or permanent storage of water, where a new or additional amount of water held back or stored exceeds 10 million cubic metres.

16. Pipelines with a diameter of more than 800 mm and a length of more than 40 km:

(a) for the transport of gas, oil, chemicals;

(b) for the transport of carbon dioxide (CO₂) streams for the purposes of geological storage, including associated booster stations.

⁴ For the purposes of this Directive, 'airport' means an airport which complies with the definition in the 1944 Chicago Convention setting up the International Civil Aviation Organisation (Annex 14).

⁵ For the purposes of this Directive, 'express road' means a road which complies with the definition in the European Agreement on Main International Traffic Arteries of 15 November 1975.

17. Installations for the intensive rearing of poultry or pigs with more than:

- (a) 85 000 places for broilers, 60 000 places for hens;
- (b) 3 000 places for production pigs (over 30 kg); or
- (c) 900 places for sows.

18. Industrial plants for the production of:

- (a) pulp from timber or similar fibrous materials;
- (b) paper and board with a production capacity exceeding 200 tonnes per day.

19. Quarries and open-cast mining where the surface of the site exceeds 25 hectares, or peat extraction, where the surface of the site exceeds 150 hectares.

20. Construction of overhead electrical power lines with a voltage of 220 kV or more and a length of more than 15 km.

21. Installations for storage of petroleum, petrochemical, or chemical products with a capacity of 200 000 tonnes or more.

22. Storage sites pursuant to Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide.

23. Installations for the capture of CO₂ streams for the purposes of geological storage pursuant to Directive 2009/31/EC from installations covered by this Annex, or where the total yearly capture of CO₂ is 1,5 megatonnes or more.

24. Any change to or extension of projects listed in this Annex where such a change or extension in itself meets the thresholds, if any, set out in this Annex.

ANNEX II

PROJECTS REFERRED TO IN ARTICLE 4(2)

1. AGRICULTURE, SILVICULTURE AND AQUACULTURE

- (a) Projects for the restructuring of rural land holdings;
- (b) Projects for the use of uncultivated land or semi-natural areas for intensive agricultural purposes;
- (c) Water management projects for agriculture, including irrigation and land drainage projects;
- (d) Initial afforestation and deforestation for the purposes of conversion to another type of land use;
- (e) Intensive livestock installations (projects not included in Annex I);
- (f) Intensive fish farming;
- (g) Reclamation of land from the sea.

2. EXTRACTIVE INDUSTRY

- (a) Quarries, open-cast mining and peat extraction (projects not included in Annex I);
- (b) Underground mining;
- (c) Extraction of minerals by marine or fluvial dredging;
- (d) Deep drillings, in particular:
 - (i) geothermal drilling;
 - (ii) drilling for the storage of nuclear waste material;
 - (iii) drilling for water supplies;with the exception of drillings for investigating the stability of the soil;
- (e) Surface industrial installations for the extraction of coal, petroleum, natural gas and ores, as well as bituminous shale.

3. ENERGY INDUSTRY

- (a) Industrial installations for the production of electricity, steam and hot water (projects not included in Annex I);
- (b) Industrial installations for carrying gas, steam and hot water; transmission of electrical energy by overhead cables (projects not included in Annex I);
- (c) Surface storage of natural gas;
- (d) Underground storage of combustible gases;
- (e) Surface storage of fossil fuels;
- (f) Industrial briquetting of coal and lignite;
- (g) Installations for the processing and storage of radioactive waste (unless included in Annex I);
- (h) Installations for hydroelectric energy production;
- (i) Installations for the harnessing of wind power for energy production (wind farms);
- (j) Installations for the capture of CO₂ streams for the purposes of geological storage pursuant to Directive 2009/31/EC from installations not covered by Annex I to this Directive.

4. PRODUCTION AND PROCESSING OF METALS

- (a) Installations for the production of pig iron or steel (primary or secondary fusion) including continuous casting;
- (b) Installations for the processing of ferrous metals:
 - (i) hot-rolling mills;
 - (ii) smitheries with hammers;
 - (iii) application of protective fused metal coats;
- (c) Ferrous metal foundries;
- (d) Installations for the smelting, including the alloyage, of non-ferrous metals, excluding precious metals, including recovered products (refining, foundry casting, etc.);
- (e) Installations for surface treatment of metals and plastic materials using an electrolytic or chemical process;
- (f) Manufacture and assembly of motor vehicles and manufacture of motor-vehicle engines;
- (g) Shipyards;
- (h) Installations for the construction and repair of aircraft;
- (i) Manufacture of railway equipment;
- (j) Swaging by explosives;
- (k) Installations for the roasting and sintering of metallic ores.

5. MINERAL INDUSTRY

- (a) Coke ovens (dry coal distillation);
- (b) Installations for the manufacture of cement;
- (c) Installations for the production of asbestos and the manufacture of asbestos products (projects not included in Annex I);
- (d) Installations for the manufacture of glass including glass fibre;
- (e) Installations for smelting mineral substances including the production of mineral fibres;
- (f) Manufacture of ceramic products by burning, in particular roofing tiles, bricks, refractory bricks, tiles, stoneware or porcelain.

6. CHEMICAL INDUSTRY (PROJECTS NOT INCLUDED IN ANNEX I)

- (a) Treatment of intermediate products and production of chemicals;
- (b) Production of pesticides and pharmaceutical products, paint and varnishes, elastomers and peroxides;
- (c) Storage facilities for petroleum, petrochemical and chemical products.

7. FOOD INDUSTRY

- (a) Manufacture of vegetable and animal oils and fats;
- (b) Packing and canning of animal and vegetable products;
- (c) Manufacture of dairy products;
- (d) Brewing and malting;
- (e) Confectionery and syrup manufacture;

- (f) Installations for the slaughter of animals;
- (g) Industrial starch manufacturing installations;
- (h) Fish-meal and fish-oil factories;
- (i) Sugar factories.

8. TEXTILE, LEATHER, WOOD AND PAPER INDUSTRIES

- (a) Industrial plants for the production of paper and board (projects not included in Annex I);
- (b) Plants for the pre-treatment (operations such as washing, bleaching, mercerisation) or dyeing of fibres or textiles;
- (c) Plants for the tanning of hides and skins;
- (d) Cellulose-processing and production installations.

9. RUBBER INDUSTRY

Manufacture and treatment of elastomer-based products.

10. INFRASTRUCTURE PROJECTS

- (a) Industrial estate development projects;
- (b) Urban development projects, including the construction of shopping centres and car parks;
- (c) Construction of railways and intermodal transshipment facilities, and of intermodal terminals (projects not included in Annex I);
- (d) Construction of airfields (projects not included in Annex I);
- (e) Construction of roads, harbours and port installations, including fishing harbours (projects not included in Annex I);
- (f) Inland-waterway construction not included in Annex I, canalisation and flood-relief works;
- (g) Dams and other installations designed to hold water or store it on a long-term basis (projects not included in Annex I);
- (h) Tramways, elevated and underground railways, suspended lines or similar lines of a particular type, used exclusively or mainly for passenger transport;
- (i) Oil and gas pipeline installations and pipelines for the transport of CO₂ streams for the purposes of geological storage (projects not included in Annex I);
- (j) Installations of long-distance aqueducts;
- (k) Coastal work to combat erosion and maritime works capable of altering the coast through the construction, for example, of dykes, moles, jetties and other sea defence works, excluding the maintenance and reconstruction of such works;
- (l) Groundwater abstraction and artificial groundwater recharge schemes not included in Annex I;
- (m) Works for the transfer of water resources between river basins not included in Annex I.

11. OTHER PROJECTS

- (a) Permanent racing and test tracks for motorised vehicles;
- (b) Installations for the disposal of waste (projects not included in Annex I);
- (c) Waste-water treatment plants (projects not included in Annex I);
- (d) Sludge-deposition sites;

- (e) Storage of scrap iron, including scrap vehicles;
- (f) Test benches for engines, turbines or reactors;
- (g) Installations for the manufacture of artificial mineral fibres;
- (h) Installations for the recovery or destruction of explosive substances;
- (i) Knackers' yards.

12. TOURISM AND LEISURE

- (a) Ski runs, ski lifts and cable cars and associated developments;
- (b) Marinas;
- (c) Holiday villages and hotel complexes outside urban areas and associated developments;
- (d) Permanent campsites and caravan sites;
- (e) Theme parks.

13. (a) Any change or extension of projects listed in Annex I or this Annex, already authorised, executed or in the process of being executed, which may have significant adverse effects on the environment (change or extension not included in Annex I);
- (b) Projects in Annex I, undertaken exclusively or mainly for the development and testing of new methods or products and not used for more than two years.

ANNEX II.A

INFORMATION REFERRED TO IN ARTICLE 4(4)

(INFORMATION TO BE PROVIDED BY THE DEVELOPER ON THE PROJECTS LISTED IN ANNEX II)

1. A description of the project, including in particular:

(a) a description of the physical characteristics of the whole project and, where relevant, of demolition works;

(b) a description of the location of the project, with particular regard to the environmental sensitivity of geographical areas likely to be affected.

2. A description of the aspects of the environment likely to be significantly affected by the project.

3. A description of any likely significant effects, to the extent of the information available on such effects, of the project on the environment resulting from:

(a) the expected residues and emissions and the production of waste, where relevant;

(b) the use of natural resources, in particular soil, land, water and biodiversity.

4. The criteria of Annex III shall be taken into account, where relevant, when compiling the information in accordance with points 1 to 3.

ANNEX III

SELECTION CRITERIA REFERRED TO IN ARTICLE 4(3)

(CRITERIA TO DETERMINE WHETHER THE PROJECTS LISTED IN ANNEX II SHOULD BE SUBJECT TO AN ENVIRONMENTAL IMPACT ASSESSMENT)

1. CHARACTERISTICS OF PROJECTS

The characteristics of projects must be considered, **with particular regard** to:

- (a) the size **and design** of the **whole** project;
- (b) the cumulation with other **existing and/or approved** projects;
- (c) the use of natural resources, **in particular land, soil, water and biodiversity**;
- (d) the production of waste;
- (e) pollution and nuisances;
- (f) the risk of **major accidents and/or disasters which are relevant to the project concerned, including those caused by climate change, in accordance with scientific knowledge**;
- (g) the risks to human health (for example due to water contamination or air pollution).**

2. LOCATION OF PROJECTS

The environmental sensitivity of geographical areas likely to be affected by projects must be considered, **with particular regard** to:

- (a) the existing **and approved** land use;
- (b) the relative abundance, **availability**, quality and regenerative capacity of natural resources **(including soil, land, water and biodiversity)** in the area **and its underground**;
- (c) the absorption capacity of the natural environment, paying particular attention to the following areas:
 - (i) wetlands, **riparian areas, river mouths**;
 - (ii) coastal zones **and the marine environment**;
 - (iii) mountain and forest areas;
 - (iv) nature reserves and parks;
 - (v) areas classified or protected under **national** legislation; **Natura 2000 areas designated by Contracting Parties pursuant to Directive 92/43/EEC and Directive 2009/147/EC**;
 - (vi) areas in which **there has already been a failure to meet** the environmental quality standards laid down in Union legislation **and relevant to the project, or in which it is considered that there is such a failure**;
 - (vii) densely populated areas;
 - (viii) landscapes of historical, cultural or archaeological significance.

3. TYPE AND CHARACTERISTICS OF THE POTENTIAL IMPACT

The **likely** significant effects of projects **on the environment** must be considered in relation to criteria set out in points 1 and 2 **of this Annex, with regard to the impact of the project on the**

factors specified in Article 3(1), taking into account:

- (a) the **magnitude and spatial** extent of the impact (**for example** geographical area and size of the **population likely to be affected**);
- (b) the **nature** of the impact;
- (c) the transboundary nature of the impact;
- (d) the **intensity** and complexity of the impact;
- (e) the probability of the impact;
- (f) the expected onset**, duration, frequency and reversibility of the impact;
- (g) the cumulation of the impact with the impact of other existing and/or approved projects;**
- (h) the possibility of effectively reducing the impact.**

ANNEX IV

INFORMATION REFERRED TO IN ARTICLE 5(1)

(INFORMATION FOR THE ENVIRONMENTAL IMPACT ASSESSMENT REPORT)

1. A description of the project, including in particular:

(a) a description of the location of the project;

(b) a description of the physical characteristics of the whole project, **including, where relevant, requisite demolition works**, and the land-use requirements during the construction and operational phases;

(c) a description of the main characteristics of the **operational phase of the project (in particular any production process)**, for instance, **energy demand and energy used**, nature and quantity of the materials **and natural resources (including water, land, soil and biodiversity)** used;

(d) an estimate, by type and quantity, of expected residues and emissions **(such as water, air, soil and subsoil pollution, noise, vibration, light, heat, radiation) and quantities and types of waste produced during the construction and operation phases.**

2. **A description of the reasonable alternatives (for example in terms of project design, technology, location, size and scale)** studied by the developer, **which are relevant to the proposed project and its specific characteristics**, and an indication of the main reasons for selecting the chosen option, **including a comparison of** the environmental effects.

3. A description of the aspects of the **current state of the environment (baseline scenario) and an outline of the likely evolution thereof without implementation of the project as far as natural changes from the baseline scenario can be assessed with reasonable effort on the basis of the availability of environmental information and scientific knowledge.**

4. A description of the factors **specified in Article 3(1)** likely to be significantly affected by the project: population, **human health, biodiversity (for example fauna and flora), land (for example land take), soil (for example organic matter, erosion, compaction, sealing), water (for example hydromorphological changes, quantity and quality), air, climate (for example greenhouse gas emissions, impacts relevant to adaptation), material assets, cultural heritage, including architectural and archaeological aspects, and landscape.**

5. A description of the likely significant effects of the project on the environment resulting from, *inter alia*:

(a) the **construction and existence of the project, including, where relevant, demolition works;**

(b) the use of natural resources, **in particular land, soil, water and biodiversity, considering as far as possible the sustainable availability of these resources;**

(c) the emission of pollutants, **noise, vibration, light, heat and radiation**, the creation of nuisances, and **the disposal and recovery of waste;**

(d) the risks to human health, cultural heritage or the environment (for example due to accidents or disasters);

(e) the cumulation of effects with other existing and/or approved projects, taking into

account any existing environmental problems relating to areas of particular environmental importance likely to be affected or the use of natural resources;

(f) the impact of the project on climate (for example the nature and magnitude of greenhouse gas emissions) and the vulnerability of the project to climate change;

(g) the technologies and the substances used.

The description of the likely significant effects on the factors specified in Article 3(1) should cover the direct effects and any indirect, secondary, cumulative, transboundary, short-term, medium-term and long-term, permanent and temporary, positive and negative effects of the project. This description should take into account the environmental protection objectives established at Union or Member State level which are relevant to the project.

6. A description of the forecasting methods or evidence, used to identify and assess the significant effects on the environment, including details of difficulties (for example technical deficiencies or lack of knowledge) encountered compiling the required information and the main uncertainties involved.

7. A description of the measures envisaged to **avoid**, prevent, reduce or, if possible, offset any **identified** significant adverse effects on the environment **and, where appropriate, of any proposed monitoring arrangements** (for example the preparation of a post-project analysis). That description should explain the extent, to which significant adverse effects on the environment are avoided, prevented, reduced or offset, and should cover both the construction and operational phases.

8. A description of the expected significant adverse effects of the project on the environment deriving from the vulnerability of the project to risks of major accidents and/or disasters which are relevant to the project concerned. Relevant information available and obtained through risk assessments pursuant to Union legislation such as Directive 2012/18/EU of the European Parliament and of the Council or Council Directive 2009/71/Euratom or relevant assessments carried out pursuant to national legislation may be used for this purpose provided that the requirements of this Directive are met. Where appropriate, this description should include measures envisaged to prevent or mitigate the significant adverse effects of such events on the environment and details of the preparedness for and proposed response to such emergencies.

9. A non-technical summary of the information provided under points 1 to 8.

10. A reference list detailing the sources used for the descriptions and assessments included in the report.

ANNEX V

<...>

DIRECTIVE (EU) 2016/802 of 11 May 2016 relating to a reduction in the sulphur content of certain liquid fuels (codification)

Incorporated and adapted by Ministerial Council Decision 2016/15/MC-EnC of 14 October 2016 on amending the Treaty establishing the Energy Community and adapting and implementing Directive (EU) 2016/802 of the European Parliament and of the Council and Commission Implementing Decision (EU) 2015/253.

Commission Implementing Decision (EU) 2015/253 laying down the rules concerning the sampling and reporting under Council Directive 1999/32/EC as regards the sulphur content of marine fuels, while being part of the Energy Community environmental *acquis*, is not displayed in the present Legal Framework.

The adaptations made by Ministerial Council Decision 2016/15/MC-EnC are highlighted in **bold and blue**, the changes to Directive 1999/32/EC introduced by Directive (EU) 2016/802/EU are highlighted in **bold**.

Whereas:

- (1) Council Directive 1999/32/EC has been substantially amended several times. In the interests of clarity and rationality, that Directive should be codified.
- (2) The environmental policy of the Union, as set out in the action programmes on the environment, and in particular in the Sixth Environment Action Programme adopted by Decision No 1600/2002/EC of the European Parliament and of the Council, and in the Seventh Environment Action Programme adopted by Decision No 1386/2013/EU of the European Parliament and of the Council, has as one of its objectives to achieve levels of air quality that do not give rise to significant negative impacts on, and risks to, human health and the environment.
- (3) Article 191(2) of the Treaty on the Functioning of the European Union (TFEU) provides that Union policy on the environment is to aim at a high level of protection, taking into account the diversity of situations in the various regions of the Union.
- (4) This Directive lays down the maximum permitted sulphur content of heavy fuel oil, gas oil, marine gas oil and marine diesel oil used in the Union.
- (5) Emissions from shipping due to the combustion of marine fuels with a high sulphur content contribute to air pollution in the form of sulphur dioxide and particulate matter, which harm human health and the environment and contribute to acid deposition. Without the measures set out in this Directive, emissions from shipping would soon have been higher than emissions from all land-based sources.
- (6) Acidification and atmospheric sulphur dioxide damage sensitive ecosystems, reduce biodiversity and amenity value and detrimentally affect crop production and the growth of forests. Acid rain falling in cities may cause significant damage to buildings and the architectural heritage. Sulphur dioxide pollution may also have a significant effect upon human health, particularly among those sectors of the population suffering from respiratory diseases.
- (7) Acidification is a transboundary phenomenon requiring Union as well as national or local solutions.
- (8) Emissions of sulphur dioxide contribute to the formation of particulate matter in the atmosphere.
- (9) Air pollution caused by ships at berth is a major concern for many harbour cities when it comes to their efforts to meet the Union's air quality limit values.
- (10) Member States should encourage the use of shore-side electricity, as the electricity for pres-

ent-day ships is usually provided by auxiliary engines.

(11) The Union and the individual Member States are Contracting Parties to the UN-ECE Convention of 13 November 1979 on Long-Range Transboundary Air Pollution. The second UN-ECE Protocol on transboundary pollution by sulphur dioxide stipulates that the Contracting Parties should reduce sulphur dioxide emissions in line with or beyond the 30% reduction specified in the first Protocol, and the second UN-ECE Protocol is based on the premise that critical loads and levels will continue to be exceeded in some sensitive areas. Further measures to reduce sulphur dioxide emissions will still be required. The Contracting Parties should therefore make further significant reductions in emissions of sulphur dioxide.

(12) Sulphur, which is naturally present in small quantities in oil and coal, has for decades been recognised as the dominant source of sulphur dioxide emissions, which are one of the main causes of 'acid rain' and one of the major causes of the air pollution experienced in many urban and industrial areas.

(13) Studies have shown that the benefits from reducing sulphur emissions by reductions in the sulphur content of fuels will often be considerably greater than the estimated costs to industry in this Directive. The technology exists and is well established for reducing the sulphur level of liquid fuels.

(14) In accordance with Article 193 TFEU, this Directive should not prevent any Member State from maintaining or introducing more stringent protective measures in order to encourage early implementation with respect to the maximum sulphur content of marine fuels, for instance using emission abatement methods outside SO_x Emission Control Areas. Such measures are required to be compatible with the Treaties and are to be notified to the Commission.

(15) A Member State, before introducing new, more stringent protective measures, should notify the draft measures to the Commission in accordance with Directive (EU) 2015/1535 of the European Parliament and of the Council.

(16) The TFEU requires consideration to be given to the special characteristics of the outermost regions of the Union, namely the French overseas departments, the Azores, Madeira and the Canary Islands.

(17) With regard to the limit on the sulphur content of heavy fuel oil, it is appropriate to provide for derogations in Member States and regions where the environmental conditions so allow.

(18) With regard to the limit on the sulphur content of heavy fuel oil, it is also appropriate to provide for derogations for their use in combustion plants which comply with the emission limit values laid down in Directive 2001/80/EC of the European Parliament and of the Council, or in Annex V to Directive 2010/75/EU of the European Parliament and of the Council.

(19) For refinery combustion plants excluded from the scope of point (d) of Article 3(2) or point (c) of Article 3(3) of this Directive the emissions of sulphur dioxide averaged over such plants should not exceed the limits set out in Directive 2001/80/EC, or Annex V to Directive 2010/75/EU, or any future revision of those Directives. In the application of this Directive, Member States should bear in mind that substitution by fuels other than those referred to in Article 2 should not produce an increase in emissions of acidifying pollutants.

(20) In 2008, the International Maritime Organisation (IMO) adopted a resolution to amend Annex VI to the Protocol of 1997 to amend the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL), containing regulations

for the prevention of air pollution from ships. The revised Annex VI to MARPOL entered into force on 1 July 2010.

(21) The revised Annex VI to MARPOL introduces, *inter alia*, stricter sulphur limits for marine fuel in SO_x Emission Control Areas (1,00% as of 1 July 2010 and 0,10% as of 1 January 2015) as well as in sea areas outside SO_x Emission Control Areas (3,50% as of 1 January 2012 and, in principle, 0,50% as of 1 January 2020). Most Member States are obliged, in accordance with their international commitments, to require ships to use fuel with a maximum sulphur content of 1,00% in SO_x Emission Control Areas as of 1 July 2010. In order to ensure coherence with international law as well as to secure proper enforcement of new globally established sulphur standards in the Union, this Directive should be in line with the revised Annex VI to MARPOL. In order to ensure a minimum quality of fuel used by ships either for fuel-based or technology-based compliance, marine fuel the sulphur content of which exceeds the general standard of 3,50% by mass should not be allowed for use in the Union, except for fuels supplied to ships using emission abatement methods operating in closed mode.

(22) Amendments to Annex VI to MARPOL regarding SO_x Emission Control Areas are possible under IMO procedures. In the event that further changes, including exemptions, are introduced with regard to the application of limits for SO_x Emission Control Areas in Annex VI to MARPOL, the Commission should consider any such changes and, where appropriate, without delay make the necessary proposal in accordance with the TFEU to fully align this Directive with the IMO rules regarding SO_x Emission Control Areas.

(23) The introduction of any new emission control areas should be subject to the IMO process under Annex VI to MARPOL and should be underpinned by a well-founded case based on environmental and economic grounds and supported by scientific data.

(24) In accordance with Regulation 18 of the revised Annex VI to MARPOL, Member States should endeavour to ensure the availability of marine fuels which comply with this Directive.

(25) In view of the global dimension of environmental politics and shipping emissions, ambitious emission standards should be set at a global level.

(26) The Union will continue to advocate more effective protection of areas sensitive to SO_x emissions and a reduction in the normal limit value for bunker fuel oil at the IMO.

(27) Passenger ships operate mostly in ports or close to coastal areas and their impacts on human health and the environment are significant. In order to improve air quality around ports and coasts, those ships are required to use marine fuel with a maximum sulphur content of 1,50% until stricter sulphur standards apply to all ships in territorial seas, exclusive economic zones and pollution control zones of Member States.

(28) In order to facilitate the transition to new engine technologies with the potential for significant further emission reductions in the maritime sector, the Commission should further explore opportunities to enable and encourage the uptake of gas-powered engines in ships.

(29) Proper enforcement of the obligations with regard to the sulphur content of marine fuels is necessary in order to achieve the aims of this Directive. The experience from the implementation of Directive 1999/32/EC has shown that there is a need for a stronger monitoring and enforcement regime in order to ensure the proper implementation of this Directive. To that end, it is necessary that Member States ensure sufficiently frequent and accurate sampling of marine fuel placed on the market or used on board ship as well as regular verification of ships' logbooks and bunker delivery notes. It is also necessary for Member States to establish a system of effective, proportionate and

dissuasive penalties for non-compliance with the provisions of this Directive. In order to ensure more transparent information, it is also appropriate to provide that the register of local suppliers of marine fuel be made publicly available.

(30) Complying with the low sulphur limits for marine fuels, particularly in SO_x Emission Control Areas, can result in a significant increase in the price of such fuels, at least in the short term, and can have a negative effect on the competitiveness of short sea shipping in comparison with other transport modes, as well as on the competitiveness of the industries in the countries bordering SO_x Emission Control Areas. Suitable solutions are necessary in order to reduce compliance costs for the affected industries, such as allowing for alternative, more cost-effective methods of compliance than fuel-based compliance and providing support, where necessary. The Commission should, based, *inter alia*, on reports from Member States, closely monitor the impacts of the shipping sector's compliance with the new fuel quality standards, particularly with regard to possible modal shift from sea to land-based transport and should, if appropriate, propose proper measures to counteract such a trend.

(31) Limiting modal shift from sea to land-based transport is important given that an increasing share of goods being transported by road would in many cases run counter to the Union's climate change objectives and increase congestion.

(32) The costs of the new requirements to reduce sulphur dioxide emissions could result in modal shift from sea to land-based transport and could have negative effects on the competitiveness of the industries. The Commission should make full use of instruments such as Marco Polo and the trans-European transport network to provide targeted assistance so as to minimise the risk of modal shift. Member States may consider it necessary to provide support to operators affected by this Directive in accordance with the applicable State aid rules.

(33) In accordance with existing guidelines on State aid for environmental protection, and without prejudice to future changes thereto, Member States may provide State aid in favour of operators affected by this Directive, including aid for retrofitting operations of existing vessels, if such aid measures are deemed to be compatible with the internal market in accordance with Articles 107 and 108 TFEU, in particular in light of the applicable guidelines on State aid for environmental protection. In this context, the Commission may take into account that the use of some emission abatement methods go beyond the requirements of this Directive by reducing not only the sulphur dioxide emissions but also other emissions.

(34) Access to emission abatement methods should be facilitated. Those methods can provide emission reductions at least equivalent to, or even greater than, those achievable using low sulphur fuel, provided that they have no significant negative impacts on the environment, such as marine ecosystems, and that they are developed subject to appropriate approval and control mechanisms. The already known alternative methods, such as the use of on-board exhaust gas cleaning systems, the mixture of fuel and liquefied natural gas or the use of biofuels should be recognised in the Union. It is important to promote the testing and development of new emission abatement methods in order, among other reasons, to limit modal shift from sea to land-based transport.

(35) Emission abatement methods hold the potential for significant emission reductions. The Commission should therefore promote the testing and development of such technologies, *inter alia*, by considering the establishment of a co-financed joint programme with industry, based on principles from similar programmes, such as the Clean Sky Programme.

(36) The Commission, in cooperation with Member States and stakeholders, should further develop measures identified in the Commission's Staff Working Paper of 16 September 2011 entitled 'Pollutant emission reduction from maritime transport and the sustainable waterborne transport toolbox'.

(37) In the case of a disruption in the supply of crude oil, petroleum products or other hydrocarbons, the Commission may authorise the application of a higher limit within a Member State's territory.

(38) Member States should establish the appropriate mechanisms for monitoring compliance with the provisions of this Directive. Reports on the sulphur content of liquid fuels should be submitted to the Commission.

(39) This Directive should contain detailed indications as regards the content and the format of the report to ensure harmonised reporting.

(40) The power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of the amendment of the equivalent emission values for, and the criteria for the use of, emission abatement methods laid down in Annexes I and II to this Directive, in order to adapt them to scientific and technical progress in such a way as to ensure strict consistency with the relevant instruments of the IMO, and in respect of the amendment of points (a) to (e) and (p) of Article 2, point (b)(i) of Article 13(2) and Article 13(3) of this Directive in order to adapt those provisions to scientific and technical progress. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

(41) In order to ensure uniform conditions for the implementation of this Directive, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council.

(42) It is appropriate for the Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) established by Regulation (EC) No 2099/2002 of the European Parliament and of the Council to assist the Commission in the approval of the emission abatement methods which are not covered by Council Directive 96/98/EC.

(43) Effective, proportionate and dissuasive penalties are important for the implementation of this Directive. Member States should include in those penalties fines calculated in such a way as to ensure that the fines at least deprive those responsible of the economic benefits derived from their infringement and that those fines gradually increase for repeated infringements. Member States should notify the provisions on penalties to the Commission.

(44) This Directive should be without prejudice to the obligations of the Member States relating to the time limits for the transposition into national law of the Directives set out in Annex III, Part B,

Article 1

Purpose and scope

1. The purpose of this Directive is to reduce the emissions of sulphur dioxide resulting from the combustion of certain types of liquid fuels and thereby to reduce the harmful effects of such emissions on man and the environment.

2. Reductions in emissions of sulphur dioxide resulting from the combustion of certain petrole-

um-derived liquid fuels shall be achieved by imposing limits on the sulphur content of such fuels as a condition for their use within **Contracting Parties'** territory, territorial seas and exclusive economic zones or pollution control zones.

The limitations on the sulphur content of certain petroleum-derived liquid fuels as laid down in this Directive shall not, however, apply to:

- (a) fuels intended for the purposes of research and testing;
- (b) fuels intended for processing prior to final combustion;
- (c) fuels to be processed in the refining industry;
- (d) <...>¹
- (e) fuels used by warships and other vessels on military service. However, each **Contracting Party** shall endeavour to ensure, by the adoption of appropriate measures not impairing the operations or operational capability of such ships, that the ships act in a manner consistent, so far as is reasonable and practical, with this Directive;
- (f) any use of fuels in a vessel necessary for the specific purpose of securing the safety of a ship or saving life at sea;
- (g) any use of fuels in a ship necessitated by damage sustained by it or its equipment, provided that all reasonable measures are taken after the occurrence of the damage to prevent or minimise excess emissions and that measures are taken as soon as possible to repair the damage. This shall not apply if the owner or master acted either with intent to cause damage, or recklessly;
- (h) without prejudice to Article 5, fuels used on board vessels employing emission abatement methods in accordance with Articles 8 and 10.

Article 2

Definitions

For the purpose of this Directive **the following definitions shall apply:**

(a) 'heavy fuel oil' means:

- (i) any petroleum-derived liquid fuel, excluding marine fuel, falling within CN codes 2710 19 51 to 2710 19 68, 2710 20 31, 2710 20 35 **or** 2710 20 39; or
- (ii) any petroleum-derived liquid fuel, other than gas oil as defined in point **(b)** and **other than marine fuels as defined in points (c), (d) and (e)**, which, by reason of its distillation limits, falls within the category of heavy oils intended for use as fuel and of which less than 65% by volume (including losses) distils at 250 °C by the ASTM D86 method. If the distillation cannot be determined by the ASTM D86 method, the petroleum product is likewise categorised as a heavy fuel oil;

(b) 'gas oil' means:

- (i) any petroleum-derived liquid fuel, excluding marine fuel, falling within CN codes 2710 19 25, 2710 19 29, 2710 19 47, 2710 19 48, 2710 20 17 or 2710 20 19; or

¹ According to point (a) of Article 2(1) of Decision 2016/15/MC-EnC, point (d) of Article 1(2) shall not be applicable in the Energy Community.

(ii) any petroleum-derived liquid fuel, excluding marine fuel, of which less than 65% by volume (including losses) distils at 250 °C and of which at least 85% by volume (including losses) distils at 350 °C by the ASTM D86 method. Diesel fuels as defined in point 2 of Article 2 of Directive 98/70/EC of the European Parliament and of the Council are excluded from this definition. Fuels used in non-road mobile machinery and agricultural tractors are also excluded from this definition;

(c) 'marine fuel' means any petroleum-derived liquid fuel intended for use or in use on board a vessel, including those fuels defined in ISO 8217. It includes any petroleum-derived liquid fuel in use on board inland waterway vessels or recreational craft, as defined respectively in Article 2 of Directive 97/68/EC of the European Parliament and of the Council and Article 1(3) of Directive 94/25/EC of the European Parliament and of the Council, when such vessels are at sea;

(d) 'marine diesel oil' means any marine fuel as defined for DMB grade in Table I of ISO 8217 with the exception of the reference to the sulphur content;

(e) 'marine gas oil' means any marine fuel as defined for DMX, DMA and DMZ grades in Table I of ISO 8217 with the exception of the reference to the sulphur content;

(f) 'MARPOL' means the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto;

(g) 'Annex VI to MARPOL' means the annex, entitled 'Regulations for the Prevention of Air Pollution from Ships', which the Protocol of 1997 added to MARPOL;

(h) 'SO_x Emission Control Areas' means sea areas defined as such by the International Maritime Organisation (IMO) under Annex VI to MARPOL;

(i) 'passenger ships' means ships that carry more than 12 passengers, where a passenger is every person other than:

- (i) the master and the members of the crew or other person employed or engaged in any capacity on board a ship on the business of that ship; and
- (ii) a child under 1 year of age;

(j) 'regular services' means a series of passenger ship crossings operated so as to serve traffic between the same two or more ports, or a series of voyages from and to the same port without intermediate calls, either:

- (i) according to a published timetable; or

(ii) with crossings so regular or frequent that they constitute a recognisable schedule;

(k) 'warship' means a ship belonging to the armed forces of a State, bearing the external marks distinguishing such ships of its nationality, under the command of an officer duly commissioned by the government of the State and whose name appears in the appropriate service list or its equivalent, and manned by a crew which is under regular armed forces discipline;

(l) 'ships at berth' means ships which are securely moored or anchored in a [Community](#) port while they are loading, unloading or hotelling, including the time spent when not engaged in cargo operations;

(m) 'placing on the market' means supplying or making available to third persons, against

payment or free of charge, anywhere within **Contracting Parties'** jurisdictions, marine fuels for on-board combustion. It excludes supplying or making available marine fuels for export in ships' cargo tanks;

(n) <...>²

(o) 'emission abatement method' means any fitting, material, appliance or apparatus to be fitted in a ship or other procedure, alternative fuel, or compliance method, used as an alternative to low sulphur marine fuel meeting the requirements set out in this Directive, that is verifiable, quantifiable and enforceable;

(p) 'ASTM method' means the methods laid down by the American Society for Testing and Materials in the 1976 edition of standard definitions and specifications for petroleum and lubricating products;

(q) 'combustion plant' means any technical apparatus in which fuels are oxidised in order to use the heat generated.

Article 3

Maximum sulphur content of heavy fuel oil

1. **Contracting Parties** shall <...> ensure that <...> heavy fuel oils are not used within their territory if their sulphur content exceeds 1,00% by mass.

2. <...> **Until 31 December 2027**, subject to appropriate monitoring of emissions by competent authorities, paragraph 1 shall not apply to heavy fuel oils used:

(a) in combustion plants which fall within the scope of **Directive 2001/80/EC**, which are **subject to Article 4(1) or (2) or point (a) of Article 4(3) of that Directive** and which comply with the emission limits for sulphur dioxide for such plants as set out **in that Directive**;

(b) in combustion plants which fall within the scope of **Directive 2001/80/EC**, which are **subject to point (b) of Article 4(3) and Article 4(6) of that Directive and the monthly average sulphur dioxide emissions of which do not exceed 1 700 mg/Nm³** at an oxygen content in the flue gas of 3% by volume on a dry basis;

(c) in combustion plants which do not fall under points (a) or (b), and the **monthly average** sulphur dioxide emissions of which do not exceed 1 700 mg/Nm³ at an oxygen content in the flue gas of 3% by volume on a dry basis;

(d) for combustion in refineries, where the monthly average of emissions of sulphur dioxide averaged over all combustion plants in the refinery, irrespective of the type of fuel or fuel combination used, but excluding plants which fall under points (a) and (b), **gas turbines and gas engines**, does not exceed 1 700 mg/Nm³ at an oxygen content in the flue gas of 3% by volume on a dry basis.

3. **As from 1 January 2028**, subject to appropriate monitoring of emissions by competent authorities, paragraph 1 shall not apply to heavy fuel oils used:

(a) in combustion plants which fall within the scope of **Chapter III of Directive 2010/75/EU**, and which comply with the emission limits for sulphur dioxide for such plants as set out in **Annex V to that Directive** or, where those emission limit values are not applicable in accordance with that Directive, for which the monthly average sulphur dioxide emissions does

² Not applicable in accordance with Article 2(1)(e) of Decision 2016/15/MC-EnC.

not exceed 1 700 mg/Nm³ at an oxygen content in the flue gas of 3% by volume on a dry basis;
(b) in combustion plants which do not fall under point (a), and the monthly average sulphur dioxide emissions of which does not exceed 1 700 mg/Nm³ at an oxygen content in the flue gas of 3% by volume on a dry basis;

(c) for combustion in refineries, where the monthly average of emissions of sulphur dioxide averaged over all combustion plants in the refinery, irrespective of the type of fuel or fuel combination used, but excluding plants falling under point (a), gas turbines and gas engines, does not exceed 1 700 mg/Nm³ at an oxygen content in the flue gas of 3% by volume on a dry basis. **Contracting Parties** shall take the necessary measures to ensure that no combustion plant using heavy fuel oil with a sulphur concentration greater than that referred to in paragraph 1 is operated without a permit issued by a competent authority, which specifies the emission limits.

4. <...>

5. If a **Contracting Party** avails itself of the possibilities referred to in paragraph 2, it shall, at least 12 months beforehand, inform the **Secretariat** and the public. The **Secretariat** shall be given sufficient information to assess whether the criteria mentioned in paragraph 2 are met. The **Secretariat** shall inform the other **Contracting Parties**.

Within six months of the date on which it receives the information from the **Contracting Party**, the **Secretariat** shall examine the measures envisaged and, in accordance with the procedure set out in Article 9, take a decision which it shall communicate to the **Contracting Parties**. This decision shall be reviewed every eight years on the basis of information to be provided to the **Secretariat** by the **Contracting Parties** concerned in accordance with the procedure set out in Article 9.³

Article 4

Maximum sulphur content in gas oil

1. **Contracting Parties** shall <...> ensure that gas oils <...> are not used within their territory <...> if their sulphur content exceeds 0,10% by mass.

2. <...>

3. Provided that the air quality standards for sulphur dioxide laid down in Directive 80/779/EEC or in any Community legislation which repeals and replaces these standards and other relevant Community provisions are respected and the emissions do not contribute to critical loads being exceeded in any **Contracting Party**, a **Contracting Party** may authorise gas oil with a sulphur content between 0,10 and 0,20% by mass to be used in part or the whole of its territory. Such authorisation shall apply only while emissions from a **Contracting Party** do not contribute to critical loads being exceeded in any **Contracting Party** and shall not extend beyond 1 January 2013.

4. If a **Contracting Party** avails itself of the possibilities referred to in paragraph 3, it shall, at least 12 months beforehand, inform the **Secretariat** and the public. The **Secretariat** shall be given sufficient information to assess whether the criteria mentioned in paragraph 3 are met. The **Secretariat** shall inform the other **Contracting Parties**.

Within six months of the date on which it receives the information from the **Contracting Party**, the

³ According to Article 4(1) of Decision 2016/15/MC-EnC, this provision is applicable until 30 June 2018 in the Energy Community.

Secretariat shall examine the measures envisaged and, in accordance with the procedure set out in Article 9, take a decision which it shall communicate to the **Contracting Parties**.⁴

Article 5

Maximum sulphur content in marine fuel

Contracting Parties shall ensure that marine fuels are not used within their territory if their sulphur content exceeds 3,50% by mass, except for fuels supplied to ships using emission abatement methods subject to Article 8 operating in closed mode.

Article 6

Maximum sulphur content of marine fuels used in territorial seas, exclusive economic zones and pollution control zones of **Contracting Parties**, including SO_x Emission Control Areas, and by passenger ships operating on regular services to or from **Community** ports

1. **Contracting Parties** shall take all necessary measures to ensure that marine fuels are not used in the areas of their territorial seas, exclusive economic zones and pollution control zones if the sulphur content of those fuels by mass exceeds:

(a) 3,50% as from 1 January 2018, without prejudice to commitments of certain **Contracting Parties** under Annex VI to the International Convention for the Prevention of Pollution from Ships (MARPOL)⁵;

(b) 0,50% as from 1 January 2020. This paragraph shall apply to all vessels of all flags, including vessels whose journey began outside of the **Community**, without prejudice to paragraphs 2 and 5 of this Article and Article 7.

2. **Contracting Parties** shall take all necessary measures to ensure that marine fuels are not used in the areas of their territorial seas, exclusive economic zones and pollution control zones falling within SO_x Emission Control Areas if the sulphur content of those fuels by mass exceeds:

(a) <...>,⁶

(b) 0,10% as from 1 January 2015, in accordance with Article 6(3).⁷

This paragraph shall apply to all vessels of all flags, including vessels whose journey began outside the **Community**.

The **Secretariat** shall have due regard to any future changes to the requirements pursuant to Annex VI to MARPOL applicable within SO_x Emission Control Areas, and, where appropriate, without undue delay make any relevant proposals with a view to amending this

⁴ According to Article 4(1) of Decision 2016/15/MC-EnC, this provision is applicable until 30 June 2018 in the Energy Community.

⁵ The text displayed here corresponds to point (d) of Article 2(1) of Decision 2016/15/MC-EnC.

⁶ Not applicable in accordance with Article 2(1)(a) of Decision 2016/15/MC-EnC.

⁷ The text displayed here corresponds to point (f) of Article 2(1) of Decision 2016/15/MC-EnC.

Directive accordingly.

3. The application date for paragraph 2 for any new sea areas, including ports, designated by the IMO as SO_x Emission Control Areas in accordance with Regulation 14(3)(b) of Annex VI to MARPOL shall be 12 months after the date of entry into force of the designation.

4. **Contracting Parties** shall be responsible for the enforcement of paragraph 2 at least in respect of:

- vessels flying their flag, and
- in the case of **Contracting Parties** bordering SO_x Emission Control Areas, vessels of all flags while in their ports.

Contracting Parties may also take additional enforcement action in respect of other vessels in accordance with international maritime law.

5. **Contracting Parties** shall take all necessary measures to ensure that marine fuels are not used in their territorial seas, exclusive economic zones and pollution control zones falling outside SO_x Emission Control Areas by passenger ships operating on regular services to or from any **Community** port if the sulphur content of those fuels exceeds 1,50% by mass until 1 January 2020.

Contracting Parties shall be responsible for the enforcement of this requirement at least in respect of vessels flying their flag and vessels of all flags while in their ports.

6. **Contracting Parties** shall require the correct completion of ships' logbooks, including fuel-changeover operations.

7. **Contracting Parties** shall endeavour to ensure the availability of marine fuels which comply with this Directive and inform the **Secretariat** of the availability of such marine fuels in its ports and terminals.

8. If a ship is found by a **Contracting Party** not to be in compliance with the standards for marine fuels which comply with this Directive, the competent authority of the **Contracting Party** is entitled to require the ship to:

- (a) present a record of the actions taken to attempt to achieve compliance; and
- (b) provide evidence that it attempted to purchase marine fuel which complies with this Directive in accordance with its voyage plan and, if it was not made available where planned, that attempts were made to locate alternative sources for such marine fuel and that, despite best efforts to obtain marine fuel which complies with this Directive, no such marine fuel was made available for purchase.

The ship shall not be required to deviate from its intended voyage or to delay unduly the voyage in order to achieve compliance.

If a ship provides the information referred to in the first subparagraph, the **Contracting Party** concerned shall take into account all relevant circumstances and the evidence presented to determine the appropriate action to take, including not taking control measures.

A ship shall notify its flag State and the competent authority of the relevant port of destination when it cannot purchase marine fuel which complies with this Directive.

A port State shall notify the **Secretariat** when a ship has presented evidence of the non-availability of marine fuels which comply with this Directive.

9. **Contracting Parties** shall, in accordance with Regulation 18 of Annex VI to MARPOL:

- (a) maintain a publicly available register of local suppliers of marine fuel;
- (b) ensure that the sulphur content of all marine fuels sold in their territory is documented by the supplier on a bunker delivery note, accompanied by a sealed sample signed by the representative of the receiving ship;
- (c) take action against marine fuel suppliers that have been found to deliver fuel that does not comply with the specification stated on the bunker delivery note;
- (d) ensure that remedial action is taken to bring any non-compliant marine fuel discovered into compliance.

10. **Contracting Parties** shall ensure that marine diesel oils are not placed on the market in their territory if the sulphur content of those marine diesel oils exceeds 1,50% by mass.

Article 7

Maximum sulphur content of marine fuels used by ships at berth in **Community** ports

1. **Contracting Parties** shall take all necessary measures to ensure that ships at berth in **Community** ports do not use marine fuels with a sulphur content exceeding 0,10% by mass, allowing sufficient time for the crew to complete any necessary fuel-changeover operation as soon as possible after arrival at berth and as late as possible before departure. **Contracting Parties** shall require the time of any fuel-changeover operation to be recorded in ships' logbooks.

2. Paragraph 1 shall not apply:

- (a) whenever, according to published timetables, ships are due to be at berth for less than two hours;
- (b) to ships which switch off all engines and use shore-side electricity while at berth in ports.

3. **Contracting Parties** shall ensure that marine gas oils are not placed on the market in their territory if the sulphur content of those marine gas oils exceeds 0,10% by mass.

Article 8

Emission abatement methods

1. **Contracting Parties** shall allow the use of emission abatement methods by ships of all flags in their ports, territorial seas, exclusive economic zones and pollution control zones, as an alternative to using marine fuels that meet the requirements of Articles 6 and 7, subject to paragraphs 2 and 4 of this Article.

2. Ships using the emission abatement methods referred to in paragraph 1 shall continuously achieve reductions of sulphur dioxide emissions that are at least equivalent to the reductions that would be achieved by using marine fuels that meet the requirements of Articles 6 and 7. Equivalent emission values shall be determined in accordance with Annex I.

3. **Contracting Parties** shall, as an alternative solution for reducing emissions, encourage the use of onshore power supply systems by docked vessels.
4. The emission abatement methods referred to in paragraph 1 shall comply with the criteria specified in the instruments referred to in Annex II.
5. <...>⁸

Article 9

Approval of emission abatement methods for use on board ships flying the flag of a **Contracting Party**

1. Emission abatement methods falling within the scope of Directive 96/98/EC shall be approved in accordance with that Directive.
2. Emission abatement methods not covered by paragraph 1 of this Article shall be approved in accordance with the procedure referred to in Article 3(2) of Regulation (EC) No 2099/2002, taking into account:
 - (a) guidelines developed by the IMO;
 - (b) the results of any trials conducted under Article 10;
 - (c) effects on the environment, including achievable emission reductions, and impacts on ecosystems in enclosed ports, harbours and estuaries; and
 - (d) the feasibility of monitoring and verification.

Article 10

Trials of new emission abatement methods

Contracting Parties may, in cooperation with other **Contracting Parties**, as appropriate, approve trials of ship emission abatement methods on vessels flying their flag, or in sea areas within their jurisdiction. During those trials, the use of marine fuels meeting the requirements of Articles 6 and 7 shall not be mandatory, provided that all of the following conditions are fulfilled:

- (a) the **Secretariat** and any port State concerned are notified in writing at least 6 months before trials begin;
- (b) permits for trials do not exceed 18 months in duration;
- (c) all ships involved install tamper-proof equipment for the continuous monitoring of funnel gas emissions and use it throughout the trial period;
- (d) all ships involved achieve emission reductions which are at least equivalent to those which would be achieved through the sulphur limits for fuels specified in this Directive;
- (e) there are proper waste management systems in place for any waste generated by the emission abatement methods throughout the trial period;

⁸ Not applicable in accordance with Article 2(1)(g) of Decision 2016/15/MC-EnC.

- (f) there is an assessment of impacts on the marine environment, particularly ecosystems in enclosed ports, harbours and estuaries throughout the trial period; and
- (g) full results are provided to the **Secretariat** and are made publicly available within 6 months of the end of the trials.

Article 11

Financial measures

Contracting Parties may adopt financial measures in favour of operators affected by this Directive where such financial measures are in accordance with State aid rules applicable and to be adopted in this area.

Article 12

Change in the supply of fuels

If, as a result of a sudden change in the supply of crude oil, petroleum products or other hydrocarbons, it becomes difficult for a **Contracting Party** to apply the limits on the maximum sulphur content referred to in Articles 3 and 4, that **Contracting Party** shall inform the **Secretariat** thereof. The **Secretariat** may authorise a higher limit to be applicable within the territory of that **Contracting Party** for a period not exceeding 6 months. It shall notify the **Ministerial Council** and the **Contracting Parties of its decision**. Any **Contracting Party** may refer that decision to the **Ministerial Council** within 1 month. The **Ministerial Council**, acting by a qualified majority, may adopt a different decision within 2 months.

Article 13

Sampling and analysis

1. **Contracting Parties** shall take all necessary measures to check by sampling that the sulphur content of fuels used complies with Articles 3 to 7. The sampling shall commence <...> on the date on which the relevant limit for maximum sulphur content in the fuel comes into force. It shall be carried out **periodically** with sufficient frequency and **quantities such that** the samples are representative of the fuel examined, **and in the case of marine fuel, of the fuel being used by vessels while in relevant sea areas and ports. The samples shall be analysed without undue delay.**

2. The following means of sampling, analysis and inspection of marine fuel shall be used:

(a) inspection of ships' logbooks and bunker delivery notes; and

(b) as appropriate, the following means of sampling and analysis:

- (i) sampling of the marine fuel for on-board combustion while being delivered to ships, in accordance with the Guidelines for the sampling of fuel oil for determination of compliance with the revised Annex VI to MARPOL, adopted on 17 July 2009 by Resolution 182(59) of the Marine Environment Protection Committee (MEPC) of the IMO, and

analysis of its sulphur content; or

(ii) sampling and analysis of the sulphur content of marine fuel for on-board combustion contained in tanks, where technically and economically feasible, and in sealed bunker samples on board ships.

3. The reference method adopted for determining the sulphur content shall be ISO method 8754 (2003) or EN ISO 14596:2007.

In order to determine whether marine fuel delivered to, and used on board, ships is compliant with the sulphur limits required by Articles 4 to 7, the fuel verification procedure set out in Appendix VI to Annex VI to MARPOL shall be used.

4. <...>⁹

Article 14

Reporting and review

1. Each year by 30 June, **Contracting Parties** shall, on the basis of the results of the sampling, analysis and inspections carried out in accordance with Article 13, submit a report to the **Secretariat** on the compliance with the sulphur standards set out in this Directive for the preceding year.

On the basis of the reports received in accordance with the first subparagraph of this paragraph and the notifications regarding the non-availability of marine fuel which complies with this Directive submitted by **Contracting Parties** in accordance with the fifth subparagraph of Article 6(8), the **Secretariat** shall, within 12 months of the date referred to in the first subparagraph of this paragraph, draw up and publish a report on the implementation of this Directive. The **Secretariat** shall evaluate the need for further strengthening of the relevant provisions of this Directive and make any appropriate legislative proposals to that effect.

2. By 31 December 2013, the **Secretariat** shall submit a report to the European Parliament and to the **Ministerial Council** which shall be accompanied, if appropriate, by legislative proposals. The **Secretariat** shall consider in its report the potential for reducing air pollution taking into account, *inter alia*: annual reports submitted in accordance with paragraphs 1 and 3; observed air quality and acidification; fuel costs; potential economic impact and observed modal shift; and progress in reducing emissions from ships.

3. <...>¹⁰

⁹ Not applicable in accordance with Article 2(1)(g) of Decision 2016/15/MC-EnC.

¹⁰ Not applicable in accordance with Article 2(1)(g) of Decision 2016/15/MC-EnC.

Article 15

Adaptation to scientific and technical progress

The **Secretariat** shall be empowered to adopt delegated acts in accordance with Article 16 concerning the adaptations of points (a) to (e) and (p) of Article 2, point (b)(i) of Article 13(2) and Article 13(3) to scientific and technical progress. Such adaptations shall not result in any direct changes to the scope of this Directive or to sulphur limits for fuels specified in this Directive.

Article 16

Exercise of the delegation

<...>

Article 17

Committee procedure

<...>

Article 18

Penalties

Contracting Parties shall determine the penalties applicable to breaches of the national provisions adopted pursuant to this Directive.

The penalties determined shall be effective, proportionate and dissuasive and may include fines calculated in such a way as to ensure that the fines at least deprive those responsible of the economic benefits derived from the infringement of the national provisions as referred to in the first paragraph and that those fines gradually increase for repeated infringements.

Article 19

Repeal

1. Contracting Parties shall bring into force the laws, regulations and administrative provisions necessary to comply with Article 1(2), Article 2, Article 3(3), Articles 5 to 11, 13, 14 and 15 of Directive (EU) 2016/802 by 30 June 2018 at the latest and with Decision (EU) 2015/253 by 1 January 2018 at the latest.¹¹ They shall forthwith communicate to the Energy Community Secretariat the text of those provisions.

When Contracting Parties adopt those provisions, they shall contain a reference to this Decision, Directive (EU) 2016/802 and Decision (EU) 2015/253 or be accompanied by such a ref-

¹¹ Until 30 June 2018, Directive 1999/32/EC is applicable in the Energy Community. Contracting Parties were obliged to bring into force the laws, regulations and administrative provisions necessary to comply with that Directive until 31 December 2011 (in accordance with their Accession Protocols, 1 January 2012 for Ukraine, 31 December 2014 for Moldova and 1 September 2021 for Georgia).

erence on the occasion of their official publication. They shall also include a statement that references in existing laws, regulations and administrative provisions to Directive 93/12/EEC shall be construed as references to Directive (EU) 2016/802. Contracting Parties shall determine how such reference is to be made and how that statement is to be formulated.

2. Contracting Parties shall communicate to the Energy Community Secretariat the text of the main provisions of national law which they adopt in the field covered by this Decision, Directive (EU) 2016/802 and Decision (EU) 2015/253.¹²

Article 20

Entry into force

This Decision shall enter into force on the date of its adoption.¹³

Article 21

Addressees

This Decision is addressed to the Contracting Parties of the Treaty establishing the Energy Community.¹⁴

¹² The text displayed here corresponds to Article 4 of Decision 2016/15/MC-EnC.

¹³ The text displayed here corresponds to Article 5 of Decision 2016/15/MC-EnC.

¹⁴ The text displayed here corresponds to Article 6 of Decision 2016/15/MC-EnC.

ANNEX I

EQUIVALENT EMISSION VALUES FOR EMISSION ABATEMENT METHODS AS
REFERRED TO IN ARTICLE 8(2)

Marine fuel sulphur limits referred to in Articles 6 and 7 of this Directive and Regulations 14.1 and 14.4 of Annex VI to MARPOL and corresponding emission values referred to in Article 8(2):

Marine fuel Sulphur Content (% m/m)	Ratio Emission SO ₂ (ppm)/CO ₂ (% v/v)
3,50	151,7
1,50	65,0
1,00	43,3
0,50	21,7
0,10	4,3

Note:

- the use of the Ratio Emissions limits is only applicable when using petroleum-based distillate or residual fuel oils,
- in justified cases where the CO₂ concentration is reduced by the exhaust gas cleaning (EGC) unit, the CO₂ concentration may be measured at the EGC unit inlet, provided that the correctness of such a methodology can be clearly demonstrated.

ANNEX II

CRITERIA FOR THE USE OF EMISSION ABATEMENT METHODS AS REFERRED TO IN ARTICLE 8(4)

The emission abatement methods referred to in Article 8 shall comply at least with the criteria specified in the following instruments, as applicable:

Emission abatement method	Criteria for use
Mixture of marine fuel and boil-off gas	Commission Decision 2010/769/EU ¹ .
Exhaust gas cleaning systems	Resolution MEPC.184(59) adopted on 17 July 2009 'Washwater resulting from exhaust gas cleaning systems which make use of chemicals, additives, preparations and relevant chemicals created <i>in situ</i> , referred to in point 10.1.6.1 of Resolution MEPC.184(59), shall not be discharged into the sea, including enclosed ports, harbours and estuaries, unless it is demonstrated by the ship operator that such washwater discharge has no significant negative impacts on and does not pose risks to human health and the environment. If the chemical used is caustic soda it is sufficient that the washwater meets the criteria set out in Resolution MEPC.184(59) and its pH does not exceed 8,0.
Biofuels	Use of biofuels as defined in Directive 2009/28/EC of the European Parliament and of the Council ² that comply with the relevant CEN and ISO standards. The mixtures of biofuels and marine fuels shall comply with the sulphur standards set out in Article 5, Article 6(1), (2) and (5) and Article 7 of this Directive.

¹ Commission Decision 2010/769/EU of 13 December 2010 on the establishment of criteria for the use by liquefied natural gas carriers of technological methods as an alternative to using low sulphur marine fuels meeting the requirements of Article 4b of Council Directive 1999/32/EC relating to a reduction in the sulphur content of certain liquid fuels as amended by Directive 2005/33/EC of the European Parliament and of the Council on the sulphur content of marine fuels (OJ L328, 14.12.2010, p. 15).

² Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC (OJ L140, 5.6.2009, p. 16).

DIRECTIVE 2001/80/EC of 23 October 2001 on the limitation of emissions of certain pollutants into the air from large combustion plants

Adapted by Ministerial Council Decision 2013/05/MC-EnC of 24 October 2013 on the implementation of Directive 2001/80/EC of the European Parliament and of the Council of 23 October 2001 on the limitation of emissions of certain pollutants into the air from large combustion plants.¹

*The adaptations made by Ministerial Council Decision 2013/05/MC-EnC are highlighted in **bold and blue**.*

Whereas:

(1) Council Directive 88/609/EEC of 24 November 1988 on the limitation of emissions of certain pollutants into the air from large combustion plants has contributed to the reduction and control of atmospheric emissions from large combustion plants. It should be recast in the interests of clarity.

(2) The Fifth Environmental Action Programme sets as objectives that the critical loads and levels of certain acidifying pollutants such as sulphur dioxide (SO₂) and nitrogen oxides (NO_x) should not be exceeded at any time and, as regards air quality, that all people should be effectively protected against recognised health risks from air pollution.

(3) All Member States have signed the Gothenburg Protocol of 1 December 1999 to the 1979 Convention of the United Nations Economic Commission for Europe (UNECE) on long-range transboundary air pollution to abate acidification, eutrophication and ground-level ozone, which includes, *inter alia*, commitments to reduce emissions of sulphur dioxide and oxides of nitrogen.

(4) The Commission has published a Communication on a Community strategy to combat acidification in which the revision of Directive 88/609/EEC was identified as being an integral component of that strategy with the long term aim of reducing emissions of sulphur dioxide and nitrogen oxides sufficiently to bring depositions and concentrations down to levels below the critical loads and levels.

(5) In accordance with the principle of subsidiarity as set out in Article 5 of the Treaty, the objective of reducing acidifying emissions from large combustion plants cannot be sufficiently achieved by the Member States acting individually and uncoordinated action offers no guarantee of achieving the desired objective; in view of the need to reduce acidifying emissions across the Community, it is more effective to take action at Community level.

(6) Existing large combustion plants are significant contributors to emissions of sulphur dioxide and nitrogen oxides in the Community and it is necessary to reduce these emissions. It is therefore necessary to adapt the approach to the different characteristics of the large combustion plant sector in the Member States.

(7) Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control sets out an integrated approach to pollution prevention and control in which all the aspects of an installation's environmental performance are considered in an integrated manner; combustion installations with a rated thermal input exceeding 50 MW are included within the scope of that Directive; pursuant to Article 15(3) of that Directive an inventory of the principal emissions

¹ Ministerial Council Decision 2013/05/MC-EnC was subsequently amended by Ministerial Council Decision 2015/07/MC-EnC on amending Decision D/2013/05/MC-EnC of 24 October 2013 on the implementation of Directive 2001/80/EC of the European Parliament and of the Council on the limitation of emissions of certain pollutants into the air from large combustion plants and on amending Annex II of the Energy Community Treaty.

and sources responsible is to be published every three years by the Commission on the basis of data supplied by the Member States. Pursuant to Article 18 of that Directive, acting on a proposal from the Commission, the Council will set emission limit values in accordance with the procedures laid down in the Treaty for which the need for Community action has been identified, on the basis, in particular, of the exchange of information provided for in Article 16 of that Directive.

(8) Compliance with the emission limit values laid down by this Directive should be regarded as a necessary but not sufficient condition for compliance with the requirements of Directive 96/61/EC regarding the use of best available techniques. Such compliance may involve more stringent emission limit values, emission limit values for other substances and other media, and other appropriate conditions.

(9) Industrial experience in the implementation of techniques for the reduction of polluting emissions from large combustion plants has been acquired over a period of 15 years.

(10) The Protocol on heavy metals to the UNECE Convention on long-range transboundary air pollution recommends the adoption of measures to reduce heavy metals emitted by certain installations. It is known that benefits from reducing dust emissions by dust abatement equipment will provide benefits on reducing particle-bound heavy metal emissions.

(11) Installations for the production of electricity represent an important part of the large combustion plant sector.

(12) Directive 96/92/EC of the European Parliament and of the Council of 19 December 1996 concerning common rules for the internal market in electricity is intended *inter alia* to have the effect of distributing new production capacity among new arrivals in the sector.

(13) The Community is committed to a reduction of carbon dioxide emissions. Where it is feasible the combined production of heat and electricity represents a valuable opportunity for significantly improving overall efficiency in fuel use.

(14) A significant increase in the use of natural gas for producing electricity is already underway and is likely to continue, in particular through the use of gas turbines.

(15) In view of the increase in energy production from biomass, specific emission standards for this fuel are justified.

(16) The Council Resolution of 24 February 1997 on a Community strategy for waste management emphasises the need for promoting waste recovery and states that appropriate emission standards should apply to the operation of facilities in which waste is incinerated in order to ensure a high level of protection for the environment.

(17) Industrial experience has been gained concerning techniques and equipment for the measurement of the principal pollutants emitted by large combustion plants; the European Committee for Standardisation (CEN) has undertaken work with the aim of providing a framework securing comparable measurement results within the Community and guaranteeing a high level of quality of such measurements.

(18) There is a need to improve knowledge concerning the emission of the principal pollutants from large combustion plants. In order to be genuinely representative of the level of pollution of an installation, such information should also be associated with knowledge concerning its energy consumption.

(19) This Directive is without prejudice to the time limits within which the Member States must trans-

pose and implement Directive 88/609/EEC,

Article 1

This Directive shall apply to combustion plants, the rated thermal input of which is equal to or greater than 50 MW, irrespective of the type of fuel used (solid, liquid or gaseous).

Article 2

For the purpose of this Directive:

1. "emission" means the discharge of substances from the combustion plant into the air;
2. "waste gases" means gaseous discharges containing solid, liquid or gaseous emissions; their volumetric flow rates shall be expressed in cubic metres per hour at standard temperature (273 K) and pressure (101,3 kPa) after correction for the water vapour content, hereinafter referred to as (Nm³/h);
3. "emission limit value" means the permissible quantity of a substance contained in the waste gases from the combustion plant which may be discharged into the air during a given period; it shall be calculated in terms of mass per volume of the waste gases expressed in mg/Nm³, assuming an oxygen content by volume in the waste gas of 3% in the case of liquid and gaseous fuels, 6% in the case of solid fuels and 15% in the case of gas turbines;
4. "rate of desulphurisation" means the ratio of the quantity of sulphur which is not emitted into the air at the combustion plant site over a given period to the quantity of sulphur contained in the fuel which is introduced into the combustion plant facilities and which is used over the same period;
5. "operator" means any natural or legal person who operates the combustion plant, or who has or has been delegated decisive economic power over it;
6. "fuel" means any solid, liquid or gaseous combustible material used to fire the combustion plant with the exception of waste covered by Council Directive 89/369/EEC of 8 June 1989 on the prevention of air pollution from new municipal waste incineration plants, Council Directive 89/429/EEC of 21 June 1989 on the reduction of air pollution from existing municipal waste incineration plants, and Council Directive 94/67/EC of 16 December 1994 concerning the incineration of hazardous waste or any subsequent Community act repealing and replacing one or more of these Directives;
7. "combustion plant" means any technical apparatus in which fuels are oxidised in order to use the heat thus generated.

This Directive shall apply only to combustion plants designed for production of energy with the exception of those which make direct use of the products of combustion in manufacturing processes. In particular, this Directive shall not apply to the following combustion plants:

- (a) plants in which the products of combustion are used for the direct heating, drying, or any other treatment of objects or materials e.g. reheating furnaces, furnaces for heat treatment;
- (b) post-combustion plants i.e. any technical apparatus designed to purify the waste gases by combustion which is not operated as an independent combustion plant;

- (c) facilities for the regeneration of catalytic cracking catalysts;
- (d) facilities for the conversion of hydrogen sulphide into sulphur;
- (e) reactors used in the chemical industry;
- (f) coke battery furnaces;
- (g) cowpers;
- (h) any technical apparatus used in the propulsion of a vehicle, ship or aircraft;
- (i) gas turbines used on offshore platforms;
- (j) gas turbines licensed before 27 November 2002 or which in the view of the competent authority are the subject of a full request for a licence before 27 November 2002 provided that the plant is put into operation no later than 27 November 2003 without prejudice to Article 7(1) and Annex VIII(A) and (B);

Plants powered by diesel, petrol and gas engines shall not be covered by this Directive.

Where two or more separate new plants are installed in such a way that, taking technical and economic factors into account, their waste gases could, in the judgement of the competent authorities, be discharged through a common stack, the combination formed by such plants shall be regarded as a single unit;

8. "multi-fuel firing unit" means any combustion plant which may be fired simultaneously or alternately by two or more types of fuel;

9. "new plant" means any combustion plant for which the original construction licence or, in the absence of such a procedure, the original operating licence was granted on or after **1 July 1992**;

10. "existing plant" means any combustion plant for which the original construction licence or, in the absence of such a procedure, the original operating licence was granted before **1 July 1992**;

11. "biomass" means products consisting of any whole or part of a vegetable matter from agriculture or forestry which can be used as a fuel for the purpose of recovering its energy content and the following waste used as a fuel:

- (a) vegetable waste from agriculture and forestry;
 - (b) vegetable waste from the food processing industry, if the heat generated is recovered;
 - (c) fibrous vegetable waste from virgin pulp production and from production of paper from pulp, if it is co-incinerated at the place of production and the heat generated is recovered;
 - (d) cork waste;
 - (e) wood waste with the exception of wood waste which may contain halogenated organic compounds or heavy metals as a result of treatment with wood preservatives or coating, and which includes in particular such wood waste originating from construction and demolition waste;
12. "gas turbine" means any rotating machine which converts thermal energy into mechanical work, consisting mainly of a compressor, a thermal device in which fuel is oxidised in order to heat the working fluid, and a turbine.
13. "Outermost Regions" means the French Overseas Departments with regard to France, the Azores and Madeira with regard to Portugal and the Canary Islands with regard to Spain.

Article 3

1. Not later than 1 July 1990 **Contracting Parties** shall draw up appropriate programmes for the progressive reduction of total annual emissions from existing plants. The programmes shall set out the timetables and the implementing procedures.
2. In accordance with the programmes mentioned in paragraph 1, **Contracting Parties** shall continue to comply with the emission ceilings and with the corresponding percentage reductions laid down for sulphur dioxide in Annex I, columns 1 to 6, and for oxides of nitrogen in Annex II, columns 1 to 4, by the dates specified in those Annexes, until the implementation of the provisions of Article 4 that apply to existing plants.
3. When the programmes are being carried out, **Contracting Parties** shall also determine the total annual emissions in accordance with Annex VIII(C).
4. If a substantial and unexpected change in energy demand or in the availability of certain fuels or certain generating installations creates serious technical difficulties for the implementation by a **Contracting Party** of its programme drawn up under paragraph 1, the **Secretariat** shall, at the request of the **Contracting Party** concerned and taking into account the terms of the request, take a decision to modify, for that **Contracting Party**, the emission ceilings and/or the dates set out in Annexes I and II and communicate its decision to the Council and to the **Contracting Parties**. Any **Contracting Party** may within three months refer the decision of the **Secretariat** to the Council. The Council, acting by a qualified majority, may within three months take a different decision.

Article 4

1. Without prejudice to Article 17 **Contracting Parties** shall take appropriate measures to ensure that all licences for the construction or, in the absence of such a procedure, for the operation of new plants which in the view of the competent authority are the subject of a full request for a licence before 27 November 2002, provided that the plant is put into operation no later than 27 November 2003 contain conditions relating to compliance with the emission limit values laid down in part A of Annexes III to VII in respect of sulphur dioxide, nitrogen oxides and dust.
2. **Contracting Parties** shall take appropriate measures to ensure that all licences for the construction or, in the absence of such a procedure, for the operation of new plants, other than those covered by paragraph 1, contain conditions relating to compliance with the emission limit values laid down in part B of Annexes III to VII in respect of sulphur dioxide, nitrogen oxides and dust.
3. Without prejudice to Directive 96/61/EC and Council Directive 96/62/EC of 27 September 1996 on ambient air quality assessment and management, **Contracting Parties** shall, by **1 January 2018** at the latest, achieve significant emission reductions by:
 - (a) taking appropriate measures to ensure that all licences for the operation of existing plants contain conditions relating to compliance with the emission limit values established for new plants referred to in paragraph 1; or
 - (b) ensuring that existing plants are subject to the national emission reduction plan referred to in paragraph 6; and, where appropriate, applying Articles 5, 7 and 8.
4. **With the exception of plants for which a date of closure prior to 1 January 2018 has**

been agreed by the authorities via bilateral agreements with the European Union or other international organisations, existing plants may be exempted from compliance with the emission limit values referred to in paragraph 3 and from their inclusion in the national emission reduction plan on the following conditions:

(a) the operator of an existing plant undertakes, in a written declaration submitted by 31 December 2015 at the latest to the competent authority, not to operate the plant for more than 20 000 operational hours starting from 1 January 2018 and ending no later than 31 December 2023;

(b) the Ministerial Council, in the form of a decision and following a verification by the Secretariat that the above conditions are met, authorizes this exemption in the form of a decision approved by the majority of its members including a vote in favour by the European Union.

The operator is required to submit each year to the competent authority a record of the used and unused time allowed for the plants' remaining operational life. Contracting Parties are required to submit each year a summary of these reports to the Secretariat.

From the point in time when the plant has been operating for 20 000 hours since 1 January 2018 and in any case from 1 January 2024 onwards, the plant shall not be operated further unless it meets the emission limit values set out in Part 2 of Annex V to Directive 2010/75/EU.²

5. **Contracting Parties** may require compliance with emission limit values and time limits for implementation which are more stringent than those set out in paragraphs 1, 2, 3 and 4 and in Article 10. They may include other pollutants, and they may impose additional requirements or adaptation of plant to technical progress.

6. **Contracting Parties** may, without prejudice to this Directive and Directive 96/61/EC, and taking into consideration the costs and benefits as well as their obligations under Directive 2001/81/EC of the European Parliament and of the Council of 23 October 2001 on national emission ceilings for certain atmospheric pollutants and Directive 96/62/EC, define and implement a national emission reduction plan for existing plants, taking into account, *inter alia*, compliance with the ceilings as set out in Annexes I and II.

The national emission reduction plan shall reduce the total annual emissions of nitrogen oxides (NO_x), sulphur dioxide (SO₂) and dust from existing plants to the levels that would have been achieved by applying the emission limit values referred to in paragraph 3 to the existing plants in operation in the year **2012**, (including those existing plants undergoing a rehabilitation plan in **2012**, approved by the competent authority, to meet emission reductions required by national legislation) on the basis of each plant's actual annual operating time, fuel used and thermal input, averaged over the last five years of operation up to and including **2012**.

The closure of a plant included in the national emission reduction plan shall not result in an increase in the total annual emissions from the remaining plants covered by the plan.

The national emission reduction plan may under no circumstances exempt a plant from the provisions laid down in relevant Community legislation, including *inter alia* Directive 96/61/EC.

The following conditions shall apply to national emission reduction plans:

² The text displayed here corresponds to Article 4 of Decision 2013/05/MC-EnC.

(a) the plan shall comprise objectives and related targets, measures and timetables for reaching these objectives and targets, and a monitoring mechanism;

(b) **Contracting Parties** shall communicate their national emission reduction plan to the **Secretariat** no later than **31 December 2015**;

(c) within **nine** months of the communication referred to in point (b) the **Secretariat** shall evaluate whether or not the plan meets the requirements of this paragraph. When the **Secretariat** considers that this is not the case, it shall inform the **Contracting Party** and within the subsequent three months the **Contracting Party** shall communicate any measures it has taken in order to ensure that the requirements of this paragraph are met;

(d) the **Secretariat** shall, no later than 27 November 2002, develop guidelines to assist **Contracting Parties** in the preparation of their plans.

National emission reduction plans shall be in use up to 31 December 2027 at the latest.

The ceilings for the year 2018 shall be calculated on the basis of the applicable emission limit values at the time of submission of the plan as set out in Part A to Annexes III to VII to Directive 2001/80/EC or, where applicable, on the basis of the rates of desulphurisation set out in Annex III to Directive 2001/80/EC. In the case of gas turbines, the emission limit values for nitrogen oxides set out for such plants in Part B of Annex VI to Directive 2001/80/EC shall be used.

The ceilings for the year 2023 shall be calculated on the basis of the applicable emission limit values in that year set out in Part A to Annexes III to VII to Directive 2001/80/EC or, where applicable, on the basis of the rates of desulphurisation set out in Annex III to Directive 2001/80/EC. In the case of gas turbines, the emission limit values for nitrogen oxides set out for such plants in Part B of Annex VI to Directive 2001/80/EC shall be used. The ceilings for the years 2019 to 2022 shall be set providing a linear trend between the ceilings of 2018 and 2023.

The ceilings for the year 2026 and 2027 shall be calculated on the basis of the relevant emission limit values set out in Part 1 of Annex V to Directive 2010/75/EU or, where applicable, the relevant rates of desulphurisation set out in Part 5 of Annex V to Directive 2010/75/EU. The ceilings for the years 2024 and 2025 shall be set providing a linear decrease of the ceilings between 2023 and 2026.³

7. Not later than 31 December 2004 and in the light of progress towards protecting human health and attaining the Community's environmental objectives for acidification and for air quality pursuant to Directive 96/62/EC, the **Secretariat** shall submit a report to the European Parliament and the Council in which it shall assess:

(a) the need for further measures;

³ The text displayed here corresponds to Article 5(4) of Decision 2013/05/MC-EnC. According to Article 2 of Decision 2015/07/MC-EnC, "As regards Ukraine, <...> [a] national emission reduction plan shall be in use up to 31 December 2028 at the latest for SO₂ and dust and up to 31 December 2033 for NO_x."

The ceilings for the 2018 shall not be higher than the emissions for the year 2012 from the plants concerned, while taking into account all emission reduction measures that are foreseen to be realised by 2018.

The ceilings for the year 2028 for SO₂ and dust and the ceiling for the year 2033 for NO_x shall be calculated on the basis of the relevant emission limit values set out in Part 1 of Annex V to Directive 2010/75/EU or, where applicable, the relevant rates of desulphurisation set out in Part 5 of Annex V to Directive 2010/75/EU.

The ceilings for the intermediate years shall be set providing a linear decrease of the ceilings between 2018 on the one hand, and 2028 (for SO₂ and dust) or 2033 (for NO_x) on the other."

- (b) the amounts of heavy metals emitted by large combustion plants;
- (c) the cost-effectiveness and costs and advantages of further emission reductions in the combustion plants sector in **Contracting Parties** compared to other sectors;
- (d) the technical and economic feasibility of such emission reductions;
- (e) the effects of both the standards set for the large combustion plants sector including the provisions for indigenous solid fuels, and the competition situation in the energy market, on the environment and the internal market;
- (f) any national emission reduction plans provided by **Contracting Parties** in accordance with paragraph 6.

The **Secretariat** shall include in its report an appropriate proposal of possible end dates or of lower limit values for the derogation contained in footnote 2 to Annex VI(A).

8. The report referred to in paragraph 7 shall, as appropriate, be accompanied by related proposals, having regard to Directive 96/61/EC.

Article 5

By way of derogation from Annex III:

1. Plants, of a rated thermal input equal to or greater than 400 MW, which do not operate more than the following numbers of hours a year (rolling average over a period of five years),

- until 31 December 2015, 2000 hours;
- from 1 January 2016, 1500 hours;

shall be subject to a limit value for sulphur dioxide emissions of 800 mg/Nm³.

This provision shall not apply to new plants for which the licence is granted pursuant to Article 4(2).

2. Until 31 December 1999, the Kingdom of Spain may authorise new power plants with a rated thermal input equal to or greater than 500 MW burning indigenous or imported solid fuels, commissioned before the end of 2005 and complying with the following requirements:

(a) in the case of imported solid fuels, a sulphur dioxide emission limit value of 800 mg/Nm³;

(b) in the case of indigenous solid fuels, at least a 60% rate of desulphurisation,

provided that the total authorised capacity of such plants to which this derogation applies does not exceed:

- 2000 MWe in the case of plants burning indigenous solid fuels;
- in the case of plants burning imported solid fuels either 7500 or 50% of all the new capacity of all plants burning solid fuels authorised up to 31 December 1999, whichever is the lower.

Article 6

In the case of new plants for which the licence is granted pursuant to Article 4(2) or plants covered by Article 10, **Contracting Parties** shall ensure that the technical and economic feasibility of providing for the combined generation of heat and power is examined. Where this feasibility is confirmed,

bearing in mind the market and the distribution situation, installations shall be developed accordingly.

Article 7

1. **Contracting Parties** shall ensure that provision is made in the licences or permits referred to in Article 4 for procedures relating to malfunction or breakdown of the abatement equipment. In case of a breakdown the competent authority shall in particular require the operator to reduce or close down operations if a return to normal operation is not achieved within 24 hours, or to operate the plant using low polluting fuels. In any case the competent authority shall be notified within 48 hours. In no circumstances shall the cumulative duration of unabated operation in any twelve-month period exceed 120 hours. The competent authority may allow exceptions to the limits of 24 hours and 120 hours above in cases where, in their judgement:

- (a) there is an overriding need to maintain energy supplies, or
- (b) the plant with the breakdown would be replaced for a limited period by another plant which would cause an overall increase in emissions.

2. The competent authority may allow a suspension for a maximum of six months from the obligation to comply with the emission limit values provided for in Article 4 for sulphur dioxide in respect of a plant which to this end normally uses low-sulphur fuel, in cases where the operator is unable to comply with these limit values because of an interruption in the supply of low-sulphur fuel resulting from a serious shortage. The **Secretariat** shall immediately be informed of such cases.

3. The competent authority may allow a derogation from the obligation to comply with the emission limit values provided for in Article 4 in cases where a plant which normally uses only gaseous fuel, and which would otherwise need to be equipped with a waste gas purification facility, has to resort exceptionally, and for a period not exceeding 10 days except where there is an overriding need to maintain energy supplies, to the use of other fuels because of a sudden interruption in the supply of gas. The competent authority shall immediately be informed of each specific case as it arises. **Contracting Parties** shall inform the **Secretariat** immediately of the cases referred to in this paragraph.

Article 8

1. In the case of plants with a multi-firing unit involving the simultaneous use of two or more fuels, when granting the licence referred to in Articles 4(1) or 4(2), and in the case of such plants covered by Articles 4(3) or 10, the competent authority shall set the emission limit values as follows:

- (a) firstly by taking the emission limit value relevant for each individual fuel and pollutant corresponding to the rated thermal input of the combustion plant as given in Annexes III to VII,
- (b) secondly by determining fuel-weighted emission limit values, which are obtained by multiplying the above individual emission limit value by the thermal input delivered by each fuel, the product of multiplication being divided by the sum of the thermal inputs delivered by all fuels,
- (c) thirdly by aggregating the fuel-weighted limit values.

2. In multi-firing units using the distillation and conversion residues from crude-oil refining for own

consumption, alone or with other fuels, the provisions for the fuel with the highest emission limit value (determinative fuel) shall apply, notwithstanding paragraph 1 above, if during the operation of the combustion plant the proportion contributed by that fuel to the sum of the thermal inputs delivered by all fuels is at least 50%.

Where the proportion of the determinative fuel is lower than 50%, the emission limit value is determined on a pro rata basis of the heat input supplied by the individual fuels in relation to the sum of the thermal inputs delivered by all fuels as follows:

- (a) firstly by taking the emission limit value relevant for each individual fuel and pollutant corresponding to the rated heat input of the combustion plant as given in Annexes III to VII,
- (b) secondly by calculating the emission limit value of the determinative fuel (fuel with the highest emission limit value according to Annexes III to VII and, in the case of two fuels having the same emission limit value, the fuel with the higher thermal input); this value is obtained by multiplying the emission limit value laid down in Annexes III to VII for that fuel by a factor of two, and subtracting from this product the emission limit value of the fuel with the lowest emission limit value,
- (c) thirdly by determining the fuel-weighted emission limit values, which are obtained by multiplying the calculated fuel emission limit value by the thermal input of the determinative fuel and the other individual emission limit values by the thermal input delivered by each fuel, the product of multiplication being divided by the sum of the thermal inputs delivered by all fuels,
- (d) fourthly by aggregating the fuel-weighted emission limit values.

3. As an alternative to paragraph 2, the following average emission limit values for sulphur dioxide may be applied (irrespective of the fuel combination used):

- (a) for plants referred to in Article 4(1) and (3): 1000 mg/Nm³, averaged over all such plants within the refinery;
- (b) for new plants referred to in Article 4(2): 600 mg/Nm³, averaged over all such plants within the refinery, with the exception of gas turbines.

The competent authorities shall ensure that the application of this provision does not lead to an increase in emissions from existing plants.

4. In the case of plants with a multi-firing unit involving the alternative use of two or more fuels, when granting the licence referred to in Article 4(1) and (2), and in the case of such plants covered by Articles 4(3) or 10, the emission limit values set out in Annexes III to VII corresponding to each fuel used shall be applied.

Article 9

Waste gases from combustion plants shall be discharged in controlled fashion by means of a stack. The licence referred to in Article 4 and licences for combustion plants covered by Article 10 shall lay down the discharge conditions. The competent authority shall in particular ensure that the stack height is calculated in such a way as to safeguard health and the environment.

Article 10

Where a combustion plant is extended by at least 50 MW, the emission limit values as set in part B of Annexes III to VII shall apply to the new part of the plant and shall be fixed in relation to the thermal capacity of the entire plant. This provision shall not apply in the cases referred to in Article 8(2) and (3).

Where the operator of a combustion plant is envisaging a change according to Articles 2(10)(b) and 12(2) of Directive 96/61/EC, the emission limit values as set out in part B of Annexes III to VII in respect of sulphur dioxide, nitrogen oxides and dust shall apply.

Article 11

In the case of construction of combustion plants which are likely to have significant effects on the environment in another **Contracting Party**, the **Contracting Parties** shall ensure that all appropriate information and consultation takes place, in accordance with Article 7 of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment.

Article 12

Contracting Parties shall take the necessary measures to ensure the monitoring, in accordance with Annex VIII(A), of emissions from the combustion plants covered by this Directive and of all other values required for the implementation of this Directive. **Contracting Parties** may require that such monitoring shall be carried out at the operator's expense.

Article 13

Contracting Parties shall take appropriate measures to ensure that the operator informs the competent authorities within reasonable time limits about the results of the continuous measurements, the checking of the measuring equipment, the individual measurements and all other measurements carried out in order to assess compliance with this Directive.

Article 14

1. In the event of continuous measurements, the emission limit values set out in part A of Annexes III to VII shall be regarded as having been complied with if the evaluation of the results indicates, for operating hours within a calendar year, that:

- (a) none of the calendar monthly mean values exceeds the emission limit values; and
- (b) in the case of:

- (i) sulphur dioxide and dust: 97% of all the 48 hourly mean values do not exceed 110% of the

emission limit values,

(ii) nitrogen oxides: 95% of all the 48 hourly mean values do not exceed 110% of the emission limit values.

The periods referred to in Article 7 as well as start-up and shut-down periods shall be disregarded.

2. In cases where only discontinuous measurements or other appropriate procedures for determination are required, the emission limit values set out in Annexes III to VII shall be regarded as having been complied with if the results of each of the series of measurements or of the other procedures defined and determined according to the rules laid down by the competent authorities do not exceed the emission limit values.

3. In the cases referred to in Article 5(2) and (3), the rates of desulphurisation shall be regarded as having been complied with if the evaluation of measurements carried out pursuant to Annex VIII, point A.3, indicates that all of the calendar monthly mean values or all of the rolling monthly mean values achieve the required desulphurisation rates.

The periods referred to in Article 7 as well as start-up and shut-down periods shall be disregarded.

4. For new plants for which the licence is granted pursuant to Article 4(2), the emission limit values shall be regarded, for operating hours within a calendar year, as complied with if:

(a) no validated daily average value exceeds the relevant figures set out in part B of Annexes III to VII, and

(b) 95% of all the validated hourly average values over the year do not exceed 200% of the relevant figures set out in part B of Annexes III to VII.

The "validated average values" are determined as set out in point A.6 of Annex VIII.

The periods referred to in Article 7 as well as start up and shut down periods shall be disregarded.

Article 15

1. **Contracting Parties** shall, not later than 31 December 1990, inform the **Secretariat** of the programmes drawn up in accordance with Article 3(1).

At the latest one year after the end of the different phases for reduction of emissions from existing plants, the **Contracting Parties** shall forward to the **Secretariat** a summary report on the results of the implementation of the programmes.

An intermediate report is required as well in the middle of each phase.

2. The reports referred to in paragraph 1 shall provide an overall view of:

(a) all the combustion plants covered by this Directive,

(b) emissions of sulphur dioxide, and oxides of nitrogen expressed in tonnes per annum and as concentrations of these substances in the waste gases,

(c) measures already taken or envisaged with a view to reducing emissions, and of changes in the choice of fuel used,

(d) changes in the method of operation already made or envisaged,

(e) definitive closures of combustion plants already effected or envisaged, and

(f) where appropriate, the emission limit values imposed in the programmes in respect of existing plants.

When determining the annual emissions and concentrations of pollutants in the waste gases, **Contracting Parties** shall take account of Articles 12, 13 and 14.

3. **Contracting Parties** applying Article 5 or the provisions of the Nota Bene in Annex III or the footnotes in Annex VI(A) shall report thereon annually to the **Secretariat**.

Article 16

The **Contracting Parties** shall determine the penalties applicable to breaches of the national provisions adopted pursuant to this Directive. The penalties thus provided for shall be effective, proportionate and dissuasive.

Article 17

1. Directive 88/609/EEC shall be repealed with effect from 27 November 2002, without prejudice to paragraph 2 or to the obligations of **Contracting Parties** concerning the time limits for transposition and application of that Directive listed in Annex IX hereto.

2. In the case of new plants licensed before 27 November 2002 Article 4(1) of this Directive, Article 4(1), Article 5(2), Article 6, Article 15(3), Annexes III, VI, VIII and point A.2 of Annex IX to Directive 88/609/EEC as amended by Directive 94/66/EC shall remain in effect until 1 January 2008 after which they shall be repealed.

3. References to Directive 88/609/EEC shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex X hereto.

Article 18

1. **Contracting Parties** shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 31 December 2017.^{4 5} They shall forthwith inform the **Secretariat** thereof.

When **Contracting Parties** 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 **Contracting Parties**.

2. For existing plant, and for new plant for which a licence is granted pursuant to Article 4(1), the provisions of point A.2 of Annex VIII shall be applied from 27 November 2004.

3. **Contracting Parties** shall communicate to the **Secretariat** the texts of the provisions of national law which they adopt in the field covered by this Directive.

⁴ The text displayed here corresponds to point 3 of Annex II of the Energy Community Treaty.

⁵ In accordance with the Accession Protocol, the corresponding date for Georgia is 31 December 2018.

Article 19

This Decision shall enter into force upon its adoption by the Ministerial Council.⁶

Article 20

This Directive is addressed to the **Contracting Parties**.

⁶ The text displayed here corresponds to Article 8 of Decision 2013/05/MC-EnC.

ANNEX I

CEILINGS AND REDUCTION TARGETS FOR EMISSIONS OF SO₂ FROM EXISTING PLANTS⁽¹⁾⁽²⁾

	0	1	2	3	4	5	6	7	8	9
Member State	SO ₂ emissions by large combustion plants 1980 ktonnes	Emission ceiling (ktonnes/year)			% reduction over 1980 emissions			% reduction over adjusted 1980 emissions		
		Phase 1	Phase 2	Phase 3	Phase 1	Phase 2	Phase 3	Phase 1	Phase 2	Phase 3
		1993	1998	2003	1993	1998	2003	1993	1998	2003
Belgium	530	318	212	159	- 40	- 60	- 70	- 40	- 60	- 70
Denmark	323	213	141	106	- 34	- 56	- 67	- 40	- 60	- 70
Germany	2225	1335	890	668	- 40	- 60	- 70	- 40	- 60	- 70
Greece	303	320	320	320	+ 6	+ 6	+ 6	- 45	- 45	- 45
Spain	2290	2290	1730	1440	0	- 24	- 37	- 21	- 40	- 50
France	1910	1146	764	573	- 40	- 60	- 70	- 40	- 60	- 70
Ireland	99	124	124	124	+ 25	+ 25	+ 25	- 29	- 29	- 29
Italy	2450	1800	1500	900	- 27	- 39	- 63	- 40	- 50	- 70
Luxembourg	30	1.8	1.5	1.5	- 40	- 50	- 60	- 40	- 50	- 50
Netherlands	299	180	120	90	- 40	- 60	- 70	- 40	- 60	- 70
Portugal	115	232	270	206	+ 102	+ 135	+ 79	- 25	- 13	- 34
United Kingdom	3883	3106	2330	1553	- 20	- 40	- 60	- 20	- 40	- 60
Austria	90	54	36	27	- 40	- 60	- 70	- 40	- 60	- 70
Finland	171	102	68	51	- 40	- 60	- 70	- 40	- 60	- 70
Sweden	112	67	45	34	- 40	- 60	- 70	- 40	- 60	- 70

⁽¹⁾ Additional emissions may arise from capacity authorised on or after 1 July 1987.

⁽²⁾ Emissions coming from combustion plants authorised before 1 July 1987 but not yet in operation before that date and which have not been taken into account in establishing the emission ceilings fixed by this Annex shall either comply with the requirements established by this Directive for new plants or be accounted for in the overall emissions from existing plants that must not exceed the ceilings fixed in this Annex.

ANNEX II

CEILINGS AND REDUCTION TARGETS FOR EMISSIONS OF NO_x FROM EXISTING PLANTS⁽¹⁾⁽²⁾

Member State	0	1	2	3	4	5	6
Member State	NO _x emissions (as NO ₂) by large combustion plants 1980 ktonnes	NO _x emission ceilings (ktonnes/year)		% reduction over 1980 emissions		% reduction over adjusted 1980 emissions	
		Phase 1	Phase 2	Phase 1	Phase 2	Phase 1	Phase 2
		1993(*)	1998	1993(*)	1998	1993(*)	1998
Belgium	110	88	66	- 20	- 40	- 20	- 40
Denmark	124	121	81	- 3	- 35	- 10	- 40
Germany	870	696	522	- 20	- 40	- 20	- 40
Greece	36	70	70	+ 94	+ 94	0	0
Spain	366	368	277	+ 1	- 24	- 20	- 40
France	400	320	240	- 20	- 40	- 20	- 40
Ireland	28	50	50	+ 79	+ 79	0	0
Italy	580	570	428	- 2	- 26	- 20	- 40
Luxembourg	3	2.4	1.8	- 20	- 40	- 20	- 40
Netherlands	122	98	73	- 20	- 40	- 20	- 40
Portugal	23	59	64	+ 157	+ 178	- 8	0
United Kingdom	1016	864	711	- 15	- 30	- 15	- 30
Austria	19	15	11	- 20	- 40	- 20	- 40
Finland	81	65	48	- 20	- 40	- 20	- 40
Sweden	31	25	19	- 20	- 40	- 20	- 40

(*) Member States may for technical reasons delay for up to two years the phase 1 date for reduction in NO_x emissions by notifying the Commission within one month of the notification of the Directive.

(1) Additional emissions may arise from capacity authorised on or after 1 July 1987.

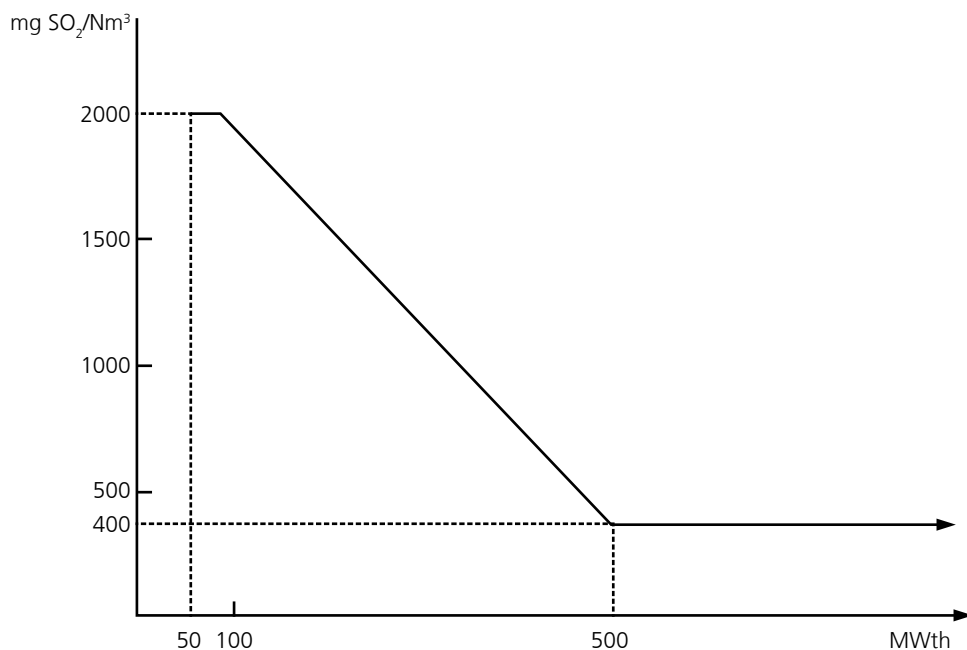
(2) Emissions coming from combustion plants authorised before 1 July 1987 but not yet in operation before that date and which have not been taken into account in establishing the emission ceilings fixed by this Annex shall either comply with the requirements established by this Directive for new plants or be accounted for in the overall emissions from existing plants that must not exceed the ceilings fixed in this Annex.

ANNEX III

EMISSION LIMIT VALUES FOR SO_2

Solid fuel

A. SO_2 emission limit values expressed in mg/Nm^3 (O_2 content 6%) to be applied by new and existing plants pursuant to Article 4(1) and 4(3) respectively:



NB Where the emission limit values above cannot be met due to the characteristics of the fuel, a rate of desulphurisation of at least 60% shall be achieved in the case of plants with a rated thermal input of less than or equal to 100 MW_{th} , 75% for plants greater than 100 MW_{th} and less than or equal to 300 MW_{th} and 90% for plants greater than 300 MW_{th} . For plants greater than 500 MW_{th} , a desulphurisation rate of at least 94% shall apply or of at least 92% where a contract for the fitting of flue gas desulphurisation or lime injection equipment has been entered into, and work on its installation has commenced, before 1 January 2001.

B. SO₂ emission limit values expressed in mg/Nm³ (O₂ content 6%) to be applied by new plants pursuant to Article 4(2) with the exception of gas turbines.

Type of fuel	50 to 100 MWth	50 to 100 MWth	> 300 MWth
Biomass	200	200	200
General case	850	200 ⁽¹⁾	200

⁽¹⁾ Except in the case of the 'Outermost Regions' where 850 to 200 mg/Nm³ (linear decrease) shall apply.

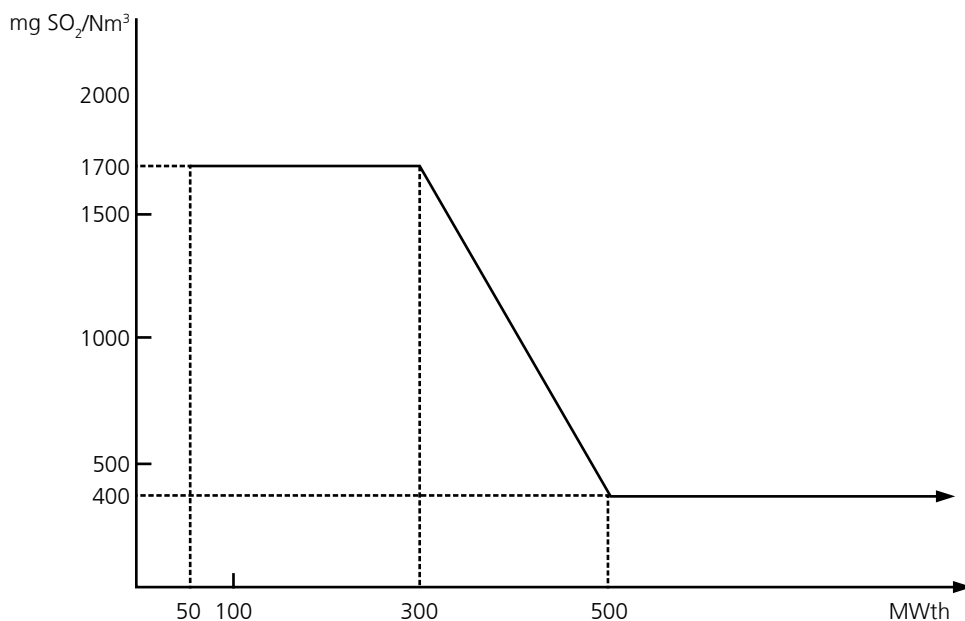
NB Where the emission limit values above cannot be met due to the characteristics of the fuel, installations shall achieve 300 mg/Nm³ SO₂, or a rate of desulphurisation of at least 92% shall be achieved in the case of plants with a rated thermal input of less than or equal to 300 MWth and in the case of plants with a rated thermal input greater than 300 MWth a rate of desulphurisation of at least 95% together with a maximum permissible emission limit value of 400 mg/Nm³ shall apply.

ANNEX IV

EMISSION LIMIT VALUES FOR SO₂

Liquid fuels

A. SO₂ emission limit values expressed in mg/Nm³ (O₂ content 3%) to be applied by new and existing plants pursuant to Article 4(1) and 4(3), respectively:



B. SO₂ emission limit values expressed in mg/Nm³ (O₂ content 3%) to be applied by new plants pursuant to Article 4(2) with the exception of gas turbines

50 to 100 MWth	100 to 300 MWth	> 300 MWth
850	400 to 200 (linear decrease) ⁽¹⁾	200

⁽¹⁾ Except in the case of the 'Outermost Regions' where 850 to 200 mg/Nm³ (linear decrease) shall apply.

In the case of two installations with a rated thermal input of 250 MWth on Crete and Rhodos to be licensed before 31 December 2007 the emission limit value of 1700 mg/Nm³ shall apply.

ANNEX V**EMISSION LIMIT VALUES FOR SO₂**

Gaseous fuels

A. SO₂ emission limit values expressed in mg/Nm³ (O₂ content 3%) to be applied by new and existing plants pursuant to Article 4(1) and 4(3), respectively:

Type of fuel	Limit values (mg/Nm ³)
Gaseous fuels in general	35
Liquefied gas	5
Low caloric gases from gasification of refinery residues coke oven gas, blast-furnace gas	800
Gas from gasification of coal	(¹)

(¹) The Council will fix the emission limit values applicable to such gas at a later stage on the basis of proposals from the Commission to be made in the light of further technical experience.

B. SO₂ emission limit values expressed in mg/Nm³ (O₂ content 3%) to be applied by new plants pursuant to Article 4(2):

Gaseous fuels in general	35
Liquefied gas	5
Low calorific gases from coke oven	400
Low caloric gases from blast furnace	200

ANNEX VI

EMISSION LIMIT VALUES FOR NO_x (MEASURED AS NO₂)

A. NO_x emission limit values expressed in mg/Nm³ (O₂ content 6% for solid fuels, 3% for liquid and gaseous fuels) to be applied by new and existing plants pursuant to Article 4(1) and 4(3), respectively:

Type of fuel	Limit values ⁽¹⁾ (mg/Nm ³)
Solid ⁽²⁾ , ⁽³⁾ :	
50 to 500 MWth:	600
>500 MWth:	500
From 1 January 2016	
50 to 500 MWth:	600
>500 MWth:	200
Liquid:	
50 to 500 MWth:	400
>500 MWth:	450
Gaseous:	
50 to 500 MWth:	300
>500 MWth:	200

⁽¹⁾ Except in the case of the 'Outermost Regions' where the following values shall apply:

Solid in general: 650

Solid with < 10% vol comps: 1300

Liquid: 450

Gaseous: 350

⁽²⁾ Until 31 December 2015 plants of a rated thermal input greater than 500 MW, which from 2008 onwards do not operate more than 2000 hours a year (rolling average over a period of five years), shall:

- in the case of plant licensed in accordance with Article 4(3)(a), be subject to a limit value for nitrogen oxide emissions (measured as NO₂) of 600 mg/Nm³;

- in the case of plant subject to a national plan under Article 4(6), have their contribution to the national plan assessed on the basis of a limit value of 600 mg/Nm³.

From 1 January 2016 such plants, which do not operate more than 1500 hours a year (rolling average over a period of five years), shall be subject to a limit value for nitrogen oxide emissions (measured as NO₂) of 450 mg/Nm³.

⁽³⁾ Until 1 January 2018 in the case of plants that in the 12 month period ending on 1 January 2001 operated on, and continue to operate on, solid fuels whose volatile content is less than 10%, 1200 mg/Nm³ shall apply.

B. NO_x emission limit values expressed in mg/Nm³ to be applied by new plants pursuant to Article 4(2) with the exception of gas turbines

Solid fuels (O₂ content 6%)

Type of fuel	50 to 100 MWth	100 to 300 MWth	> 300 MWth
Biomass	400	300	200
General case	400	200 ⁽¹⁾	200

⁽¹⁾ Except in the case of the 'Outermost Regions' where 300 mg/Nm³ (linear decrease) shall apply.

Liquid fuels (O₂ content 3%)

50 to 100 MWth	100 to 300 MWth	> 300 MWth
400	200 ⁽¹⁾	200

⁽¹⁾ Except in the case of the 'Outermost Regions' where 300 mg/Nm³ (linear decrease) shall apply.

In the case of two installations with a rated thermal input of 250 MWth on Crete and Rhodos to be licensed before 31 December 2007 the emission limit value of 400 mg/Nm³ shall apply.

Gaseous fuels (O₂ content 3%)

	50 to 300 MWth	> 300 MWth
Natural gas ⁽¹⁾	150	100
Other gases	200	200

Gas Turbines

NO_x emission limit values expressed in mg/Nm³ (O₂ content 15%) to be applied by a single gas turbine unit pursuant to Article 4(2) (the limit values apply only above 70% load):

	> 50 MWth (thermal input at ISO conditions)
Natural gas ⁽¹⁾	50 ⁽²⁾
Liquid fuels ⁽³⁾	120
Gaseous fuels (other than natural gas)	120

⁽¹⁾ Natural gas is naturally occurring methane with not more than 20% (by volume) of inerts and other constituents.

⁽²⁾ 75 mg/Nm³ in the following cases, where the efficiency of the gas turbine is determined at ISO base load conditions:

- gas turbines, used in combined heat and power systems having an overall efficiency greater than 75%;
- gas turbines used in combined cycle plants having an annual average overall electrical efficiency greater than 55%;
- gas turbines for mechanical drives.

For single cycle gas turbines not falling into any of the above categories, but having an efficiency greater than 35% - determined at ISO base load conditions - the emission limit value shall be $50 \cdot \eta / 35$ where η is the gas turbine efficiency expressed as a percentage (and at ISO base load conditions).

⁽³⁾ This emission limit value only applies to gas turbines firing light and middle distillates.

Gas turbines for emergency use that operate less than 500 hours per year are excluded from these limit values. The operator of such plants is required to submit each year to the competent authority a record of such used time.

ANNEX VII

EMISSION LIMIT VALUES FOR DUST

A. Dust emission limit values expressed in mg/Nm³ (O₂ content 6% for solid fuels, 3% for liquid and gaseous fuels) to be applied by new and existing plants pursuant to Article 4(1) and 4(3), respectively:

Type of fuel	Rated thermal input (MW)	Emission limit values (mg/Nm ³)
Solid	≥ 500	50 ⁽²⁾
	< 500	100
Liquid ⁽¹⁾	all plants	50
Gaseous	all plants	5 as a rule 10 for blast furnace 50 for gases produced by the steel industry which can be used elsewhere

⁽¹⁾ A limit value of 100 mg/Nm³ may be applied to plants with a rated thermal input less than 500 MWth burning liquid fuel with an ash content of more than 0.06%.

⁽²⁾ A limit value of 100 mg/Nm³ may be applied to plants licensed pursuant to Article 4(3) with a rated thermal input greater than or equal to 500 MWth burning solid fuel with a heat content of less than 5800 kJ/kg (net calorific value), a moisture content greater than 45% by weight, a combined moisture and ash content greater than 60% by weight and a calcium oxide content greater than 10%.

B. Dust emission limit values expressed in mg/Nm³ to be applied by new plants, pursuant to Article 4(2) with the exception of gas turbines:

Solid fuels (O₂ content 6%)

50 to 100 MWth	> 100 MWth
50	30

Liquid fuels (O₂ content 3%)

50 to 100 MWth	> 100 MWth
50	30

In the case of two installations with a rated thermal input of 250 MWth on Crete and Rhodos to be licensed before 31 December 2007 the emission limit value of 50 mg/Nm³ shall apply.

Gaseous fuels (O₂ content 3%)

As a rule	5
For blast furnace	10
For gases produced by the steel industry which can be used elsewhere	30

ANNEX VIII

METHODS OF MEASUREMENT OF EMISSIONS

A. Procedures for measuring and evaluating emissions from combustion plants.

1. *Until 27 November 2004*

Concentrations of SO₂, dust, NO_x shall be measured continuously in the case of new plants for which a licence is granted pursuant to Article 4(1) with a rated thermal input of more than 300 MW. However, monitoring of SO₂ and dust may be confined to discontinuous measurements or other appropriate determination procedures in cases where such measurements or procedures, which must be verified and approved by the competent authorities, may be used to obtain concentration.

In the case of new plants for which a licence is granted pursuant to Article 4(1) not covered by the first subparagraph, the competent authorities may require continuous measurements of those three pollutants to be carried out where considered necessary. Where continuous measurements are not required, discontinuous measurements or appropriate determination procedures as approved by the competent authorities shall be used regularly to evaluate the quantity of the above-mentioned substances present in the emissions.

2. *From 27 November 2002 and without prejudice to Article 18(2)*

Competent authorities shall require continuous measurements of concentrations of SO₂, NO_x, and dust from waste gases from each combustion plant with a rated thermal input of 100 MW or more.

By way of derogation from the first subparagraph, continuous measurements may not be required in the following cases:

- for combustion plants with a life span of less than 10 000 operational hours;
- for SO₂ and dust from natural gas burning boilers or from gas turbines firing natural gas;
- for SO₂ from gas turbines or boilers firing oil with known sulphur content in cases where there is no desulphurisation equipment;
- for SO₂ from biomass firing boilers if the operator can prove that the SO₂ emissions can under no circumstances be higher than the prescribed emission limit values.

Where continuous measurements are not required, discontinuous measurements shall be required at least every six months. As an alternative, appropriate determination procedures, which must be verified and approved by the competent authorities, may be used to evaluate the quantity of the above mentioned pollutants present in the emissions. Such procedures shall use relevant CEN standards as soon as they are available. If CEN standards are not available ISO standards, national or international standards which will ensure the provision of data of an equivalent scientific quality shall apply.

3. In the case of plants which must comply with the desulphurisation rates fixed by Article 5(2) and Annex III, the requirements concerning SO₂ emission measurements established under paragraph 2 of this point shall apply. Moreover, the sulphur content of the fuel which is introduced into the combustion plant facilities must be regularly monitored.

4. The competent authorities shall be informed of substantial changes in the type of fuel used or in the mode of operation of the plant. They shall decide whether the monitoring requirements laid down in paragraph 2 are still adequate or require adaptation.

5. The continuous measurements carried out in compliance with paragraph 2 shall include the relevant process operation parameters of oxygen content, temperature, pressure and water vapour content. The continuous measurement of the water vapour content of the exhaust gases shall not be necessary, provided that the sampled exhaust gas is dried before the emissions are analysed.

Representative measurements, i.e. sampling and analysis, of relevant pollutants and process parameters as well as reference measurement methods to calibrate automated measurement systems shall be carried out in accordance with CEN standards as soon as they are available. If CEN standards are not available ISO standards, national or international standards which will ensure the provision of data of an equivalent scientific quality shall apply.

Continuous measuring systems shall be subject to control by means of parallel measurements with the reference methods at least every year.

6. The values of the 95% confidence intervals of a single measures results shall not exceed the following percentages of the emission limit values:

- Sulphur dioxide 20%
- Nitrogen oxides 20%
- Dust 30%

The validated hourly and daily average values shall be determined from the measured valid hourly average values after having subtracted the value of the confidence interval specified above.

Any day in which more than three hourly average values are invalid due to malfunction or maintenance of the continuous measurement system shall be invalidated. If more than ten days over a year are invalidated for such situations the competent authority shall require the operator to take adequate measures to improve the reliability of the continuous monitoring system.

B. Determination of total annual emissions of combustion plants

Contracting Parties shall establish, starting in 2018 and for each subsequent year, an inventory of SO₂, NO_x and dust emissions from all combustion plants with a rated thermal input of 50 MW or more. The competent authority shall obtain for each plant operated under the control of one operator at a given location the following data:

- the total annual emissions of SO₂, NO_x and dust (as total suspended particles);**
- the total annual amount of energy input, related to the net calorific value, broken down in terms of the five categories of fuel: biomass, other solid fuels, liquid fuels, natural gas, other gases.**

A summary of the results of this inventory that shows the emissions from refineries separately shall be communicated to the Secretariat every three years within twelve months from the end of the three-year period considered. The yearly plant-by-plant data shall be made available to the Secretariat upon request. The Secretariat shall make available to the Contracting Parties a summary of the comparison and evaluation of the national inventories within twelve months of receipt of the national inventories.

Contracting Parties implementing a national emission reduction plan in accordance with Article 4(6) shall report annually to the Secretariat the plant-by-plant fuel use and emission data for all plants covered by the plan. With the aim of demonstrating progress in

implementation, this report shall also include emission projections for scenarios taking into account ongoing investments for which financing is secured and a well-defined implementation timeline is drawn up.⁷

C. Determination of the total annual emissions of existing plants until and including 2003.

1. **Contracting Parties** shall establish, starting in 1990 and for each subsequent year until and including 2003, a complete emission inventory for existing plants covering SO₂ and NO_x:

- on a plant by plant basis for plants above 300 MWth and for refineries;
- on an overall basis for other combustion plants to which this Directive applies.

2. The methodology used for these inventories shall be consistent with that used to determine SO₂ and NO_x emissions from combustion plants in 1980.

3. The results of this inventory shall be communicated to the **Secretariat** in a conveniently aggregated form within nine months from the end of the year considered. The methodology used for establishing such emission inventories and the detailed base information shall be made available to the **Secretariat** at its request.

4. The **Secretariat** shall organise a systematic comparison of such national inventories and, if appropriate, shall submit proposals to the Council aiming at harmonising emission inventory methodologies, for the needs of an effective implementation of this Directive.

⁷ The text displayed here corresponds to Article 6 of Decision 2013/05/MC-EnC.

DIRECTIVE 2010/75/EU of 24 November 2010 on industrial emissions (integrated pollution prevention and control)^{1 2}

Incorporated and adapted by Ministerial Council Decision 2013/06/MC-EnC of 24 October 2013 on the implementation of Chapter III, Annex V, and Article 72(3)-(4) of Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) and amending Article 16 and Annex II of the Energy Community Treaty and adapted by Ministerial Council Decision 2015/06/MC-EnC of 16 October 2015 on the implementation of Chapter III, Annex V, and Article 72(3)-(4) of Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) for existing combustion plants and amending Annex II of the Energy Community Treaty.

The adaptations made by Ministerial Council Decision 2013/06/MC-EnC are highlighted in bold and blue.

Whereas:

(1) A number of substantial changes are to be made to Council Directive 78/176/EEC of 20 February 1978 on waste from the titanium dioxide industry, Council Directive 82/883/EEC of 3 December 1982 on procedures for the surveillance and monitoring of environments concerned by waste from the titanium dioxide industry, Council Directive 92/112/EEC of 15 December 1992 on procedures for harmonising the programmes for the reduction and eventual elimination of pollution caused by waste from the titanium dioxide industry, Council Directive 1999/13/EC of 11 March 1999 on the limitation of emissions of volatile organic compounds due to the use of organic solvents in certain activities and installations, Directive 2000/76/EC of the European Parliament and of the Council of 4 December 2000 on the incineration of waste, Directive 2001/80/EC of the European Parliament and of the Council of 23 October 2001 on the limitation of emissions of certain pollutants into the air from large combustion plants and Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control. In the interests of clarity, those Directives should be recast.

(2) In order to prevent, reduce and as far as possible eliminate pollution arising from industrial activities in compliance with the 'polluter pays' principle and the principle of pollution prevention, it is necessary to establish a general framework for the control of the main industrial activities, giving priority to intervention at source, ensuring prudent management of natural resources and taking into account, when necessary, the economic situation and specific local characteristics of the place in which the industrial activity is taking place.

(3) Different approaches to controlling emissions into air, water or soil separately may encourage the shifting of pollution from one environmental medium to another rather than protecting the environment as a whole. It is, therefore, appropriate to provide for an integrated approach to prevention and control of emissions into air, water and soil, to waste management, to energy efficiency and to accident prevention. Such an approach will also contribute to the achievement of a level playing

¹ Since Ministerial Council Decision 2013/06/MC-EnC incorporated only Chapter III, Annex V, and Article 72(3)-(4) of Directive 2010/75/EU into the Energy Community *acquis communautaire*, only the text of those provisions are displayed here.

² Recommendation 2018/03/MC-EnC to prepare the implementation of Chapter II, Chapter IV and Annex VI of Directive 2010/75/EU has incorporated other parts of this Directive into the Energy Community *acquis communautaire*, albeit in a non-legally binding manner.

field in the Union by aligning environmental performance requirements for industrial installations.

(4) It is appropriate to revise the legislation relating to industrial installations in order to simplify and clarify the existing provisions, reduce unnecessary administrative burden and implement the conclusions of the Commission Communications of 21 September 2005 on the Thematic Strategy on Air Pollution (hereinafter the Thematic Strategy on Air Pollution), of 22 September 2006 on the Thematic Strategy for Soil Protection and of 21 December 2005 on the Thematic Strategy on the Prevention and Recycling of Waste adopted as a follow-up to Decision No 1600/2002/EC of the European Parliament and of the Council of 22 July 2002 laying down the Sixth Community Environment Action Programme. Those Communications set objectives to protect human health and the environment which cannot be met without further reductions in emissions arising from industrial activities.

(5) In order to ensure the prevention and control of pollution, each installation should operate only if it holds a permit or, in the case of certain installations and activities using organic solvents, only if it holds a permit or is registered.

(6) It is for Member States to determine the approach for assigning responsibilities to operators of installations provided that compliance with this Directive is ensured. Member States may choose to grant a permit to one responsible operator for each installation or to specify the responsibility amongst several operators of different parts of an installation. Where its current legal system provides for only one responsible operator for each installation, a Member State may decide to retain this system.

(7) In order to facilitate the granting of permits, Member States should be able to set requirements for certain categories of installations in general binding rules.

(8) It is important to prevent accidents and incidents and limit their consequences. Liability regarding the environmental consequences of accidents and incidents is a matter for relevant national law and, where applicable, other relevant Union law.

(9) In order to avoid duplication of regulation, the permit for an installation covered by Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community should not include an emission limit value for direct emissions of the greenhouse gases specified in Annex I to that Directive except where it is necessary to ensure that no significant local pollution is caused or where an installation is excluded from that scheme.

(10) In accordance with Article 193 of the Treaty on the Functioning of the European Union (TFEU), this Directive does not prevent Member States from maintaining or introducing more stringent protective measures, for example greenhouse gas emission requirements, provided that such measures are compatible with the Treaties and the Commission has been notified.

(11) Operators should submit permit applications containing the information necessary for the competent authority to set permit conditions. Operators should be able to use information resulting from the application of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment and of Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances when submitting permit applications.

(12) The permit should include all the measures necessary to achieve a high level of protection of the environment as a whole and to ensure that the installation is operated in accordance with the general principles governing the basic obligations of the operator. The permit should also include emission

limit values for polluting substances, or equivalent parameters or technical measures, appropriate requirements to protect the soil and groundwater and monitoring requirements. Permit conditions should be set on the basis of best available techniques.

(13) In order to determine best available techniques and to limit imbalances in the Union as regards the level of emissions from industrial activities, reference documents for best available techniques (hereinafter BAT reference documents') should be drawn up, reviewed and, where necessary, updated through an exchange of information with stakeholders and the key elements of BAT reference documents (hereinafter BAT conclusions') adopted through committee procedure. In this respect, the Commission should, through committee procedure, establish guidance on the collection of data, on the elaboration of BAT reference documents and on their quality assurance. BAT conclusions should be the reference for setting permit conditions. They can be supplemented by other sources. The Commission should aim to update BAT reference documents not later than 8 years after the publication of the previous version.

(14) In order to ensure an effective and active exchange of information resulting in high-quality BAT reference documents, the Commission should establish a forum that functions in a transparent manner. Practical arrangements for the exchange of information and the accessibility of BAT reference documents should be laid down, in particular to ensure that Member States and stakeholders provide data of sufficient quality and quantity based on established guidance to enable the determination of best available techniques and emerging techniques.

(15) It is important to provide sufficient flexibility to competent authorities to set emission limit values that ensure that, under normal operating conditions, emissions do not exceed the emission levels associated with the best available techniques. To this end, the competent authority may set emission limits that differ from the emission levels associated with the best available techniques in terms of the values, periods of time and reference conditions applied, so long as it can be demonstrated, through the results of emission monitoring, that emissions have not exceeded the emission levels associated with the best available techniques. Compliance with the emission limit values that are set in permits results in emissions below those emission limit values.

(16) In order to take into account certain specific circumstances where the application of emission levels associated with the best available techniques would lead to disproportionately high costs compared to the environmental benefits, competent authorities should be able to set emission limit values deviating from those levels. Such deviations should be based on an assessment taking into account well-defined criteria. The emission limit values set out in this Directive should not be exceeded. In any event, no significant pollution should be caused and a high level of protection of the environment taken as a whole should be achieved.

(17) In order to enable operators to test emerging techniques which could provide for a higher general level of environmental protection, or at least the same level of environmental protection and higher cost savings than existing best available techniques, the competent authority should be able to grant temporary derogations from emission levels associated with the best available techniques.

(18) Changes to an installation may give rise to higher levels of pollution. Operators should notify the competent authority of any planned change which might affect the environment. Substantial changes to installations which may have significant negative effects on human health or the environment should not be made without a permit granted in accordance with this Directive.

(19) The spreading of manure contributes significantly to emissions of pollutants into air and water.

With a view to meeting the objectives set out in the Thematic Strategy on Air Pollution and Union law on water protection, it is necessary for the Commission to review the need to establish the most suitable controls of these emissions through the application of best available techniques.

(20) The intensive rearing of poultry and cattle contributes significantly to emissions of pollutants into air and water. With a view to meeting the objectives set out in the Thematic Strategy on Air Pollution and in Union law on water protection, it is necessary for the Commission to review the need to establish differentiated capacity thresholds for different poultry species in order to define the scope of this Directive and to review the need to establish the most suitable controls on emissions from cattle rearing installations.

(21) In order to take account of developments in best available techniques or other changes to an installation, permit conditions should be reconsidered regularly and, where necessary, updated, in particular where new or updated BAT conclusions are adopted.

(22) In specific cases where permit reconsideration and updating identifies that a longer period than 4 years after the publication of a decision on BAT conclusions might be needed to introduce new best available techniques, competent authorities may set a longer time period in permit conditions where this is justified on the basis of the criteria laid down in this Directive.

(23) It is necessary to ensure that the operation of an installation does not lead to a deterioration of the quality of soil and groundwater. Permit conditions should, therefore, include appropriate measures to prevent emissions to soil and groundwater and regular surveillance of those measures to avoid leaks, spills, incidents or accidents occurring during the use of equipment and during storage. In order to detect possible soil and groundwater pollution at an early stage and, therefore, to take appropriate corrective measures before the pollution spreads, the monitoring of soil and groundwater for relevant hazardous substances is also necessary. When determining the frequency of monitoring, the type of prevention measures and the extent and occurrence of their surveillance may be considered.

(24) In order to ensure that the operation of an installation does not deteriorate the quality of soil and groundwater, it is necessary to establish, through a baseline report, the state of soil and groundwater contamination. The baseline report should be a practical tool that permits, as far as possible, a quantified comparison between the state of the site described in that report and the state of the site upon definitive cessation of activities, in order to ascertain whether a significant increase in pollution of soil or groundwater has taken place. The baseline report should, therefore, contain information making use of existing data on soil and groundwater measurements and historical data related to past uses of the site.

(25) In accordance with the polluter pays principle, when assessing the level of significance of the pollution of soil and groundwater caused by the operator which would trigger the obligation to return the site to the state described in the baseline report, Member States should take into account the permit conditions that have applied over the lifetime of the activity concerned, the pollution prevention measures adopted for the installation, and the relative increase in pollution compared to the contamination load identified in the baseline report. Liability regarding pollution not caused by the operator is a matter for relevant national law and, where applicable, other relevant Union law.

(26) In order to ensure the effective implementation and enforcement of this Directive, operators should regularly report to the competent authority on compliance with permit conditions. Member States should ensure that the operator and the competent authority each take necessary measures

in the event of non-compliance with this Directive and provide for a system of environmental inspections. Member States should ensure that sufficient staff are available with the skills and qualifications needed to carry out those inspections effectively.

(27) In accordance with the Århus Convention on access to information, public participation in decision-making and access to justice in environmental matters, effective public participation in decision-making is necessary to enable the public to express, and the decision-maker to take account of, opinions and concerns which may be relevant to those decisions, thereby increasing the accountability and transparency of the decision-making process and contributing to public awareness of environmental issues and support for the decisions taken. Members of the public concerned should have access to justice in order to contribute to the protection of the right to live in an environment which is adequate for personal health and well-being.

(28) The combustion of fuel in installations with a total rated thermal input below 50 MW contributes significantly to emissions of pollutants into the air. With a view to meeting the objectives set out in the Thematic Strategy on Air Pollution, it is necessary for the Commission to review the need to establish the most suitable controls on emissions from such installations. That review should take into account the specificities of combustion plants used in healthcare facilities, in particular with regard to their exceptional use in the case of emergencies.

(29) Large combustion plants contribute greatly to emissions of polluting substances into the air resulting in a significant impact on human health and the environment. In order to reduce that impact and to work towards meeting the requirements of Directive 2001/81/EC of the European Parliament and of the Council of 23 October 2001 on national emission ceilings for certain atmospheric pollutants and the objectives set out in the Thematic Strategy on Air Pollution, it is necessary to set more stringent emission limit values at Union level for certain categories of combustion plants and pollutants.

(30) The Commission should review the need to establish Union-wide emission limit values and to amend the emission limit values set out in Annex V for certain large combustion plants, taking into account the review and update of the relevant BAT reference documents. In this context, the Commission should consider the specificity of the energy systems of refineries.

(31) Due to the characteristics of certain indigenous solid fuels, it is appropriate to apply minimum desulphurisation rates rather than emission limit values for sulphur dioxide for combustion plants firing such fuels. Moreover, as the specific characteristics of oil shale may not allow the application of the same sulphur abatement techniques or the achievement of the same desulphurisation efficiency as for other fuels, a slightly lower minimum desulphurisation rate for plants using this fuel is appropriate.

(32) In the case of a sudden interruption in the supply of low-sulphur fuel or gas resulting from a serious shortage, the competent authority should be able to grant temporary derogations to allow emissions of the combustion plants concerned to exceed the emission limit values set out in this Directive.

(33) The operator concerned should not operate a combustion plant for more than 24 hours after malfunctioning or breakdown of abatement equipment and unabated operation should not exceed 120 hours in a 12-month period in order to limit the negative effects of pollution on the environment. However, where there is an overriding need for energy supplies or it is necessary to avoid an overall increase of emissions resulting from the operation of another combustion plant, competent authorities should be able to grant a derogation from those time limits.

(34) In order to ensure a high level of environmental and human health protection and to avoid transboundary movements of waste to plants operating at lower environmental standards, it is necessary to set and maintain stringent operating conditions, technical requirements and emission limit values for plants incinerating or co-incinerating waste within the Union.

(35) The use of organic solvents in certain activities and installations gives rise to emissions of organic compounds into the air which contribute to the local and transboundary formation of photochemical oxidants which causes damage to natural resources and has harmful effects on human health. It is, therefore, necessary to take preventive action against the use of organic solvents and to establish a requirement to comply with emission limit values for organic compounds and appropriate operating conditions. Operators should be allowed to comply with the requirements of a reduction scheme instead of complying with the emission limit values set out in this Directive where other measures, such as the use of low-solvent or solvent-free products or techniques, provide alternative means of achieving equivalent emission reduction.

(36) Installations producing titanium dioxide can give rise to significant pollution into air and water. In order to reduce these impacts, it is necessary to set at Union level more stringent emission limit values for certain polluting substances.

(37) With regard to the inclusion in the scope of national laws, regulations and administrative provisions brought into force in order to comply with this Directive of installations for the manufacturing of ceramic products by firings, on the basis of the characteristics of the national industrial sector, and in order to grant clear interpretation of the scope, Member States should decide whether to apply both the criteria, production capacity and kiln capacity, or just one of the two criteria.

(38) In order to simplify reporting and reduce unnecessary administrative burden, the Commission should identify methods to streamline the way in which data are made available pursuant to this Directive with the other requirements of Union law, and in particular Regulation (EC) No 166/2006 of the European Parliament and of the Council of 18 January 2006 concerning the establishment of a European Pollutant Release and Transfer Register.

(39) In order to ensure uniform conditions for implementation, implementing powers should be conferred on the Commission to adopt guidance on the collection of data, on the drawing up of BAT reference documents and on their quality assurance, including the suitability of their content and format, to adopt decisions on BAT conclusions, to establish detailed rules on the determination of start-up and shut-down periods and for transitional national plans for large combustion plants, and to establish the type, format and frequency of information that Member States are to make available to the Commission. In accordance with Article 291 TFEU, rules and general principles concerning mechanisms for the control by Member States of the Commission's exercise of implementing powers are to be laid down in advance by a regulation adopted in accordance with the ordinary legislative procedure. Pending the adoption of that new regulation, Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission continues to apply, with the exception of the regulatory procedure with scrutiny, which is not applicable.

(40) The Commission should be empowered to adopt delegated acts in accordance with Article 290 TFEU in respect of the setting of the date from which continuous measurements of emissions into the air of heavy metals and dioxins and furans are to be carried out, and the adaptation of certain parts of Annexes V, VI and VII to scientific and technical progress. In the case of waste incineration

plants and waste co-incineration plants, this may include, *inter alia*, the establishment of criteria to allow derogations from continuous monitoring of total dust emissions. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level.

(41) In order to address significant environmental pollution, for example from heavy metals and dioxins and furans, the Commission should, based on an assessment of the implementation of the best available techniques by certain activities or of the impact of those activities on the environment as a whole, present proposals for Union-wide minimum requirements for emission limit values and for rules on monitoring and compliance.

(42) Member States should lay down rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and ensure that they are implemented. Those penalties should be effective, proportionate and dissuasive.

(43) In order to provide existing installations with sufficient time to adapt technically to the new requirements of this Directive, some of the new requirements should apply to those installations after a fixed period from the date of application of this Directive. Combustion plants need sufficient time to install the necessary abatement measures to meet the emission limit values set out in Annex V.

(44) Since the objectives of this Directive, namely to ensure a high level of environmental protection and the improvement of environmental quality, cannot be sufficiently achieved by Member States and can, therefore, by reason of the transboundary nature of pollution from industrial activities, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

(45) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular, this Directive seeks to promote the application of Article 37 of that Charter.

(46) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive change as compared with the earlier Directives. The obligation to transpose the provisions which are unchanged arises under the earlier Directives.

(47) In accordance with paragraph 34 of the Interinstitutional agreement on better law-making, Member States are encouraged to draw up, for themselves and in the interests of the Union, their own tables, which will as far as possible, illustrate the correlation between this Directive and the transposition measures, and to make those tables public.

(48) This Directive should be without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law and application of the Directives set out in Annex IX, Part B.

CHAPTER III

SPECIAL PROVISIONS FOR COMBUSTION PLANTS

Article 28

Scope

This Chapter shall apply to combustion plants, the total rated thermal input of which is equal to or greater than 50 MW, irrespective of the type of fuel used.

This Chapter shall not apply to the following combustion plants:

- (a) plants in which the products of combustion are used for the direct heating, drying, or any other treatment of objects or materials;
- (b) post-combustion plants designed to purify the waste gases by combustion which are not operated as independent combustion plants;
- (c) facilities for the regeneration of catalytic cracking catalysts;
- (d) facilities for the conversion of hydrogen sulphide into sulphur;
- (e) reactors used in the chemical industry;
- (f) coke battery furnaces;
- (g) cowpers;
- (h) any technical apparatus used in the propulsion of a vehicle, ship or aircraft;
- (i) gas turbines and gas engines used on offshore platforms;
- (j) plants which use any solid or liquid waste as a fuel other than waste referred to in point (b) of point 31 of Article 3.

Article 29

Aggregation rules

1. Where the waste gases of two or more separate combustion plants are discharged through a common stack, the combination formed by such plants shall be considered as a single combustion plant and their capacities added for the purpose of calculating the total rated thermal input.
2. Where two or more separate combustion plants which have been granted a permit for the first time on or after 1 July 1987, or the operators of which have submitted a complete application for a permit on or after that date, are installed in such a way that, taking technical and economic factors into account, their waste gases could in the judgement of the competent authority, be discharged through a common stack, the combination formed by such plants shall be considered as a single combustion plant and their capacities added for the purpose of calculating the total rated thermal input.
3. For the purpose of calculating the total rated thermal input of a combination of combustion plants referred to in paragraphs 1 and 2, individual combustion plants with a rated thermal input below 15 MW shall not be considered.

Article 30

Emission limit values

1. Waste gases from combustion plants shall be discharged in a controlled way by means of a stack, containing one or more flues, the height of which is calculated in such a way as to safeguard human health and the environment.

2. All permits for installations containing combustion plants which have been granted a permit before **1 January 2018**², or the operators of which have submitted a complete application for a permit before that date, provided that such plants are put into operation no later than **1 January 2019**, shall include conditions ensuring that emissions into air from these plants do not exceed the emission limit values set out in Part 1 of Annex V.

All permits for installations containing combustion plants which had been granted an exemption as referred to in Article 4(4) of Directive 2001/80/EC and which are in operation after **1 January 2024**³, shall include conditions ensuring that emissions into the air from these plants do not exceed the emission limit values set out in Part 2 of Annex V.

3. All permits for installations containing combustion plants not covered by paragraph 2 shall include conditions ensuring that emissions into the air from these plants do not exceed the emission limit values set out in Part 2 of Annex V.

4. The emission limit values set out in Parts 1 and 2 of Annex V as well as the minimum rates of desulphurisation set out in Part 5 of that Annex shall apply to the emissions of each common stack in relation to the total rated thermal input of the entire combustion plant. Where Annex V provides that emission limit values may be applied for a part of a combustion plant with a limited number of operating hours, those limit values shall apply to the emissions of that part of the plant, but shall be set in relation to the total rated thermal input of the entire combustion plant.

5. The competent authority may grant a derogation for a maximum of 6 months from the obligation to comply with the emission limit values provided for in paragraphs 2 and 3 for sulphur dioxide in respect of a combustion plant which to this end normally uses low-sulphur fuel, in cases where the operator is unable to comply with those limit values because of an interruption in the supply of low-sulphur fuel resulting from a serious shortage.

Member States⁴ shall immediately inform the Commission of any derogation granted under the first subparagraph.

6. The competent authority may grant a derogation from the obligation to comply with the emission limit values provided for in paragraphs 2 and 3 in cases where a combustion plant using only gaseous fuel has to resort exceptionally to the use of other fuels because of a sudden interruption in the supply of gas and for this reason would need to be equipped with a waste gas purification facility. The period for which such a derogation is granted shall not exceed 10 days except where there is an overriding need to maintain energy supplies.

The operator shall immediately inform the competent authority of each specific case referred to in the first subparagraph.

² The text displayed here corresponds to Point 5 of Annex II of the Treaty.

³ Article 4(4) of Directive 2001/80/EC as amended by Article 4 of Decision 2013/05/MC-EnC.

⁴ Decision 2013/06/MC-EnC incorporating this Directive is addressed to the Contracting Parties.

Member States shall inform the Commission immediately of any derogation granted under the first subparagraph.

7. Where a combustion plant is extended, the emission limit values set out in Part 2 of Annex V shall apply to the extended part of the plant affected by the change and shall be set in relation to the total rated thermal input of the entire combustion plant. In the case of a change to a combustion plant, which may have consequences for the environment and which affects a part of the plant with a rated thermal input of 50 MW or more, the emission limit values as set out in Part 2 of Annex V shall apply to the part of the plant which has changed in relation to the total rated thermal input of the entire combustion plant.

8. The emission limit values set out in Parts 1 and 2 of Annex V shall not apply to the following combustion plants:

(a) diesel engines;

(b) recovery boilers within installations for the production of pulp.

9. For the following combustion plants, on the basis of the best available techniques, the Commission shall review the need to establish Union-wide emission limit values and to amend the emission limit values set out in Annex V:

(a) the combustion plants referred to in paragraph 8;

(b) combustion plants within refineries firing the distillation and conversion residues from the refining of crude-oil for own consumption, alone or with other fuels, taking into account the specificity of the energy systems of refineries;

(c) combustion plants firing gases other than natural gas;

(d) combustion plants in chemical installations using liquid production residues as non-commercial fuel for own consumption.

The Commission shall, by 31 December 2013, report the results of this review to the European Parliament and to the Council accompanied, if appropriate, by a legislative proposal.

Article 31

Desulphurisation rate

1. For combustion plants firing indigenous solid fuel, which cannot comply with the emission limit values for sulphur dioxide referred to in Article 30(2) and (3) due to the characteristics of this fuel, Member States may apply instead the minimum rates of desulphurisation set out in Part 5 of Annex V, in accordance with the compliance rules set out in Part 6 of that Annex and with prior validation by the competent authority of the technical report referred to in Article 72(4)(a).

2. For combustion plants firing indigenous solid fuel, which co-incinerate waste, and which cannot comply with the C_{proc} values for sulphur dioxide set out in points 3.1 or 3.2 of Part 4 of Annex VI due to the characteristics of the indigenous solid fuel, Member States may apply instead the minimum rates of desulphurisation set out in Part 5 of Annex V, in accordance with the compliance rules set out in Part 6 of that Annex. If Member States choose to apply this paragraph, C_{waste} as referred to in point 1 of Part 4 of Annex VI shall be equal to 0 mg/Nm³.

3. The Commission shall, by 31 December 2019, review the possibility of applying minimum rates of

desulphurisation set out in Part 5 of Annex V, taking into account, in particular, the best available techniques and benefits obtained from reduced sulphur dioxide emissions.

Article 32

Transitional National Plan

<...>⁵

Article 33

Limited life time derogation

<...>⁶

Article 34

Small isolated systems

1. Until 31 December 2019, combustion plants being, on 6 January 2011, part of a small isolated system may be exempted from compliance with the emission limit values referred to in Article 30(2) and the rates of desulphurisation referred to in Article 31, where applicable. Until 31 December 2019, the emission limit values set out in the permits of these combustion plants, pursuant in particular to the requirements of Directives 2001/80/EC and 2008/1/EC, shall at least be maintained.

2. Combustion plants with a total rated thermal input of more than 500 MW firing solid fuels, which were granted the first permit after 1 July 1987, shall comply with the emission limit values for nitrogen oxides set out in Part 1 of Annex V.

3. Where there are, on the territory of a Member State combustion plants covered by this Chapter that are part of a small isolated system, that Member State shall report to the Commission before 7 January 2013 a list of those combustion plants, the total annual energy consumption of the small isolated system and the amount of energy obtained through interconnection with other systems.

Article 35

District heating plants

1. Until 31 December 2022, a combustion plant may be exempted from compliance with the emission limit values referred to in Article 30(2) and the rates of desulphurisation referred to in Article 31 provided that the following conditions are fulfilled:

- (a) the total rated thermal input of the combustion plant does not exceed 200 MW;
- (b) the plant was granted a first permit before 27 November 2002 or the operator of that plant had

⁵ Article 4(6) of Directive 2001/80/EC as amended by Decision 2013/05/MC-EnC applies.

⁶ Article 4(4) of Directive 2001/80/EC as amended by Decision 2013/05/MC-EnC applies.

submitted a complete application for a permit before that date, provided that it was put into operation no later than 27 November 2003;

(c) at least 50% of the useful heat production of the plant, as a rolling average over a period of 5 years, is delivered in the form of steam or hot water to a public network for district heating; and

(d) the emission limit values for sulphur dioxide, nitrogen oxides and dust set out in its permit applicable on 31 December 2015, pursuant in particular to the requirements of Directives 2001/80/EC and 2008/1/EC, are at least maintained until 31 December 2022.

2. At the latest on 1 January 2016, each Member State shall communicate to the Commission a list of any combustion plants to which paragraph 1 applies, including their total rated thermal input, the fuel types used and the applicable emission limit values for sulphur dioxide, nitrogen oxides and dust. In addition, Member States shall, for any combustion plants to which paragraph 1 applies and during the period mentioned in that paragraph, inform the Commission annually of the proportion of useful heat production of each plant which was delivered in the form of steam or hot water to a public network for district heating, expressed as a rolling average over the preceding 5 years.

Article 36

Geological storage of carbon dioxide

1. Member States shall ensure that operators of all combustion plants with a rated electrical output of 300 megawatts or more for which the original construction licence or, in the absence of such a procedure, the original operating licence is granted after the entry into force of Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide, have assessed whether the following conditions are met:

- (a) suitable storage sites are available,
- (b) transport facilities are technically and economically feasible,
- (c) it is technically and economically feasible to retrofit for carbon dioxide capture.

2. If the conditions laid down in paragraph 1 are met, the competent authority shall ensure that suitable space on the installation site for the equipment necessary to capture and compress carbon dioxide is set aside. The competent authority shall determine whether the conditions are met on the basis of the assessment referred to in paragraph 1 and other available information, particularly concerning the protection of the environment and human health.

Article 37

Malfunction or breakdown of the abatement equipment

1. Member States shall ensure that provision is made in the permits for procedures relating to malfunction or breakdown of the abatement equipment.

2. In the case of a breakdown, the competent authority shall require the operator to reduce or close down operations if a return to normal operation is not achieved within 24 hours, or to operate the plant using low polluting fuels.

The operator shall notify the competent authority within 48 hours after the malfunction or breakdown of the abatement equipment.

The cumulative duration of unabated operation shall not exceed 120 hours in any 12-month period. The competent authority may grant a derogation from the time limits set out in the first and third subparagraphs in one of the following cases:

- (a) there is an overriding need to maintain energy supplies;
- (b) the combustion plant with the breakdown would be replaced for a limited period by another plant which would cause an overall increase in emissions.

Article 38

Monitoring of emissions into air

1. Member States shall ensure that the monitoring of air polluting substances is carried out in accordance with Part 3 of Annex V.
2. The installation and functioning of the automated monitoring equipment shall be subject to control and to annual surveillance tests as set out in Part 3 of Annex V.
3. The competent authority shall determine the location of the sampling or measurement points to be used for the monitoring of emissions.
4. All monitoring results shall be recorded, processed and presented in such a way as to enable the competent authority to verify compliance with the operating conditions and emission limit values which are included in the permit.

Article 39

Compliance with emission limit values

The emission limit values for air shall be regarded as being complied with if the conditions set out in Part 4 of Annex V are fulfilled.

Article 40

Multi-fuel firing combustion plants

1. In the case of a multi-fuel firing combustion plant involving the simultaneous use of two or more fuels, the competent authority shall set the emission limit values in accordance with the following steps:
 - (a) taking the emission limit value relevant for each individual fuel and pollutant corresponding to the total rated thermal input of the entire combustion plant as set out in Parts 1 and 2 of Annex V;
 - (b) determining fuel-weighted emission limit values, which are obtained by multiplying the individual emission limit value referred to in point (a) by the thermal input delivered by each fuel, and dividing the product of multiplication by the sum of the thermal inputs delivered by all fuels,

(c) aggregating the fuel-weighted emission limit values.

2. In the case of multi-fuel firing combustion plants covered by Article 30(2), which use the distillation and conversion residues from the refining of crude-oil for own consumption, alone or with other fuels, the following emission limit values may be applied instead of the emission limit values set according to paragraph 1:

(a) where, during the operation of the combustion plant, the proportion contributed by the determinative fuel to the sum of the thermal inputs delivered by all fuels is 50% or more, the emission limit value set in Part 1 of Annex V for the determinative fuel;

(b) where the proportion contributed by the determinative fuel to the sum of the thermal inputs delivered by all fuels is less than 50%, the emission limit value determined in accordance with the following steps:

(i) taking the emission limit values set out in Part 1 of Annex V for each of the fuels used, corresponding to the total rated thermal input of the combustion plant;

(ii) calculating the emission limit value of the determinative fuel by multiplying the emission limit value, determined for that fuel according to point (i), by a factor of two, and subtracting from this product the emission limit value of the fuel used with the lowest emission limit value as set out in Part 1 of Annex V, corresponding to the total rated thermal input of the combustion plant;

(iii) determining the fuel-weighted emission limit value for each fuel used by multiplying the emission limit value determined under points (i) and (ii) by the thermal input of the fuel concerned and by dividing the product of this multiplication by the sum of the thermal inputs delivered by all fuels;

(iv) aggregating the fuel-weighted emission limit values determined under point (iii).

3. In the case of multi-fuel firing combustion plants covered by Article 30(2), which use the distillation and conversion residues from the refining of crude-oil for own consumption, alone or with other fuels, the average emission limit values for sulphur dioxide set out in Part 7 of Annex V may be applied instead of the emission limit values set according to paragraphs 1 or 2 of this Article.

Article 41

Implementing rules

Implementing rules shall be established concerning:

(a) the determination of the start-up and shut-down periods referred to in point 27 of Article 3 and in point 1 of Part 4 of Annex V; and

(b) the transitional national plans referred to in Article 32 and, in particular, the setting of emission ceilings and related monitoring and reporting.

Those implementing rules shall be adopted in accordance with the regulatory procedure referred to in Article 75(2). The Commission shall make appropriate proposals not later than 7 July 2011.

Article 72**Reporting by Member States⁷**

<...>

3. For all combustion plants covered by Chapter III of this Directive, Member States shall, from **1 January 2018**,⁸ establish an annual inventory of the sulphur dioxide, nitrogen oxides and dust emissions and energy input.

Taking into account the aggregation rules set out in Article 29, the competent authority shall obtain the following data for each combustion plant:

- (a) the total rated thermal input (MW) of the combustion plant;
- (b) the type of combustion plant: boiler, gas turbine, gas engine, diesel engine, other (specifying the type);
- (c) the date of the start of operation of the combustion plant;
- (d) the total annual emissions (tonnes per year) of sulphur dioxide, nitrogen oxides and dust (as total suspended particles);
- (e) the number of operating hours of the combustion plant;
- (f) the total annual amount of energy input, related to the net calorific value (TJ per year), broken down in terms of the following categories of fuel: coal, lignite, biomass, peat, other solid fuels (specifying the type), liquid fuels, natural gas, other gases (specifying the type).

The annual plant-by-plant data contained in these inventories shall be made available to the Commission upon request.

A summary of the inventories shall be made available to the Commission every 3 years within 12 months from the end of the three-year period considered. This summary shall show separately the data for combustion plants within refineries.

The Commission shall make available to the Member States and to the public a summary of the comparison and evaluation of those inventories in accordance with Directive 2003/4/EC within 24 months from the end of the three-year period considered.

4. Member States shall, from **1 January 2018**,⁹ report the following data annually to the Commission:

- (a) for combustion plants to which Article 31 applies, the sulphur content of the indigenous solid fuel used and the rate of desulphurisation achieved, averaged over each month. For the first year where Article 31 is applied, the technical justification of the non-feasibility of complying with the emission limit values referred to in Article 30(2) and (3) shall also be reported; and
- (b) for combustion plants which do not operate more than 1 500 operating hours per year as a rolling average over a period of 5 years, the number of operating hours per year.

<...>

⁷ Decision 2013/06/MC-EnC incorporating this Directive is addressed to the Contracting Parties.

⁸ The text displayed here corresponds to Article 2(1) of Decision 2013/06/MC-EnC.

⁹ The text displayed here corresponds to Article 2(1) of Decision 2013/06/MC-EnC.

Article 80

Transposition¹⁰

1. Each Contracting Party shall bring into force the laws, regulations and administrative provisions necessary to comply with Chapter III, Annex V and Article 72(3)-(4) of Directive 2010/75/EU by 1 January 2018.¹¹ They shall forthwith inform the Energy Community Secretariat thereof.

2. Contracting Parties shall communicate to the Energy Community Secretariat the text of the main provisions of national law which they adopt in the field covered by the present Decision.

Article 83

Entry into force¹²

This Decision shall enter into force upon its adoption by the Ministerial Council.

Article 84

Addressees¹³

This Decision is addressed to the Contracting Parties.

¹⁰ The text displayed here corresponds to Article 2 of Decision 2013/06/MC-EnC.

¹¹ In accordance with the Accession Protocol, the corresponding date for Georgia is 1 September 2018.

¹² The text displayed here corresponds to Article 3 of Decision 2013/06/MC-EnC.

¹³ The text displayed here corresponds to Article 4 of Decision 2013/06/MC-EnC.

ANNEX V

TECHNICAL PROVISIONS RELATING TO COMBUSTION PLANTS

PART 1

Emission limit values for combustion plants referred to in Article 30(2)

1. All emission limit values shall be calculated at a temperature of 273,15 K, a pressure of 101,3 kPa and after correction for the water vapour content of the waste gases and at a standardised O₂ content of 6% for solid fuels, 3% for combustion plants, other than gas turbines and gas engines using liquid and gaseous fuels and 15% for gas turbines and gas engines.
2. Emission limit values (mg/Nm³) for SO₂ for combustion plants using solid or liquid fuels with the exception of gas turbines and gas engines

Total rated thermal input (MW)	Coal and lignite and other solid fuels	Biomass	Peat	Liquid fuels
50-100	400	200	300	350
100-300	250	200	300	250
> 300	200	200	200	200

Combustion plants, using solid fuels which were granted a permit before 27 November 2002 or the operators of which had submitted a complete application for a permit before that date, provided that the plant was put into operation no later than 27 November 2003, and which do not operate more than 1 500 operating hours per year as a rolling average over a period of 5 years, shall be subject to an emission limit value for SO₂ of 800 mg/Nm³.

Combustion plants using liquid fuels, which were granted a permit before 27 November 2002 or the operators of which had submitted a complete application for a permit before that date, provided that the plant was put into operation no later than 27 November 2003, and which do not operate more than 1 500 operating hours per year as a rolling average over a period of 5 years, shall be subject to an emission limit value for SO₂ of 850 mg/Nm³ in case of plants with a total rated thermal input not exceeding 300 MW and of 400 mg/Nm³ in case of plants with a total rated thermal input greater than 300 MW.

A part of a combustion plant discharging its waste gases through one or more separate flues within a common stack, and which does not operate more than 1 500 operating hours per year as a rolling average over a period of 5 years, may be subject to the emission limit values set out in the preceding two paragraphs in relation to the total rated thermal input of the entire combustion plant. In such cases the emissions through each of those flues shall be monitored separately.

3. Emission limit values (mg/Nm³) for SO₂ for combustion plants using gaseous fuels with the exception of gas turbines and gas engines

In general	35
Liquefied gas	5
Low calorific gases from coke oven	400
Low calorific gases from blast furnace	200

Combustion plants, firing low calorific gases from gasification of refinery residues, which were granted a permit before 27 November 2002 or the operators of which had submitted a complete application for a permit before that date, provided that the plant was put into operation no later than 27 November 2003, shall be subject to an emission limit value for SO_2 of 800 mg/Nm^3 .

4. Emission limit values (mg/Nm^3) for NO_x for combustion plants using solid or liquid fuels with the exception of gas turbines and gas engines

Total rated thermal input (MW)	Coal and lignite and other solid fuels	Biomass and peat	Liquid fuels
50-100	300 450 in case of pulverised lignite combustion	300	450
100-300	200	250	200 ⁽¹⁾
> 300	200	200	150 ⁽¹⁾

⁽¹⁾ The emission limit value is 450 mg/Nm^3 for the firing of distillation and conversion residues from the refining of crude-oil for own consumption in combustion plants with a total rated thermal input not exceeding 500 MW which were granted a permit before 27 November 2002 or the operators of which had submitted a complete application for a permit before that date, provided that the plant was put into operation no later than 27 November 2003.

Combustion plants in chemical installations using liquid production residues as non-commercial fuel for own consumption with a total rated thermal input not exceeding 500 MW which were granted a permit before 27 November 2002 or the operators of which had submitted a complete application for a permit before that date, provided that the plant was put into operation no later than 27 November 2003, shall be subject to an emission limit value for NO_x of 450 mg/Nm^3 .

Combustion plants using solid or liquid fuels with a total rated thermal input not exceeding 500 MW which were granted a permit before 27 November 2002 or the operators of which had submitted a complete application for a permit before that date, provided that the plant was put into operation no later than 27 November 2003, and which do not operate more than 1 500 operating hours per year as a rolling average over a period of 5 years, shall be subject to an emission limit value for NO_x of 450 mg/Nm^3 .

Combustion plants using solid fuels with a total rated thermal input greater than 500 MW, which were granted a permit before 1 July 1987 and which do not operate more than 1 500 operating hours per year as a rolling average over a period of 5 years, shall be subject to an emission limit value for NO_x of 450 mg/Nm^3 .

Combustion plants using liquid fuels, with a total rated thermal input greater than 500 MW which were granted a permit before 27 November 2002 or the operators of which had submitted a complete application for a permit before that date, provided that the plant was put into operation no later than 27 November 2003, and which do not operate more than 1 500 operating hours per year as a rolling average over a period of 5 years, shall be subject to an emission limit value for NO_x of 400 mg/Nm^3 .

A part of a combustion plant discharging its waste gases through one or more separate flues within a common stack, and which does not operate more than 1 500 operating hours per year as a rolling average over a period of 5 years, may be subject to the emission limit values set out in the preceding three paragraphs in relation to the total rated thermal input of the entire combustion plant. In such cases the emissions through each of those flues shall be monitored separately.

5. Gas turbines (including combined cycle gas turbines (CCGT)) using light and middle distillates as liquid fuels shall be subject to an emission limit value for NO_x of 90 mg/Nm³ and for CO of 100 mg/Nm³. Gas turbines for emergency use that operate less than 500 operating hours per year are not covered by the emission limit values set out in this point. The operator of such plants shall record the used operating hours.

6. Emission limit values (mg/Nm³) for NO_x and CO for gas fired combustion plants

	NO_x	CO
Combustion plants firing natural gas with the exception of gas turbines and gas engines	100	100
Combustion plants firing blast furnace gas, coke oven gas or low calorific gases from gasification of refinery residues, with the exception of gas turbines and gas engines	200 ⁽⁴⁾	—
Combustion plants firing other gases, with the exception of gas turbines and gas engines	200 ⁽⁴⁾	—
Gas turbines (including CCGT), using natural gas ⁽¹⁾ as fuel	50 ⁽²⁾ ⁽³⁾	100
Gas turbines (including CCGT), using other gases as fuel	120	—
Gas engines	100	100

⁽¹⁾ Natural gas is naturally occurring methane with not more than 20% (by volume) of inerts and other constituents.

⁽²⁾ 75 mg/Nm³ in the following cases, where the efficiency of the gas turbine is determined at ISO base load conditions:

- (i) gas turbines, used in combined heat and power systems having an overall efficiency greater than 75%;
- (ii) gas turbines used in combined cycle plants having an annual average overall electrical efficiency greater than 55%;
- (iii) gas turbines for mechanical drives.

⁽³⁾ For single cycle gas turbines not falling into any of the categories mentioned under note (2), but having an efficiency greater than 35% – determined at ISO base load conditions – the emission limit value for NO_x shall be $50x/35$ where x is the gas turbine efficiency at ISO base load conditions expressed as a percentage.

⁽⁴⁾ 300 mg/Nm³ for such combustion plants with a total rated thermal input not exceeding 500 MW which were granted a permit before 27 November 2002 or the operators of which had submitted a complete application for a permit before that date, provided that the plant was put into operation no later than 27 November 2003.

For gas turbines (including CCGT), the NO_x and CO emission limit values set out in the table contained in this point apply only above 70% load.

For gas turbines (including CCGT) which were granted a permit before 27 November 2002 or the operators of which had submitted a complete application for a permit before that date, provided that the plant was put into operation no later than 27 November 2003, and which do not operate more than 1 500 operating hours per year as a rolling average over a period of 5 years, the emission limit value for NO_x is 150 mg/Nm³ when firing natural gas and 200 mg/Nm³ when firing other gases or liquid fuels.

A part of a combustion plant discharging its waste gases through one or more separate flues within a common stack, and which does not operate more than 1 500 operating hours per year as a rolling average over a period of 5 years, may be subject to the emission limit values set out in the preceding paragraph in relation to the total rated thermal input of the entire combustion plant. In such cases the emissions through each of those flues shall be monitored separately.

Gas turbines and gas engines for emergency use that operate less than 500 operating hours per year are not covered by the emission limit values set out in this point. The operator of such plants shall

record the used operating hours.

7. Emission limit values (mg/Nm³) for dust for combustion plants using solid or liquid fuels with the exception of gas turbines and gas engines

Total rated thermal input (MW)	Coal and lignite and other solid fuels	Biomass and peat	Liquid fuels ⁽¹⁾
50-100	30	30	30
100-300	25	20	25
> 300	20	20	20

⁽¹⁾ The emission limit value is 50 mg/Nm³ for the firing of distillation and conversion residues from the refining of crude oil for own consumption in combustion plants which were granted a permit before 27 November 2002 or the operators of which had submitted a complete application for a permit before that date, provided that the plant was put into operation no later than 27 November 2003.

8. Emission limit values (mg/Nm³) for dust for combustion plants using gaseous fuels with the exception of gas turbines and gas engines

In general	5
Blast furnace gas	10
Gases produced by the steel industry which can be used elsewhere	30

PART 2

Emission limit values for combustion plants referred to in Article 30(3)

1. All emission limit values shall be calculated at a temperature of 273,15 K, a pressure of 101,3 kPa and after correction for the water vapour content of the waste gases and at a standardised O₂ content of 6% for solid fuels, 3% for combustion plants other than gas turbines and gas engines using liquid and gaseous fuels and 15% for gas turbines and gas engines.

In case of combined cycle gas turbines with supplementary firing, the standardised O₂ content may be defined by the competent authority, taking into account the specific characteristics of the installation concerned.

2. Emission limit values (mg/Nm³) for SO₂ for combustion plants using solid or liquid fuels with the exception of gas turbines and gas engines

Total rated thermal input (MW)	Coal and lignite and other solid fuels	Biomass	Peat	Liquid fuels
50-100	400	200	300	350
100-300	200	200	300 250 in case of fluidised bed combustion	200
> 300	150 200 in case of circulating or pressurised fluidised bed combustion	150	150 200 in case of fluidised bed combustion	150

3. Emission limit values (mg/Nm³) for SO₂ for combustion plants using gaseous fuels with the excep-

tion of gas turbines and gas engines

In general	35
Liquefied gas	5
Low calorific gases from coke oven	400
Low calorific gases from blast furnace	200

4. Emission limit values (mg/Nm³) for NO_x for combustion plants using solid or liquid fuels with the exception of gas turbines and gas engines

Total rated thermal input (MW)	Coal and lignite and other solid fuels	Biomass and peat	Liquid fuels
50-100	300 400 in case of pulverised lignite combustion	250	300
100-300	200	200	150
> 300	150 200 in case of pulverised lignite combustion	150	100

5. Gas turbines (including CCGT) using light and middle distillates as liquid fuels shall be subject to an emission limit value for NO_x of 50 mg/Nm³ and for CO of 100 mg/Nm³

Gas turbines for emergency use that operate less than 500 operating hours per year are not covered by the emission limit values set out in this point. The operator of such plants shall record the used operating hours.

6. Emission limit values (mg/Nm³) for NO_x and CO for gas fired combustion plants

	NO _x	CO
Combustion plants other than gas turbines and gas engines	100	100
Gas turbines (including CCGT)	50 ⁽¹⁾	100
Gas engines	75	100

⁽¹⁾ For single cycle gas turbines having an efficiency greater than 35% – determined at ISO base load conditions – the emission limit value for NO_x shall be 50x/35 where x is the gas turbine efficiency at ISO base load conditions expressed as a percentage.

For gas turbines (including CCGT), the NO_x and CO emission limit values set out in this point apply only above 70% load.

Gas turbines and gas engines for emergency use that operate less than 500 operating hours per year are not covered by the emission limit values set out in this point. The operator of such plants shall record the used operating hours.

7. Emission limit values (mg/Nm³) for dust for combustion plants using solid or liquid fuels with the exception of gas turbines and gas engines

Total rated thermal input (MW)	
50-300	20
> 300	10 20 for biomass and peat

8. Emission limit values (mg/Nm³) for dust for combustion plants using gaseous fuels with the exception of gas turbines and gas engines

In general	5
Blast furnace gas	10
Gases produced by the steel industry which can be used elsewhere	30

PART 3

Emission monitoring

1. The concentrations of SO₂, NO_x and dust in waste gases from each combustion plant with a total rated thermal input of 100 MW or more shall be measured continuously.

The concentration of CO in waste gases from each combustion plant firing gaseous fuels with a total rated thermal input of 100 MW or more shall be measured continuously.

2. The competent authority may decide not to require the continuous measurements referred to in point 1 in the following cases:

(a) for combustion plants with a life span of less than 10 000 operational hours;

(b) for SO₂ and dust from combustion plants firing natural gas;

(c) for SO₂ from combustion plants firing oil with known sulphur content in cases where there is no waste gas desulphurisation equipment;

(d) for SO₂ from combustion plants firing biomass if the operator can prove that the SO₂ emissions can under no circumstances be higher than the prescribed emission limit values.

3. Where continuous measurements are not required, measurements of SO₂, NO_x, dust and, for gas fired plants, also of CO shall be required at least once every 6 months.

4. For combustion plants firing coal or lignite, the emissions of total mercury shall be measured at least once per year.

5. As an alternative to the measurements of SO₂ and NO_x referred to in point 3, other procedures, verified and approved by the competent authority, may be used to determine the SO₂ and NO_x emissions. Such procedures shall use relevant CEN standards or, if CEN standards are not available, ISO, national or other international standards which ensure the provision of data of an equivalent scientific quality.

6. The competent authority shall be informed of significant changes in the type of fuel used or in the mode of operation of the plant. The competent authority shall decide whether the monitoring requirements laid down in points 1 to 4 are still adequate or require adaptation.

7. The continuous measurements carried out in accordance with point 1 shall include the measurement of the oxygen content, temperature, pressure and water vapour content of the waste gases. The continuous measurement of the water vapour content of the waste gases shall not be necessary, provided that the sampled waste gas is dried before the emissions are analysed.

8. Sampling and analysis of relevant polluting substances and measurements of process parameters as well as the quality assurance of automated measuring systems and the reference measurement methods to calibrate those systems shall be carried out in accordance with CEN standards. If CEN standards are not available, ISO, national or other international standards which ensure the provision of data of an equivalent scientific quality shall apply.

The automated measuring systems shall be subject to control by means of parallel measurements with the reference methods at least once per year.

The operator shall inform the competent authority about the results of the checking of the automated measuring systems.

9. At the emission limit value level, the values of the 95% confidence intervals of a single measured result shall not exceed the following percentages of the emission limit values:

Carbon monoxide	10%
Sulphur dioxide	20%
Nitrogen oxides	20%
Dust	30%

10. The validated hourly and daily average values shall be determined from the measured valid hourly average values after having subtracted the value of the confidence interval specified in point 9.

Any day in which more than three hourly average values are invalid due to malfunction or maintenance of the automated measuring system shall be invalidated. If more than 10 days over a year are invalidated for such situations the competent authority shall require the operator to take adequate measures to improve the reliability of the automated measuring system.

11. In the case of plants which must comply with the rates of desulphurisation referred to in Article 31, the sulphur content of the fuel which is fired in the combustion plant shall also be regularly monitored. The competent authorities shall be informed of substantial changes in the type of fuel used.

PART 4

Assessment of compliance with emission limit values

1. In the case of continuous measurements, the emission limit values set out in Parts 1 and 2 shall be regarded as having been complied with if the evaluation of the measurement results indicates, for operating hours within a calendar year, that all of the following conditions have been met:

(a) no validated monthly average value exceeds the relevant emission limit values set out in Parts 1 and 2;

(b) no validated daily average value exceeds 110% of the relevant emission limit values set out in Parts 1 and 2;

(c) in cases of combustion plants composed only of boilers using coal with a total rated thermal input below 50 MW, no validated daily average value exceeds 150% of the relevant emission limit values set out in Parts 1 and 2,

(d) 95% of all the validated hourly average values over the year do not exceed 200% of the relevant emission limit values set out in Parts 1 and 2.

The validated average values are determined as set out in point 10 of Part 3.

For the purpose of the calculation of the average emission values, the values measured during the periods referred to in Article 30(5) and (6) and Article 37 as well as during the start-up and shut-down periods shall be disregarded.

2. Where continuous measurements are not required, the emission limit values set out in Parts 1 and 2 shall be regarded as having been complied with if the results of each of the series of measure-

ments or of the other procedures defined and determined according to the rules laid down by the competent authorities do not exceed the emission limit values.

PART 5

Minimum rate of desulphurisation

1. Minimum rate of desulphurisation for combustion plants referred to in Article 30(2)

Total rated thermal input (MW)	Minimum rate of desulphurisation	
	Plants which were granted a permit before 27 November 2002 or the operators of which had submitted a complete application for a permit before that date, provided that the plant was put into operation no later than 27 November 2003	Other plants
50-100	80%	92%
100-300	90%	92%
> 300	96% ⁽¹⁾	96%

⁽¹⁾ For combustion plants firing oil shale, the minimum rate of desulphurisation is 95%.

2. Minimum rate of desulphurisation for combustion plants referred to in Article 30(3)

Total rated thermal input (MW)	Minimum rate of desulphurisation
50-100	93%
100-300	93%
> 300	97%

PART 6

Compliance with rate of desulphurisation

The minimum rates of desulphurisation set out in Part 5 of this Annex shall apply as a monthly average limit value.

PART 7

Average emission limit values for multi-fuel firing combustion plants within a refinery

Average emission limit values (mg/Nm³) for SO₂ for multi-fuel firing combustion plants within a refinery, with the exception of gas turbines and gas engines, which use the distillation and conversion residues from the refining of crude-oil for own consumption, alone or with other fuels:

(a) for combustion plants which were granted a permit before 27 November 2002 or the operators of which had submitted a complete application for a permit before that date, provided that the plant was put into operation no later than 27 November 2003: 1 000 mg/Nm³;

(b) for other combustion plants: 600 mg/Nm³.

These emission limit values shall be calculated at a temperature of 273,15 K, a pressure of 101,3 kPa and after correction for the water vapour content of the waste gases and at a standardised O₂ content of 6% for solid fuels and 3% for liquid and gaseous fuels.

DIRECTIVE 79/409/EEC of 2 April 1979 on the conservation of wild birds

Whereas the Council declaration of 22 November 1973 on the programme of action of the European Communities on the environment calls for specific action to protect birds, supplemented by the resolution of the Council of the European Communities and of the representatives of the Governments of the Member States meeting within the Council of 17 May 1977 on the continuation and implementation of a European Community policy and action programme on the environment;

Whereas a large number of species of wild birds naturally occurring in the European territory of the Member States are declining in number, very rapidly in some cases; whereas this decline represents a serious threat to the conservation of the natural environment, particularly because of the biological balances threatened thereby;

Whereas the species of wild birds naturally occurring in the European territory of the Member States are mainly migratory species; whereas such species constitute a common heritage and whereas effective bird protection is typically a trans-frontier environment problem entailing common responsibilities;

Whereas the conditions of life for birds in Greenland are fundamentally different from those in the other regions of the European territory of the Member States on account of the general circumstances and in particular the climate, the low density of population and the exceptional size and geographical situation of the island;

Whereas therefore this Directive should not apply to Greenland;

Whereas the conservation of the species of wild birds naturally occurring in the European territory of the Member States is necessary to attain, within the operation of the common market, of the Community's objectives regarding the improvement of living conditions, a harmonious development of economic activities throughout the Community and a continuous and balanced expansion, but the necessary specific powers to act have not been provided for in the Treaty;

Whereas the measures to be taken must apply to the various factors which may affect the numbers of birds, namely the repercussions of man's activities and in particular the destruction and pollution of their habitats, capture and killing by man and the trade resulting from such practices; whereas the stringency of such measures should be adapted to the particular situation of the various species within the framework of a conservation policy;

Whereas conservation is aimed at the long-term protection and management of natural resources as an integral part of the heritage of the peoples of Europe; whereas it makes it possible to control natural resources and governs their use on the basis of the measures necessary for the maintenance and adjustment of the natural balances between species as far as is reasonably possible;

Whereas the preservation, maintenance or restoration of a sufficient diversity and area of habitats is essential to the conservation of all species of birds; whereas certain species of birds should be the subject of special conservation measures concerning their habitats in order to ensure their survival and reproduction in their area of distribution; whereas such measures must also take account of migratory species and be coordinated with a view to setting up a coherent whole;

Whereas, in order to prevent commercial interests from exerting a possible harmful pressure on exploitation levels it is necessary to impose a general ban on marketing and to restrict all derogation to those species whose biological status so permits, account being taken of the specific conditions

obtaining in the different regions;

Whereas, because of their high population level, geographical distribution and reproductive rate in the Community as a whole, certain species may be hunted, which constitutes acceptable exploitation; where certain limits are established and respected, such hunting must be compatible with maintenance of the population of these species at a satisfactory level;

Whereas the various means, devices or methods of large-scale or non-selective capture or killing and hunting with certain forms of transport must be banned because of the excessive pressure which they exert or may exert on the numbers of the species concerned;

Whereas, because of the importance which may be attached to certain specific situations, provision should be made for the possibility of derogations on certain conditions and subject to monitoring by the Commission;

Whereas the conservation of birds and, in particular, migratory birds still presents problems which call for scientific research; whereas such research will also make it possible to assess the effectiveness of the measures taken;

Whereas care should be taken in consultation with the Commission to see that the introduction of any species of wild bird not naturally occurring in the European territory of the Member States does not cause harm to local flora and fauna;

Whereas the Commission will every three years prepare and transmit to the Member States a composite report based on information submitted by the Member States on the application of national provisions introduced pursuant to this Directive;

Whereas it is necessary to adapt certain Annexes rapidly in the light of technical and scientific progress; whereas, to facilitate the implementation of the measures needed for this purpose, provision should be made for a procedure establishing close cooperation between the Member States and the Commission in a Committee for Adaptation to Technical and Scientific Progress.

Article 1

1. This Directive relates to the conservation of all species of naturally occurring birds in the wild state in the European territory of the Member States to which the Treaty applies. It covers the protection, management and control of these species and lays down rules for their exploitation.
2. It shall apply to birds, their eggs, nests and habitats.
3. This Directive shall not apply to Greenland.

Article 2

Member States shall take the requisite measures to maintain the population of the species referred to in Article 1 at a level which corresponds in particular to ecological, scientific and cultural requirements, while taking account of economic and recreational requirements, or to adapt the population of these species to that level.

Article 3

1. In the light of the requirements referred to in Article 2, Member States shall take the requisite measures to preserve, maintain or re-establish a sufficient diversity and area of habitats for all the species of birds referred to in Article 1.

2. The preservation, maintenance and re-establishment of biotopes and habitats shall include primarily the following measures:

- (a) creation of protected areas;
- (b) upkeep and management in accordance with the ecological needs of habitats inside and outside the protected zones;
- (c) re-establishment of destroyed biotopes;
- (d) creation of biotopes.

Article 4

1. The species mentioned in Annex I shall be the subject of special conservation measures concerning their habitat in order to ensure their survival and reproduction in their area of distribution.

In this connection, account shall be taken of:

- (a) species in danger of extinction;
- (b) species vulnerable to specific changes in their habitat;
- (c) species considered rare because of small populations or restricted local distribution;
- (d) other species requiring particular attention for reasons of the specific nature of their habitat.

Trends and variations in population levels shall be taken into account as a background for evaluations.

Member States shall classify in particular the most suitable territories in number and size as special protection areas for the conservation of these species, taking into account their protection requirements in the geographical sea and land area where this Directive applies.

2. Member States shall take similar measures for regularly occurring migratory species not listed in Annex I, bearing in mind their need for protection in the geographical sea and land area where this Directive applies, as regards their breeding, moulting and wintering areas and staging posts along their migration routes. To this end, Member States shall pay particular attention to the protection of wetlands and particularly to wetlands of international importance.¹

3. Member States shall send the Commission all relevant information so that it may take appropriate initiatives with a view to the coordination necessary to ensure that the areas provided for in paragraphs 1 and 2 above form a coherent whole which meets the protection requirements of these species in the geographical sea and land area where this Directive applies.

4. In respect of the protection areas referred to in paragraphs 1 and 2 above, Member States shall

¹ According to Article 16(iv) of the Treaty, the *acquis communautaire* on environment includes Article 4(2) of Directive 79/409/EEC.

take appropriate steps to avoid pollution or deterioration of habitats or any disturbances affecting the birds, in so far as these would be significant having regard to the objectives of this Article. Outside these protection areas, Member States shall also strive to avoid pollution or deterioration of habitats.

Article 5

Without prejudice to Articles 7 and 9, Member States shall take the requisite measures to establish a general system of protection for all species of birds referred to in Article 1, prohibiting in particular:

- (a) deliberate killing or capture by any method;
- (b) deliberate destruction of, or damage to, their nests and eggs or removal of their nests;
- (c) taking their eggs in the wild and keeping these eggs even if empty;
- (d) deliberate disturbance of these birds particularly during the period of breeding and rearing, in so far as disturbance would be significant having regard to the objectives of this Directive;
- (e) keeping birds of species the hunting and capture of which is prohibited.

Article 6

1. Without prejudice to the provisions of paragraphs 2 and 3, Member States shall prohibit, for all the bird species referred to in Article 1, the sale, transport for sale, keeping for sale and the offering for sale of live or dead birds and of any readily recognizable parts or derivatives of such birds.

2. The activities referred to in paragraph 1 shall not be prohibited in respect of the species referred to in Annex III/1, provided that the birds have been legally killed or captured or otherwise legally acquired.

3. Member States may, for the species listed in Annex III/2, allow within their territory the activities referred to in paragraph 1, making provision for certain restrictions, provided the birds have been legally killed or captured or otherwise legally acquired.

Member States wishing to grant such authorization shall first of all consult the Commission with a view to examining jointly with the latter whether the marketing of specimens of such species would result or could reasonably be expected to result in the population levels, geographical distribution or reproductive rate of the species being endangered throughout the Community. Should this examination prove that the intended authorization will, in the view of the Commission, result in any one of the aforementioned species being thus endangered or in the possibility of their being thus endangered, the Commission shall forward a reasoned recommendation to the Member State concerned stating its opposition to the marketing of the species in question. Should the Commission consider that no such risk exists, it will inform the Member State concerned accordingly.

The Commission's recommendation shall be published in the Official Journal of the European Communities.

Member States granting authorization pursuant to this paragraph shall verify at regular intervals that the conditions governing the granting of such authorization continue to be fulfilled.

4. The Commission shall carry out studies on the biological status of the species listed in Annex III/3 and on the effects of marketing on such status.

It shall submit, at the latest four months before the time limit referred to in Article 18 (1) of this Directive, a report and its proposals to the Committee referred to in Article 16, with a view to a decision on the entry of such species in Annex III/2.

Pending this decision, the Member States may apply existing national rules to such species without prejudice to paragraph 3 hereof.

Article 7

1. Owing to their population level, geographical distribution and reproductive rate throughout the Community, the species listed in Annex II may be hunted under national legislation. Member States shall ensure that the hunting of these species does not jeopardize conservation efforts in their distribution area.

2. The species referred to in Annex II/1 may be hunted in the geographical sea and land area where this Directive applies.

3. The species referred to in Annex II/2 may be hunted only in the Member States in respect of which they are indicated.

4. Member States shall ensure that the practice of hunting, including falconry if practised, as carried on in accordance with the national measures in force, complies with the principles of wise use and ecologically balanced control of the species of birds concerned and that this practice is compatible as regards the population of these species, in particular migratory species, with the measures resulting from Article 2. They shall see in particular that the species to which hunting laws apply are not hunted during the rearing season nor during the various stages of reproduction. In the case of migratory species, they shall see in particular that the species to which hunting regulations apply are not hunted during their period of reproduction or during their return to their rearing grounds. Member States shall send the Commission all relevant information on the practical application of their hunting regulations.

Article 8

1. In respect of the hunting, capture or killing of birds under this Directive, Member States shall prohibit the use of all means, arrangements or methods used for the large-scale or non-selective capture or killing of birds or capable of causing the local disappearance of a species, in particular the use of those listed in Annex IV (a).

2. Moreover, Member States shall prohibit any hunting from the modes of transport and under the conditions mentioned in Annex IV (b).

Article 9

1. Member States may derogate from the provisions of Articles 5, 6, 7 and 8, where there is no other satisfactory solution, for the following reasons:

(a) - in the interests of public health and safety,

- in the interests of air safety,

- to prevent serious damage to crops, livestock, forests, fisheries and water,

- for the protection of flora and fauna;

(b) for the purposes of research and teaching, of re-population, of re-introduction and for the breeding necessary for these purposes;

(c) to permit, under strictly supervised conditions and on a selective basis, the capture, keeping or other judicious use of certain birds in small numbers.

2. The derogations must specify:

- the species which are subject to the derogations,

- the means, arrangements or methods authorized for capture or killing,

- the conditions of risk and the circumstances of time and place under which such derogations may be granted,

- the authority empowered to declare that the required conditions obtain and to decide what means, arrangements or methods may be used, within what limits and by whom,

- the controls which will be carried out.

3. Each year the Member States shall send a report to the Commission on the implementation of this Article.

4. On the basis of the information available to it, and in particular the information communicated to it pursuant to paragraph 3, the Commission shall at all times ensure that the consequences of these derogations are not incompatible with this Directive. It shall take appropriate steps to this end.

Article 10

1. Member States shall encourage research and any work required as a basis for the protection, management and use of the population of all species of bird referred to in Article 1.

2. Particular attention shall be paid to research and work on the subjects listed in Annex V. Member States shall send the Commission any information required to enable it to take appropriate measures for the coordination of the research and work referred to in this Article.

Article 11

Member States shall see that any introduction of species of bird which do not occur naturally in the wild state in the European territory of the Member States does not prejudice the local flora and fauna. In this connection they shall consult the Commission.

Article 12

1. Member States shall forward to the Commission every three years, starting from the date of expiry

of the time limit referred to in Article 18(1), a report on the implementation of national provisions taken thereunder.

2. The Commission shall prepare every three years a composite report based on the information referred to in paragraph 1. That part of the draft report covering the information supplied by a Member State shall be forwarded to the authorities of the Member State in question for verification. The final version of the report shall be forwarded to the Member States.

Article 13

Application of the measures taken pursuant to this Directive may not lead to deterioration in the present situation as regards the conservation of species of birds referred to in Article 1.

Article 14

Member States may introduce stricter protective measures than those provided for under this Directive.

Article 15

Such amendments as are necessary for adapting Annexes I and V to this Directive to technical and scientific progress and the amendments referred to in the second paragraph of Article 6(4) shall be adopted in accordance with the procedure laid down in Article 17.

Article 16

1. For the purposes of the amendments referred to in Article 15 of this Directive, a Committee for the Adaptation to Technical and Scientific Progress (hereinafter called "the Committee"), consisting of representatives of the Member States and chaired by a representative of the Commission, is hereby set up.

2. The Committee shall draw up its rules of procedure.

Article 17

1. Where the procedure laid down in this Article is to be followed, matters shall be referred to the Committee by its chairman, either on his own initiative or at the request of the representative of a Member State.

2. The Commission representative shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion on the draft within a time limit set by the chairman having regard to the urgency of the matter. It shall act by a majority of 41 votes, the votes of the Member States being weighted as provided in Article 148(2) of the Treaty. The chairman shall not vote.

3. (a) The Commission shall adopt the measures envisaged where they are in accordance with the opinion of the Committee.

(b) Where the measures envisaged are not in accordance with the opinion of the Committee, or if no opinion is delivered, the Commission shall without delay submit a proposal to the Council concerning the measures to be adopted. The Council shall act by a qualified majority.

(c) If, within three months of the proposal being submitted to it, the Council has not acted, the proposed measures shall be adopted by the Commission.

Article 18²

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive within two years of its notification. They shall forthwith inform the Commission thereof.

2. Member States shall communicate to the Commission the texts of the main provisions of national law which they adopt in the field governed by this Directive.

Article 19

This Directive is addressed to the Member States.

² Contracting Parties were obliged to bring into force the laws, regulations and administrative provisions necessary to comply with that Directive until 1 July 2006 (in accordance with their Accession Protocols, 30 December 2010 for Moldova, 1 January 2015 for Ukraine and 1 September 2019 for Georgia).

ANNEX I

1. *Gavia immer* | Great northern diver
2. *Calonectris diomedea* | Cory's shearwater
3. *Hydrobates pelagicus* | Storm petrel
4. *Oceanodroma leucorhoa* | Leach's petrel
5. *Phalacrocorax carbo sinensis* | Cormorant (continental race)
6. *Botaurus stellaris* | Bittern
7. *Nycticorax nycticorax* | Night heron
8. *Ardeola ralloides* | Squacco heron
9. *Egretta garzetta* | Little egret
10. *Egretta alba* | Great white heron
11. *Ardea purpurea* | Purple heron
12. *Ciconia nigra* | Black stork
13. *Ciconia ciconia* | White stork
14. *Plegadis falcinellus* | Glossy ibis
15. *Platalea leucorodia* | Spoonbill
16. *Phoenicopterus ruber* | Greater flamingo
17. *Cygnus colymbianus bewickii*(*Cygnus bewickii*) | Bewick's swan
18. *Cygnus cygnus* | Whooper swan
19. *Anser albifrons flavirostris* | White-fronted goose (Greenland race)
20. *Branta leucopsis* | Barnacle goose
21. *Aythya nyroca* | White-eyed pochard
22. *Oxyura leucicephala* | White-headed duck
23. *Pernis apivorus* | Honey buzzard
24. *Milvus migrans* | Black kite
25. *Milvus milvus* | Kite
26. *Haliaeetus albicilla* | White-tailed eagle
27. *Gypaetus barbatus* | Bearded vulture
28. *Neophron percnopterus* | Egyptian vulture
29. *Gyps fulvus* | Griffon vulture
30. *Aegypius monachus* | Black vulture
31. *Circus gallicus* | Short-toed eagle
32. *Circus aeruginosus* | Marsh harrier
33. *Circus cyaneus* | Hen harrier
34. *Circus pygargus* | Montagu's harrier

35. *Aquila chrysaetus* | Golden eagle
36. *Hieraaetus pennatus* | Booted eagle
37. *Hieraaetus fasciatus* | Bonelli's eagle
38. *Pandion haliaetus* | Osprey
39. *Falco eleonora* | Eleonora's falcon
40. *Falco biarmicus* | Lanner falcon
41. *Falco peregrinus* | Peregrine
42. *Porphyrio porphyrio* | Purple gallinule
43. *Grus grus* | Crane
44. *Tetrax tetrax* (*Otis tetrax*) | Little bustard
45. *Otis tarda* | Great bustard
46. *Himantopus himantopus* | Black-winged stilt
47. *Recurvirostra avosetta* | Avocet
48. *Burhinus oedichnemos* | Stone curlew
49. *Glareola pratincola* | Pratincole
50. *Charadrius morinellus* (*Endromias morinellus*) | Dotterel
51. *Pluvialis apricaria* | Golden plover
52. *Gallinago media* | Great snipe
53. *Tringa glareola* | Wood-sandpiper
54. *Phalaropus lobatus* | Red-necked phalarope
55. *Larus genei* | Slender-billed gull
56. *Larus audouinii* | Audouin's gull
57. *Gelochelidon nilotica* | Gull-billed tern
58. *Sterna sandvicensis* | Sandwich tern
59. *Sterna dougallii* | Roseate tern
60. *Sterna hirundo* | Common tern
61. *Sterna paradisaea* | Arctic tern
62. *Sterna albifrons* | Little tern
63. *Chelidonias niger* | Black tern
64. *Pterocles alchata* | Pin-tailed sandgrouse
65. *Bubo bubo* | Eagle owl
66. *Nyctea scandiaca* | Snowy owl
67. *Asio flammeus* | Short-eared owl
68. *Alcedo atthis* | Kingfisher
69. *Dryocopus martius* | Black woodpecker
70. *Dendrocopus leucotus* | White-backed woodpecker

- 71. *Luscinia svecica* | Blue-throat
- 72. *Sylvia undata* | Dartford warbler
- 73. *Sylvia nisoria* | Barred warbler
- 74. *Sitta whiteheadi* | Corsican nuthatch

DIRECTIVE 2004/35/EC of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage

Incorporated and adapted by Ministerial Council Decision 2016/14/MC-EnC of 14 October 2016 on amending the Treaty establishing the Energy Community and adapting and implementing Directive 2004/35/EC of the European Parliament and of the Council.

*The adaptations made by Ministerial Council Decision 2016/12/MC-EnC are highlighted in **bold and blue**.*

Whereas:

(1) There are currently many contaminated sites in the Community, posing significant health risks, and the loss of biodiversity has dramatically accelerated over the last decades. Failure to act could result in increased site contamination and greater loss of biodiversity in the future. Preventing and remedying, insofar as is possible, environmental damage contributes to implementing the objectives and principles of the Community's environment policy as set out in the Treaty. Local conditions should be taken into account when deciding how to remedy damage.

(2) The prevention and remedying of environmental damage should be implemented through the furtherance of the "polluter pays" principle, as indicated in the Treaty and in line with the principle of sustainable development. The fundamental principle of this Directive should therefore be that an operator whose activity has caused the environmental damage or the imminent threat of such damage is to be held financially liable, in order to induce operators to adopt measures and develop practices to minimise the risks of environmental damage so that their exposure to financial liabilities is reduced.

(3) Since the objective of this Directive, namely to establish a common framework for the prevention and remedying of environmental damage at a reasonable cost to society, cannot be sufficiently achieved by the Member States and can therefore be better achieved at Community level by reason of the scale of this Directive and its implications in respect of other Community legislation, namely Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds, Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, and Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy, 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 Directive does not go beyond what is necessary in order to achieve that objective.

(4) Environmental damage also includes damage caused by airborne elements as far as they cause damage to water, land or protected species or natural habitats.

(5) Concepts instrumental for the correct interpretation and application of the scheme provided for by this Directive should be defined especially as regards the definition of environmental damage. When the concept in question derives from other relevant Community legislation, the same definition should be used so that common criteria can be used and uniform application promoted.

(6) Protected species and natural habitats might also be defined by reference to species and habitats protected in pursuance of national legislation on nature conservation. Account should nevertheless

be taken of specific situations where Community, or equivalent national, legislation allows for certain derogations from the level of protection afforded to the environment.

(7) For the purposes of assessing damage to land as defined in this Directive the use of risk assessment procedures to determine to what extent human health is likely to be adversely affected is desirable.

(8) This Directive should apply, as far as environmental damage is concerned, to occupational activities which present a risk for human health or the environment. Those activities should be identified, in principle, by reference to the relevant Community legislation which provides for regulatory requirements in relation to certain activities or practices considered as posing a potential or actual risk for human health or the environment.

(9) This Directive should also apply, as regards damage to protected species and natural habitats, to any occupational activities other than those already directly or indirectly identified by reference to Community legislation as posing an actual or potential risk for human health or the environment. In such cases the operator should only be liable under this Directive whenever he is at fault or negligent.

(10) Express account should be taken of the Euratom Treaty and relevant international conventions and of Community legislation regulating more comprehensively and more stringently the operation of any of the activities falling under the scope of this Directive. This Directive, which does not provide for additional rules of conflict of laws when it specifies the powers of the competent authorities, is without prejudice to the rules on international jurisdiction of courts as provided, *inter alia*, in Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. This Directive should not apply to activities the main purpose of which is to serve national defence or international security.

(11) This Directive aims at preventing and remedying environmental damage, and does not affect rights of compensation for traditional damage granted under any relevant international agreement regulating civil liability.

(12) Many Member States are party to international agreements dealing with civil liability in relation to specific fields. These Member States should be able to remain so after the entry into force of this Directive, whereas other Member States should not lose their freedom to become parties to these agreements.

(13) Not all forms of environmental damage can be remedied by means of the liability mechanism. For the latter to be effective, there need to be one or more identifiable polluters, the damage should be concrete and quantifiable, and a causal link should be established between the damage and the identified polluter(s). Liability is therefore not a suitable instrument for dealing with pollution of a widespread, diffuse character, where it is impossible to link the negative environmental effects with acts or failure to act of certain individual actors.

(14) This Directive does not apply to cases of personal injury, to damage to private property or to any economic loss and does not affect any right regarding these types of damages.

(15) Since the prevention and remedying of environmental damage is a task directly contributing to the pursuit of the Community's environment policy, public authorities should ensure the proper implementation and enforcement of the scheme provided for by this Directive.

(16) Restoration of the environment should take place in an effective manner ensuring that the relevant restoration objectives are achieved. A common framework should be defined to that end, the proper application of which should be supervised by the competent authority.

(17) Appropriate provision should be made for those situations where several instances of environmental damage have occurred in such a manner that the competent authority cannot ensure that all the necessary remedial measures are taken at the same time. In such a case, the competent authority should be entitled to decide which instance of environmental damage is to be remedied first.

(18) According to the “polluter-pays” principle, an operator causing environmental damage or creating an imminent threat of such damage should, in principle, bear the cost of the necessary preventive or remedial measures. In cases where a competent authority acts, itself or through a third party, in the place of an operator, that authority should ensure that the cost incurred by it is recovered from the operator. It is also appropriate that the operators should ultimately bear the cost of assessing environmental damage and, as the case may be, assessing an imminent threat of such damage occurring.

(19) Member States may provide for flat-rate calculation of administrative, legal, enforcement and other general costs to be recovered.

(20) An operator should not be required to bear the costs of preventive or remedial actions taken pursuant to this Directive in situations where the damage in question or imminent threat thereof is the result of certain events beyond the operator’s control. Member States may allow that operators who are not at fault or negligent shall not bear the cost of remedial measures, in situations where the damage in question is the result of emissions or events explicitly authorised or where the potential for damage could not have been known when the event or emission took place.

(21) Operators should bear the costs relating to preventive measures when those measures should have been taken as a matter of course in order to comply with the legislative, regulatory and administrative provisions regulating their activities or the terms of any permit or authorisation.

(22) Member States may establish national rules covering cost allocation in cases of multiple party causation. Member States may take into account, in particular, the specific situation of users of products who might not be held responsible for environmental damage in the same conditions as those producing such products. In this case, apportionment of liability should be determined in accordance with national law.

(23) Competent authorities should be entitled to recover the cost of preventive or remedial measures from an operator within a reasonable period of time from the date on which those measures were completed.

(24) It is necessary to ensure that effective means of implementation and enforcement are available, while ensuring that the legitimate interests of the relevant operators and other interested parties are adequately safeguarded. Competent authorities should be in charge of specific tasks entailing appropriate administrative discretion, namely the duty to assess the significance of the damage and to determine which remedial measures should be taken.

(25) Persons adversely affected or likely to be adversely affected by environmental damage should be entitled to ask the competent authority to take action. Environmental protection is, however, a diffuse interest on behalf of which individuals will not always act or will not be in a position to act. Non-governmental organisations promoting environmental protection should therefore also be given the opportunity to properly contribute to the effective implementation of this Directive.

(26) The relevant natural or legal persons concerned should have access to procedures for the review of the competent authority’s decisions, acts or failure to act.

(27) Member States should take measures to encourage the use by operators of any appropriate insurance or other forms of financial security and the development of financial security instruments and markets in order to provide effective cover for financial obligations under this Directive.

(28) Where environmental damage affects or is likely to affect several Member States, those Member States should cooperate with a view to ensuring proper and effective preventive or remedial action in respect of any environmental damage. Member States may seek to recover the costs for preventive or remedial actions.

(29) This Directive should not prevent Member States from maintaining or enacting more stringent provisions in relation to the prevention and remedying of environmental damage; nor should it prevent the adoption by Member States of appropriate measures in relation to situations where double recovery of costs could occur as a result of concurrent action by a competent authority under this Directive and by a person whose property is affected by the environmental damage.

(30) Damage caused before the expiry of the deadline for implementation of this Directive should not be covered by its provisions.

(31) Member States should report to the Commission on the experience gained in the application of this Directive so as to enable the Commission to consider, taking into account the impact on sustainable development and future risks to the environment, whether any review of this Directive is appropriate,

Article 1

Subject matter

The purpose of this Directive is to establish a framework of environmental liability based on the “polluter-pays” principle, to prevent and remedy environmental damage.

Article 2

Definitions

For the purpose of this Directive the following definitions shall apply:

1. “environmental damage” means:

(a) damage to protected species and natural habitats, which is any damage that has significant adverse effects on reaching or maintaining the favourable conservation status of such habitats or species. The significance of such effects is to be assessed with reference to the baseline condition, taking account of the criteria set out in Annex I;

Damage to protected species and natural habitats does not include previously identified adverse effects which result from an act by an operator which was expressly authorised by the relevant authorities in accordance with provisions implementing Article 6(3) and (4) or Article 16 of Directive 92/43/EEC or Article 9 of Directive 79/409/EEC or, in the case of habitats and species not covered by Community law, in accordance with equivalent provisions of national law on nature conservation.

(b) water damage, which is any damage that significantly adversely affects the ecological, chemical and/or quantitative status and/or ecological potential, as defined in Directive 2000/60/EC, of the

waters concerned, with the exception of adverse effects where Article 4(7) of that Directive applies;

(c) land damage, which is any land contamination that creates a significant risk of human health being adversely affected as a result of the direct or indirect introduction, in, on or under land, of substances, preparations, organisms or micro-organisms;

2. "damage" means a measurable adverse change in a natural resource or measurable impairment of a natural resource service which may occur directly or indirectly;

3. "protected species and natural habitats" means:

(a) the species mentioned in Article 4(2) of Directive 79/409/EEC or listed in Annex I thereto or listed in Annexes II and IV to Directive 92/43/EEC;

(b) the habitats of species mentioned in Article 4(2) of Directive 79/409/EEC or listed in Annex I thereto or listed in Annex II to Directive 92/43/EEC, and the natural habitats listed in Annex I to Directive 92/43/EEC and the breeding sites or resting places of the species listed in Annex IV to Directive 92/43/EEC; and

(c) where a **Contracting Party** so determines, any habitat or species, not listed in those Annexes which the **Contracting Party** designates for equivalent purposes as those laid down in these two Directives;

4. "conservation status" means:

(a) in respect of a natural habitat, the sum of the influences acting on a natural habitat and its typical species that may affect its long-term natural distribution, structure and functions as well as the long-term survival of its typical species within, as the case may be, the European territory of the **Contracting Parties** to which the Treaty applies or the territory of a **Contracting Party** or the natural range of that habitat;

The conservation status of a natural habitat will be taken as "favourable" when:

- its natural range and areas it covers within that range are stable or increasing,
- the specific structure and functions which are necessary for its long-term maintenance exist and are likely to continue to exist for the foreseeable future, and
- the conservation status of its typical species is favourable, as defined in (b);

(b) in respect of a species, the sum of the influences acting on the species concerned that may affect the long-term distribution and abundance of its populations within, as the case may be, the European territory of the **Contracting Parties** to which the Treaty applies or the territory of a **Contracting Party** or the natural range of that species;

The conservation status of a species will be taken as "favourable" when:

- population dynamics data on the species concerned indicate that it is maintaining itself on a long-term basis as a viable component of its natural habitats,
- the natural range of the species is neither being reduced nor is likely to be reduced for the foreseeable future, and
- there is, and will probably continue to be, a sufficiently large habitat to maintain its populations on a long-term basis;

5. "waters" mean all waters covered by Directive 2000/60/EC;

6. "operator" means any natural or legal, private or public person who operates or controls the oc-

cupational activity or, where this is provided for in national legislation, to whom decisive economic power over the technical functioning of such an activity has been delegated, including the holder of a permit or authorisation for such an activity or the person registering or notifying such an activity;

7. "occupational activity" means any activity carried out in the course of an economic activity, a business or an undertaking, irrespectively of its private or public, profit or non-profit character;

8. "emission" means the release in the environment, as a result of human activities, of substances, preparations, organisms or micro-organisms;

9. "imminent threat of damage" means a sufficient likelihood that environmental damage will occur in the near future;

10. "preventive measures" means any measures taken in response to an event, act or omission that has created an imminent threat of environmental damage, with a view to preventing or minimising that damage;

11. "remedial measures" means any action, or combination of actions, including mitigating or interim measures to restore, rehabilitate or replace damaged natural resources and/or impaired services, or to provide an equivalent alternative to those resources or services as foreseen in Annex II;

12. "natural resource" means protected species and natural habitats, water and land;

13. "services" and "natural resources services" mean the functions performed by a natural resource for the benefit of another natural resource or the public;

14. "baseline condition" means the condition at the time of the damage of the natural resources and services that would have existed had the environmental damage not occurred, estimated on the basis of the best information available;

15. "recovery", including "natural recovery", means, in the case of water, protected species and natural habitats the return of damaged natural resources and/or impaired services to baseline condition and in the case of land damage, the elimination of any significant risk of adversely affecting human health;

16. "costs" means costs which are justified by the need to ensure the proper and effective implementation of this Directive including the costs of assessing environmental damage, an imminent threat of such damage, alternatives for action as well as the administrative, legal, and enforcement costs, the costs of data collection and other general costs, monitoring and supervision costs.

Article 3

Scope

1. This Directive shall apply to:

(a) environmental damage caused by any of the occupational activities listed in Annex III **in the field of Network Energy**, and to any imminent threat of such damage occurring by reason of any of those activities;

(b) damage to protected species and natural habitats caused by any occupational activities other than those listed in Annex III, and to any imminent threat of such damage occurring by reason of any of those activities, whenever the operator has been at fault or negligent.

2. This Directive shall apply without prejudice to more stringent Community legislation regulating

the operation of any of the activities falling within the scope of this Directive and without prejudice to Community legislation containing rules on conflicts of jurisdiction.

3. Without prejudice to relevant national legislation, this Directive shall not give private parties a right of compensation as a consequence of environmental damage or of an imminent threat of such damage.

Article 4 **Exceptions**

1. This Directive shall not cover environmental damage or an imminent threat of such damage caused by:

- (a) an act of armed conflict, hostilities, civil war or insurrection;
- (b) a natural phenomenon of exceptional, inevitable and irresistible character.

2. This Directive shall not apply to environmental damage or to any imminent threat of such damage arising from an incident in respect of which liability or compensation falls within the scope of any of the International Conventions listed in Annex IV, including any future amendments thereof, which is in force in the **Contracting Party** concerned.

3. This Directive shall be without prejudice to the right of the operator to limit his liability in accordance with national legislation implementing the Convention on Limitation of Liability for Maritime Claims (LLMC), 1976, including any future amendment to the Convention, or the Strasbourg Convention on Limitation of Liability in Inland Navigation (CLNI), 1988, including any future amendment to the Convention.

4. This Directive shall not apply to such nuclear risks or environmental damage or imminent threat of such damage as may be caused by the activities covered by the Treaty establishing the European Atomic Energy Community or caused by an incident or activity in respect of which liability or compensation falls within the scope of any of the international instruments listed in Annex V, including any future amendments thereof.

5. This Directive shall only apply to environmental damage or to an imminent threat of such damage caused by pollution of a diffuse character, where it is possible to establish a causal link between the damage and the activities of individual operators.

6. This Directive shall not apply to activities the main purpose of which is to serve national defence or international security nor to activities the sole purpose of which is to protect from natural disasters.

Article 5 **Preventive action**

1. Where environmental damage has not yet occurred but there is an imminent threat of such damage occurring, the operator shall, without delay, take the necessary preventive measures.

2. **Contracting Parties** shall provide that, where appropriate, and in any case whenever an imminent threat of environmental damage is not dispelled despite the preventive measures taken by the

operator, operators are to inform the competent authority of all relevant aspects of the situation, as soon as possible.

3. The competent authority may, at any time:

(a) require the operator to provide information on any imminent threat of environmental damage or in suspected cases of such an imminent threat;

(b) require the operator to take the necessary preventive measures;

(c) give instructions to the operator to be followed on the necessary preventive measures to be taken; or

(d) itself take the necessary preventive measures.

4. The competent authority shall require that the preventive measures are taken by the operator. If the operator fails to comply with the obligations laid down in paragraph 1 or 3(b) or (c), cannot be identified or is not required to bear the costs under this Directive, the competent authority may take these measures itself.

Article 6

Remedial action

1. Where environmental damage has occurred the operator shall, without delay, inform the competent authority of all relevant aspects of the situation and take:

(a) all practicable steps to immediately control, contain, remove or otherwise manage the relevant contaminants and/or any other damage factors in order to limit or to prevent further environmental damage and adverse effects on human health or further impairment of services and

(b) the necessary remedial measures, in accordance with Article 7.

2. The competent authority may, at any time:

(a) require the operator to provide supplementary information on any damage that has occurred;

(b) take, require the operator to take or give instructions to the operator concerning, all practicable steps to immediately control, contain, remove or otherwise manage the relevant contaminants and/or any other damage factors in order to limit or to prevent further environmental damage and adverse effect on human health, or further impairment of services;

(c) require the operator to take the necessary remedial measures;

(d) give instructions to the operator to be followed on the necessary remedial measures to be taken; or

(e) itself take the necessary remedial measures.

3. The competent authority shall require that the remedial measures are taken by the operator. If the operator fails to comply with the obligations laid down in paragraph 1 or 2(b), (c) or (d), cannot be identified or is not required to bear the costs under this Directive, the competent authority may take these measures itself, as a means of last resort.

Article 7

Determination of remedial measures

1. Operators shall identify, in accordance with Annex II, potential remedial measures and submit them to the competent authority for its approval, unless the competent authority has taken action under Article 6(2)(e) and (3).
2. The competent authority shall decide which remedial measures shall be implemented in accordance with Annex II, and with the cooperation of the relevant operator, as required.
3. Where several instances of environmental damage have occurred in such a manner that the competent authority cannot ensure that the necessary remedial measures are taken at the same time, the competent authority shall be entitled to decide which instance of environmental damage must be remedied first.

In making that decision, the competent authority shall have regard, *inter alia*, to the nature, extent and gravity of the various instances of environmental damage concerned, and to the possibility of natural recovery. Risks to human health shall also be taken into account.

4. The competent authority shall invite the persons referred to in Article 12(1) and in any case the persons on whose land remedial measures would be carried out to submit their observations and shall take them into account.

Article 8

Prevention and remediation costs

1. The operator shall bear the costs for the preventive and remedial actions taken pursuant to this Directive.
2. Subject to paragraphs 3 and 4, the competent authority shall recover, *inter alia*, via security over property or other appropriate guarantees from the operator who has caused the damage or the imminent threat of damage, the costs it has incurred in relation to the preventive or remedial actions taken under this Directive.

However, the competent authority may decide not to recover the full costs where the expenditure required to do so would be greater than the recoverable sum or where the operator cannot be identified.

3. An operator shall not be required to bear the cost of preventive or remedial actions taken pursuant to this Directive when he can prove that the environmental damage or imminent threat of such damage:

- (a) was caused by a third party and occurred despite the fact that appropriate safety measures were in place; or
- (b) resulted from compliance with a compulsory order or instruction emanating from a public authority other than an order or instruction consequent upon an emission or incident caused by the operator's own activities.

In such cases **Contracting Parties** shall take the appropriate measures to enable the operator to recover the costs incurred.

4. The **Contracting Parties** may allow the operator not to bear the cost of remedial actions taken pursuant to this Directive where he demonstrates that he was not at fault or negligent and that the environmental damage was caused by:

(a) an emission or event expressly authorised by, and fully in accordance with the conditions of, an authorisation conferred by or given under applicable national laws and regulations which implement those legislative measures adopted by the Community specified in Annex III, as applied at the date of the emission or event;

(b) an emission or activity or any manner of using a product in the course of an activity which the operator demonstrates was not considered likely to cause environmental damage according to the state of scientific and technical knowledge at the time when the emission was released or the activity took place.

5. Measures taken by the competent authority in pursuance of Article 5(3) and (4) and Article 6(2) and (3) shall be without prejudice to the liability of the relevant operator under this Directive and without prejudice to Articles 87 and 88 of the Treaty.

Article 9

Cost allocation in cases of multiple party causation

This Directive is without prejudice to any provisions of national regulations concerning cost allocation in cases of multiple party causation especially concerning the apportionment of liability between the producer and the user of a product.

Article 10

Limitation period for recovery of costs

The competent authority shall be entitled to initiate cost recovery proceedings against the operator, or if appropriate, a third party who has caused the damage or the imminent threat of damage in relation to any measures taken in pursuance of this Directive within five years from the date on which those measures have been completed or the liable operator, or third party, has been identified, whichever is the later.

Article 11

Competent authority

1. **Contracting Parties** shall designate the competent authority(ies) responsible for fulfilling the duties provided for in this Directive.

2. The duty to establish which operator has caused the damage or the imminent threat of damage, to assess the significance of the damage and to determine which remedial measures should be taken with reference to Annex II shall rest with the competent authority. To that effect, the competent authority shall be entitled to require the relevant operator to carry out his own assessment and to

supply any information and data necessary.

3. **Contracting Parties** shall ensure that the competent authority may empower or require third parties to carry out the necessary preventive or remedial measures.

4. Any decision taken pursuant to this Directive which imposes preventive or remedial measures shall state the exact grounds on which it is based. Such decision shall be notified forthwith to the operator concerned, who shall at the same time be informed of the legal remedies available to him under the laws in force in the **Contracting Party** concerned and of the time-limits to which such remedies are subject.

Article 12

Request for action

1. Natural or legal persons:

(a) affected or likely to be affected by environmental damage or

(b) having a sufficient interest in environmental decision making relating to the damage or, alternatively,

(c) alleging the impairment of a right, where administrative procedural law of a **Contracting Party** requires this as a precondition,

shall be entitled to submit to the competent authority any observations relating to instances of environmental damage or an imminent threat of such damage of which they are aware and shall be entitled to request the competent authority to take action under this Directive.

What constitutes a “sufficient interest” and “impairment of a right” shall be determined by the **Contracting Parties**.

To this end, the interest of any non-governmental organisation promoting environmental protection and meeting any requirements under national law shall be deemed sufficient for the purpose of subparagraph (b). Such organisations shall also be deemed to have rights capable of being impaired for the purpose of subparagraph (c).

2. The request for action shall be accompanied by the relevant information and data supporting the observations submitted in relation to the environmental damage in question.

3. Where the request for action and the accompanying observations show in a plausible manner that environmental damage exists, the competent authority shall consider any such observations and requests for action. In such circumstances the competent authority shall give the relevant operator an opportunity to make his views known with respect to the request for action and the accompanying observations.

4. The competent authority shall, as soon as possible and in any case in accordance with the relevant provisions of national law, inform the persons referred to in paragraph 1, which submitted observations to the authority, of its decision to accede to or refuse the request for action and shall provide the reasons for it.

5. **Contracting Parties** may decide not to apply paragraphs 1 and 4 to cases of imminent threat of damage.

Article 13

Review procedures

1. The persons referred to in Article 12(1) shall have access to a court or other independent and impartial public body competent to review the procedural and substantive legality of the decisions, acts or failure to act of the competent authority under this Directive.
2. This Directive shall be without prejudice to any provisions of national law which regulate access to justice and those which require that administrative review procedures be exhausted prior to recourse to judicial proceedings.

Article 14

Financial security

1. **Contracting Parties** shall take measures to encourage the development of financial security instruments and markets by the appropriate economic and financial operators, including financial mechanisms in case of insolvency, with the aim of enabling operators to use financial guarantees to cover their responsibilities under this Directive.
2. <...>¹

Article 15

Cooperation between Contracting Parties

1. Where environmental damage affects or is likely to affect several **Contracting Parties**, those **Contracting Parties** shall cooperate, including through the appropriate exchange of information, with a view to ensuring that preventive action and, where necessary, remedial action is taken in respect of any such environmental damage.
2. Where environmental damage has occurred, the **Contracting Party** in whose territory the damage originates shall provide sufficient information to the potentially affected **Contracting Parties**.
3. Where a **Contracting Party** identifies damage within its borders which has not been caused within them it may report the issue to the **Secretariat** and any other **Contracting Party** concerned; it may make recommendations for the adoption of preventive or remedial measures and it may seek, in accordance with this Directive, to recover the costs it has incurred in relation to the adoption of preventive or remedial measures.

Article 16

Relationship with national law

1. This Directive shall not prevent **Contracting Parties** from maintaining or adopting more stringent provisions in relation to the prevention and remedying of environmental damage, including the identification of additional activities to be subject to the prevention and remediation requirements of

¹ Not applicable in accordance with Article 2(2) of Decision 2016/14/MC-EnC.

this Directive and the identification of additional responsible parties.

2. This Directive shall not prevent **Contracting Parties** from adopting appropriate measures, such as the prohibition of double recovery of costs, in relation to situations where double recovery could occur as a result of concurrent action by a competent authority under this Directive and by a person whose property is affected by environmental damage.

Article 17

Temporal application

This Directive shall not apply to:

- damage caused by an emission, event or incident that took place before the date referred to in Article 19(1),
- damage caused by an emission, event or incident which takes place subsequent to the date referred to in Article 19(1) when it derives from a specific activity that took place and finished before the said date,
- damage, if more than 30 years have passed since the emission, event or incident, resulting in the damage, occurred.

Article 18

Reports and review

1. **Contracting Parties** shall report to the **Secretariat** on the experience gained in the application of this Directive by **31 December 2026** at the latest. The reports shall include the information and data set out in Annex VI.

2. <...>

3. <...>

Article 19

Implementation

1. Contracting Parties shall inform the Energy Community Secretariat of the laws, regulations and administrative provisions brought into force to comply with the relevant provisions of Directive 2004/35/EC, as amended by Directive 2006/21/EC, Directive 2009/31/EC and Directive 2013/30/EU, in accordance with Article 12 of the Treaty establishing the Energy Community by 1 January 2021.

When Contracting Parties adopt those provisions, they shall contain a reference to this Decision and Directive 2004/35/EC, as amended by Directive 2006/21/EC, Directive 2009/31/EC and Directive 2013/30/EU, 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 Contracting Parties.

2. Contracting Parties shall communicate to the Energy Community Secretariat the text of the main provisions of national law which they adopt in the field covered by this Decision and Directive 2004/35/EC, as amended by Directive 2006/21/EC, Directive 2009/31/EC and Directive 2013/30/EU.²

Article 20

Entry into force

This Decision shall enter into force on the date of its adoption.³

Article 21

Addressees

This Decision is addressed to the Contracting Parties of the Treaty establishing the Energy Community.⁴

² The text displayed here corresponds to Article 3 of Decision 2016/14/MC-EnC.

³ The text displayed here corresponds to Article 4 of Decision 2016/14/MC-EnC.

⁴ The text displayed here corresponds to Article 5 of Decision 2016/14/MC-EnC.

ANNEX I

CRITERIA REFERRED TO IN ARTICLE 2(1)(A)

The significance of any damage that has adverse effects on reaching or maintaining the favourable conservation status of habitats or species has to be assessed by reference to the conservation status at the time of the damage, the services provided by the amenities they produce and their capacity for natural regeneration. Significant adverse changes to the baseline condition should be determined by means of measurable data such as:

- the number of individuals, their density or the area covered,
- the role of the particular individuals or of the damaged area in relation to the species or to the habitat conservation, the rarity of the species or habitat (assessed at local, regional and higher level including at Community level),
- the species' capacity for propagation (according to the dynamics specific to that species or to that population), its viability or the habitat's capacity for natural regeneration (according to the dynamics specific to its characteristic species or to their populations),
- the species' or habitat's capacity, after damage has occurred, to recover within a short time, without any intervention other than increased protection measures, to a condition which leads, solely by virtue of the dynamics of the species or habitat, to a condition deemed equivalent or superior to the baseline condition.

Damage with a proven effect on human health must be classified as significant damage.

The following does not have to be classified as significant damage:

- negative variations that are smaller than natural fluctuations regarded as normal for the species or habitat in question,
- negative variations due to natural causes or resulting from intervention relating to the normal management of sites, as defined in habitat records or target documents or as carried on previously by owners or operators,
- damage to species or habitats for which it is established that they will recover, within a short time and without intervention, either to the baseline condition or to a condition which leads, solely by virtue of the dynamics of the species or habitat, to a condition deemed equivalent or superior to the baseline condition.

ANNEX II

REMEDYING OF ENVIRONMENTAL DAMAGE

This Annex sets out a common framework to be followed in order to choose the most appropriate measures to ensure the remedying of environmental damage.

1. Remediation of damage to water or protected species or natural habitats

Remedying of environmental damage, in relation to water or protected species or natural habitats, is achieved through the restoration of the environment to its baseline condition by way of primary, complementary and compensatory remediation, where:

- (a) "Primary" remediation is any remedial measure which returns the damaged natural resources and/or impaired services to, or towards, baseline condition;
- (b) "Complementary" remediation is any remedial measure taken in relation to natural resources and/or services to compensate for the fact that primary remediation does not result in fully restoring the damaged natural resources and/or services;
- (c) "Compensatory" remediation is any action taken to compensate for interim losses of natural resources and/or services that occur from the date of damage occurring until primary remediation has achieved its full effect;
- (d) "interim losses" means losses which result from the fact that the damaged natural resources and/or services are not able to perform their ecological functions or provide services to other natural resources or to the public until the primary or complementary measures have taken effect. It does not consist of financial compensation to members of the public.

Where primary remediation does not result in the restoration of the environment to its baseline condition, then complementary remediation will be undertaken. In addition, compensatory remediation will be undertaken to compensate for the interim losses.

Remedying of environmental damage, in terms of damage to water or protected species or natural habitats, also implies that any significant risk of human health being adversely affected be removed.

1.1. Remediation objectives

Purpose of primary remediation

1.1.1. The purpose of primary remediation is to restore the damaged natural resources and/or services to, or towards, baseline condition.

Purpose of complementary remediation

1.1.2. Where the damaged natural resources and/or services do not return to their baseline condition, then complementary remediation will be undertaken. The purpose of complementary remediation is to provide a similar level of natural resources and/or services, including, as appropriate, at an alternative site, as would have been provided if the damaged site had been returned to its baseline condition. Where possible and appropriate the alternative site should be geographically linked to the damaged site, taking into account the interests of the affected population.

Purpose of compensatory remediation

1.1.3. Compensatory remediation shall be undertaken to compensate for the interim loss of natural resources and services pending recovery. This compensation consists of additional improvements to

protected natural habitats and species or water at either the damaged site or at an alternative site. It does not consist of financial compensation to members of the public.

1.2. Identification of remedial measures

Identification of primary remedial measures

1.2.1. Options comprised of actions to directly restore the natural resources and services towards baseline condition on an accelerated time frame, or through natural recovery, shall be considered.

Identification of complementary and compensatory remedial measures

1.2.2. When determining the scale of complementary and compensatory remedial measures, the use of resource-to-resource or service-to-service equivalence approaches shall be considered first. Under these approaches, actions that provide natural resources and/or services of the same type, quality and quantity as those damaged shall be considered first. Where this is not possible, then alternative natural resources and/or services shall be provided. For example, a reduction in quality could be offset by an increase in the quantity of remedial measures.

1.2.3. If it is not possible to use the first choice resource-to-resource or service-to-service equivalence approaches, then alternative valuation techniques shall be used. The competent authority may prescribe the method, for example monetary valuation, to determine the extent of the necessary complementary and compensatory remedial measures. If valuation of the lost resources and/or services is practicable, but valuation of the replacement natural resources and/or services cannot be performed within a reasonable time-frame or at a reasonable cost, then the competent authority may choose remedial measures whose cost is equivalent to the estimated monetary value of the lost natural resources and/or services.

The complementary and compensatory remedial measures should be so designed that they provide for additional natural resources and/or services to reflect time preferences and the time profile of the remedial measures. For example, the longer the period of time before the baseline condition is reached, the greater the amount of compensatory remedial measures that will be undertaken (other things being equal).

1.3. Choice of the remedial options

1.3.1. The reasonable remedial options should be evaluated, using best available technologies, based on the following criteria:

- The effect of each option on public health and safety,
- The cost of implementing the option,
- The likelihood of success of each option,
- The extent to which each option will prevent future damage, and avoid collateral damage as a result of implementing the option,
- The extent to which each option benefits to each component of the natural resource and/or service,
- The extent to which each option takes account of relevant social, economic and cultural concerns and other relevant factors specific to the locality,
- The length of time it will take for the restoration of the environmental damage to be effective,
- The extent to which each option achieves the restoration of site of the environmental damage,
- The geographical linkage to the damaged site.

1.3.2. When evaluating the different identified remedial options, primary remedial measures that do not fully restore the damaged water or protected species or natural habitat to baseline or that restore it more slowly can be chosen. This decision can be taken only if the natural resources and/or services foregone at the primary site as a result of the decision are compensated for by increasing complementary or compensatory actions to provide a similar level of natural resources and/or services as were foregone. This will be the case, for example, when the equivalent natural resources and/or services could be provided elsewhere at a lower cost. These additional remedial measures shall be determined in accordance with the rules set out in section 1.2.2.

1.3.3. Notwithstanding the rules set out in section 1.3.2. and in accordance with Article 7(3), the competent authority is entitled to decide that no further remedial measures should be taken if:

- (a) the remedial measures already taken secure that there is no longer any significant risk of adversely affecting human health, water or protected species and natural habitats, and
- (b) the cost of the remedial measures that should be taken to reach baseline condition or similar level would be disproportionate to the environmental benefits to be obtained.

2. Remediation of land damage

The necessary measures shall be taken to ensure, as a minimum, that the relevant contaminants are removed, controlled, contained or diminished so that the contaminated land, taking account of its current use or approved future use at the time of the damage, no longer poses any significant risk of adversely affecting human health. The presence of such risks shall be assessed through risk-assessment procedures taking into account the characteristic and function of the soil, the type and concentration of the harmful substances, preparations, organisms or micro-organisms, their risk and the possibility of their dispersion. Use shall be ascertained on the basis of the land use regulations, or other relevant regulations, in force, if any, when the damage occurred.

If the use of the land is changed, all necessary measures shall be taken to prevent any adverse effects on human health.

If land use regulations, or other relevant regulations, are lacking, the nature of the relevant area where the damage occurred, taking into account its expected development, shall determine the use of the specific area.

A natural recovery option, that is to say an option in which no direct human intervention in the recovery process would be taken, shall be considered.

ANNEX III

ACTIVITIES REFERRED TO IN ARTICLE 3(1)

1. The operation of installations subject to permit in pursuance of Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control. That means all activities listed in Annex I of Directive 96/61/EC with the exception of installations or parts of installations used for research, development and testing of new products and processes.

2. Waste management operations, including the collection, transport, recovery and disposal of waste and hazardous waste, including the supervision of such operations and after-care of disposal sites, subject to permit or registration in pursuance of Council Directive 75/442/EEC of 15 July 1975 on waste and Council Directive 91/689/EEC of 12 December 1991 on hazardous waste.

Those operations include, *inter alia*, the operation of landfill sites under Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste and the operation of incineration plants under Directive 2000/76/EC of the European Parliament and of the Council of 4 December 2000 on the incineration of waste.

For the purpose of this Directive, **Contracting Parties** may decide that those operations shall not include the spreading of sewage sludge from urban waste water treatment plants, treated to an approved standard, for agricultural purposes.

3. All discharges into the inland surface water, which require prior authorisation in pursuance of Council Directive 76/464/EEC of 4 May 1976 on pollution caused by certain dangerous substances, discharged into the aquatic environment of the Community.

4. All discharges of substances into groundwater which require prior authorisation in pursuance of Council Directive 80/68/EEC of 17 December 1979 on the protection of groundwater against pollution caused by certain dangerous substances.

5. The discharge or injection of pollutants into surface water or groundwater which require a permit, authorisation or registration in pursuance of Directive 2000/60/EC.

6. Water abstraction and impoundment of water subject to prior authorisation in pursuance of Directive 2000/60/EC.

7. Manufacture, use, storage, processing, filling, release into the environment and onsite transport of

(a) dangerous substances as defined in Article 2(2) of Council Directive 67/548/EEC of 27 June 1967 on the approximation of the laws, regulations and administrative provisions of the **Contracting Parties** relating to the classification, packaging and labelling of dangerous substances;

(b) dangerous preparations as defined in Article 2(2) of Directive 1999/45/EC of the European Parliament and of the Council of 31 May 1999 concerning the approximation of the laws, regulations and administrative provisions of the **Contracting Parties** relating to the classification, packaging and labelling of dangerous preparations;

(c) plant protection products as defined in Article 2(1) of Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market;

(d) biocidal products as defined in Article 2(1)(a) of Directive 98/8/EC of the European Parliament and of the Council of 16 February 1998 concerning the placing of biocidal products on the market.

8. Transport by road, rail, inland waterways, sea or air of dangerous goods or polluting goods as defined either in Annex A to Council Directive 94/55/EC of 21 November 1994 on the approximation of the laws of the **Contracting Parties** with regard to the transport of dangerous goods by road or in the Annex to Council Directive 96/49/EC of 23 July 1996 on the approximation of the laws of the **Contracting Parties** with regard to the transport of dangerous goods by rail or as defined in Council Directive 93/75/EEC of 13 September 1993 concerning minimum requirements for vessels bound for or leaving Community ports and carrying dangerous or polluting goods.

9. The operation of installations subject to authorisation in pursuance of Council Directive 84/360/EEC of 28 June 1984 on the combating of air pollution from industrial plants in relation to the release into air of any of the polluting substances covered by the aforementioned Directive.

10. Any contained use, including transport, involving genetically modified micro-organisms as defined by Council Directive 90/219/EEC of 23 April 1990 on the contained use of genetically modified micro-organisms.

11. Any deliberate release into the environment, transport and placing on the market of genetically modified organisms as defined by Directive 2001/18/EC of the European Parliament and of the Council.

12. Transboundary shipment of waste within, into or out of the European Union, requiring an authorisation or prohibited in the meaning of Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community.

ANNEX IV

INTERNATIONAL CONVENTIONS REFERRED TO IN ARTICLE 4(2)

- (a) the International Convention of 27 November 1992 on Civil Liability for Oil Pollution Damage;
- (b) the International Convention of 27 November 1992 on the Establishment of an International Fund for Compensation for Oil Pollution Damage;
- (c) the International Convention of 23 March 2001 on Civil Liability for Bunker Oil Pollution Damage;
- (d) the International Convention of 3 May 1996 on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea;
- (e) the Convention of 10 October 1989 on Civil Liability for Damage Caused during Carriage of Dangerous Goods by Road, Rail and Inland Navigation Vessels.

ANNEX V

INTERNATIONAL INSTRUMENTS REFERRED TO IN ARTICLE 4(4)

- (a) the Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy and the Brussels Supplementary Convention of 31 January 1963;
- (b) the Vienna Convention of 21 May 1963 on Civil Liability for Nuclear Damage;
- (c) the Convention of 12 September 1997 on Supplementary Compensation for Nuclear Damage;
- (d) the Joint Protocol of 21 September 1988 relating to the Application of the Vienna Convention and the Paris Convention;
- (e) the Brussels Convention of 17 December 1971 relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material.

ANNEX VI

INFORMATION AND DATA REFERRED TO IN ARTICLE 18(1)

The reports referred to in Article 18(1) shall include a list of instances of environmental damage and instances of liability under this Directive, with the following information and data for each instance:

1. Type of environmental damage, date of occurrence and/or discovery of the damage and date on which proceedings were initiated under this Directive.
2. Activity classification code of the liable legal person(s).
3. Whether there has been resort to judicial review proceedings either by liable parties or qualified entities. (The type of claimants and the outcome of proceedings shall be specified.)
4. Outcome of the remediation process.
5. Date of closure of proceedings.

Contracting Parties may include in their reports any other information and data they deem useful to allow a proper assessment of the functioning of this Directive, for example:

1. Costs incurred with remediation and prevention measures, as defined in this Directive:
 - paid for directly by liable parties, when this information is available;
 - recovered *ex post facto* from liable parties;
 - unrecovered from liable parties. (Reasons for non-recovery should be specified.)
2. Results of the actions to promote and the implementation of the financial security instruments used in accordance with this Directive.
3. An assessment of the additional administrative costs incurred annually by the public administration in setting up and operating the administrative structures needed to implement and enforce this Directive.

DIRECTIVE 2001/42/EC of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment

Incorporated and adapted by Ministerial Council Decision 2016/13/MC-EnC of 14 October 2016 on amending the Treaty establishing the Energy Community and adapting and implementing Directive 2001/42/EC of the European Parliament and of the Council.

*The adaptations made by Ministerial Council Decision 2016/13/MC-EnC are highlighted in **bold and blue**.*

Whereas:

(1) Article 174 of the Treaty provides that Community policy on the environment is to contribute to, *inter alia*, the preservation, protection and improvement of the quality of the environment, the protection of human health and the prudent and rational utilisation of natural resources and that it is to be based on the precautionary principle. Article 6 of the Treaty provides that environmental protection requirements are to be integrated into the definition of Community policies and activities, in particular with a view to promoting sustainable development.

(2) The Fifth Environment Action Programme: Towards sustainability - A European Community programme of policy and action in relation to the environment and sustainable development, supplemented by Council Decision No 2179/98/EC on its review, affirms the importance of assessing the likely environmental effects of plans and programmes.

(3) The Convention on Biological Diversity requires Parties to integrate as far as possible and as appropriate the conservation and sustainable use of biological diversity into relevant sectoral or cross-sectoral plans and programmes.

(4) Environmental assessment is an important tool for integrating environmental considerations into the preparation and adoption of certain plans and programmes which are likely to have significant effects on the environment in the Member States, because it ensures that such effects of implementing plans and programmes are taken into account during their preparation and before their adoption.

(5) The adoption of environmental assessment procedures at the planning and programming level should benefit undertakings by providing a more consistent framework in which to operate by the inclusion of the relevant environmental information into decision making. The inclusion of a wider set of factors in decision making should contribute to more sustainable and effective solutions.

(6) The different environmental assessment systems operating within Member States should contain a set of common procedural requirements necessary to contribute to a high level of protection of the environment.

(7) The United Nations/Economic Commission for Europe Convention on Environmental Impact Assessment in a Transboundary Context of 25 February 1991, which applies to both Member States and other States, encourages the parties to the Convention to apply its principles to plans and programmes as well; at the second meeting of the Parties to the Convention in Sofia on 26 and 27 February 2001, it was decided to prepare a legally binding protocol on strategic environmental assessment which would supplement the existing provisions on environmental impact assessment in a transboundary context, with a view to its possible adoption on the occasion of the 5th Ministerial

Conference “Environment for Europe” at an extraordinary meeting of the Parties to the Convention, scheduled for May 2003 in Kiev, Ukraine. The systems operating within the Community for environmental assessment of plans and programmes should ensure that there are adequate transboundary consultations where the implementation of a plan or programme being prepared in one Member State is likely to have significant effects on the environment of another Member State. The information on plans and programmes having significant effects on the environment of other States should be forwarded on a reciprocal and equivalent basis within an appropriate legal framework between Member States and these other States.

(8) Action is therefore required at Community level to lay down a minimum environmental assessment framework, which would set out the broad principles of the environmental assessment system and leave the details to the Member States, having regard to the principle of subsidiarity. Action by the Community should not go beyond what is necessary to achieve the objectives set out in the Treaty.

(9) This Directive is of a procedural nature, and its requirements should either be integrated into existing procedures in Member States or incorporated in specifically established procedures. With a view to avoiding duplication of the assessment, Member States should take account, where appropriate, of the fact that assessments will be carried out at different levels of a hierarchy of plans and programmes.

(10) All plans and programmes which are prepared for a number of sectors and which set a framework for future development consent of projects listed in Annexes I and II to Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, and all plans and programmes which have been determined to require assessment pursuant to Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild flora and fauna, are likely to have significant effects on the environment, and should as a rule be made subject to systematic environmental assessment. When they determine the use of small areas at local level or are minor modifications to the above plans or programmes, they should be assessed only where Member States determine that they are likely to have significant effects on the environment.

(11) Other plans and programmes which set the framework for future development consent of projects may not have significant effects on the environment in all cases and should be assessed only where Member States determine that they are likely to have such effects.

(12) When Member States make such determinations, they should take into account the relevant criteria set out in this Directive.

(13) Some plans or programmes are not subject to this Directive because of their particular characteristics.

(14) Where an assessment is required by this Directive, an environmental report should be prepared containing relevant information as set out in this Directive, identifying, describing and evaluating the likely significant environmental effects of implementing the plan or programme, and reasonable alternatives taking into account the objectives and the geographical scope of the plan or programme; Member States should communicate to the Commission any measures they take concerning the quality of environmental reports.

(15) In order to contribute to more transparent decision making and with the aim of ensuring that the information supplied for the assessment is comprehensive and reliable, it is necessary to provide

that authorities with relevant environmental responsibilities and the public are to be consulted during the assessment of plans and programmes, and that appropriate time frames are set, allowing sufficient time for consultations, including the expression of opinion.

(16) Where the implementation of a plan or programme prepared in one Member State is likely to have a significant effect on the environment of other Member States, provision should be made for the Member States concerned to enter into consultations and for the relevant authorities and the public to be informed and enabled to express their opinion.

(17) The environmental report and the opinions expressed by the relevant authorities and the public, as well as the results of any transboundary consultation, should be taken into account during the preparation of the plan or programme and before its adoption or submission to the legislative procedure.

(18) Member States should ensure that, when a plan or programme is adopted, the relevant authorities and the public are informed and relevant information is made available to them.

(19) Where the obligation to carry out assessments of the effects on the environment arises simultaneously from this Directive and other Community legislation, such as Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds, Directive 92/43/EEC, or Directive 2000/60/EC of the European Parliament and the Council of 23 October 2000 establishing a framework for Community action in the field of water policy, in order to avoid duplication of the assessment, Member States may provide for coordinated or joint procedures fulfilling the requirements of the relevant Community legislation.

(20) A first report on the application and effectiveness of this Directive should be carried out by the Commission five years after its entry into force, and at seven-year intervals thereafter. With a view to further integrating environmental protection requirements, and taking into account the experience acquired, the first report should, if appropriate, be accompanied by proposals for amendment of this Directive, in particular as regards the possibility of extending its scope to other areas/sectors and other types of plans and programmes,

Article 1

Objectives

The objective of this Directive is to provide for a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes with a view to promoting sustainable development, by ensuring that, in accordance with this Directive, an environmental assessment is carried out of certain plans and programmes which are likely to have significant effects on the environment.

Article 2

Definitions

For the purposes of this Directive:

(a) “plans and programmes” shall mean plans and programmes, including those co-financed by the

European Union, or international financial institutions, as well as any modifications to them:

- which are subject to preparation and/or adoption by an authority at national, regional or local level or which are prepared by an authority for adoption, through a legislative procedure by Parliament or Government, and

- which are required by legislative, regulatory or administrative provisions;

(b) "environmental assessment" shall mean the preparation of an environmental report, the carrying out of consultations, the taking into account of the environmental report and the results of the consultations in decision-making and the provision of information on the decision in accordance with Articles 4 to 9;

(c) "environmental report" shall mean the part of the plan or programme documentation containing the information required in Article 5 and Annex I;

(d) "The public" shall mean one or more natural or legal persons and, in accordance with national legislation or practice, their associations, organisations or groups.

Article 3

Scope

1. An environmental assessment, in accordance with Articles 4 to 9, shall be carried out for plans and programmes referred to in paragraphs 2 to 4 which are likely to have significant environmental effects.

2. Subject to paragraph 3, an environmental assessment shall be carried out for all plans and programmes,

(a) which are prepared for **network energy, or, provided that they contain network-energy related issues, in the fields of** agriculture, forestry, fisheries, industry, transport, waste management, water management, telecommunications, tourism, town and country planning or land use and which set the framework for future development consent of projects listed in Annexes I and II to Directive **2011/92/EU**, or

(b) which, in view of the likely effect on sites, have been determined to require an assessment pursuant to Article 6 or 7 of Directive 92/43/EEC.

3. Plans and programmes referred to in paragraph 2 which determine the use of small areas at local level and minor modifications to plans and programmes referred to in paragraph 2 shall require an environmental assessment only where the **Contracting Parties** determine that they are likely to have significant environmental effects.

4. **Contracting Parties** shall determine whether plans and programmes, other than those referred to in paragraph 2, which set the framework for future development consent of projects, are likely to have significant environmental effects.

5. **Contracting Parties** shall determine whether plans or programmes referred to in paragraphs 3 and 4 are likely to have significant environmental effects either through case-by-case examination or by specifying types of plans and programmes or by combining both approaches. For this purpose **Contracting Parties** shall in all cases take into account relevant criteria set out in Annex II, in order to ensure that plans and programmes with likely significant effects on the environment are covered

by this Directive.

6. In the case-by-case examination and in specifying types of plans and programmes in accordance with paragraph 5, the authorities referred to in Article 6(3) shall be consulted.

7. **Contracting Parties** shall ensure that their conclusions pursuant to paragraph 5, including the reasons for not requiring an environmental assessment pursuant to Articles 4 to 9, are made available to the public.

8. The following plans and programmes are not subject to this Directive:

- plans and programmes the sole purpose of which is to serve national defence or civil emergency,
- financial or budget plans and programmes.

9. <...>¹

Article 4

General obligations

1. The environmental assessment referred to in Article 3 shall be carried out during the preparation of a plan or programme and before its adoption or submission to the legislative procedure.

2. The requirements of this Directive shall either be integrated into existing procedures in **Contracting Parties** for the adoption of plans and programmes or incorporated in procedures established to comply with this Directive.

3. Where plans and programmes form part of a hierarchy, **Contracting Parties** shall, with a view to avoiding duplication of the assessment, take into account the fact that the assessment will be carried out, in accordance with this Directive, at different levels of the hierarchy. For the purpose of, *inter alia*, avoiding duplication of assessment, **Contracting Parties** shall apply Article 5(2) and (3).

Article 5

Environmental report

1. Where an environmental assessment is required under Article 3(1), an environmental report shall be prepared in which the likely significant effects on the environment of implementing the plan or programme, and reasonable alternatives taking into account the objectives and the geographical scope of the plan or programme, are identified, described and evaluated. The information to be given for this purpose is referred to in Annex I.

2. The environmental report prepared pursuant to paragraph 1 shall include the information that may reasonably be required taking into account current knowledge and methods of assessment, the contents and level of detail in the plan or programme, its stage in the decision-making process and the extent to which certain matters are more appropriately assessed at different levels in that process in order to avoid duplication of the assessment.

3. Relevant information available on environmental effects of the plans and programmes and obtained at other levels of decision-making or through other Community legislation may be used for

¹ Not applicable in accordance with Article 2(2) of Decision 2016/13/MC-EnC.

providing the information referred to in Annex I.

4. The authorities referred to in Article 6(3) shall be consulted when deciding on the scope and level of detail of the information which must be included in the environmental report.

Article 6

Consultations

1. The draft plan or programme and the environmental report prepared in accordance with Article 5 shall be made available to the authorities referred to in paragraph 3 of this Article and the public.

2. The authorities referred to in paragraph 3 and the public referred to in paragraph 4 shall be given an early and effective opportunity within appropriate time frames to express their opinion on the draft plan or programme and the accompanying environmental report before the adoption of the plan or programme or its submission to the legislative procedure.

3. **Contracting Parties** shall designate the authorities to be consulted which, by reason of their specific environmental responsibilities, are likely to be concerned by the environmental effects of implementing plans and programmes.

4. **Contracting Parties** shall identify the public for the purposes of paragraph 2, including the public affected or likely to be affected by, or having an interest in, the decision-making subject to this Directive, including relevant non-governmental organisations, such as those promoting environmental protection and other organisations concerned.

5. The detailed arrangements for the information and consultation of the authorities and the public shall be determined by the **Contracting Parties**.

Article 7

Transboundary consultations

1. Where a **Contracting Party** considers that the implementation of a plan or programme being prepared in relation to its territory is likely to have significant effects on the environment in another **Contracting Party**, or where a **Contracting Party** likely to be significantly affected so requests, the **Contracting Party** in whose territory the plan or programme is being prepared shall, before its adoption or submission to the legislative procedure, forward a copy of the draft plan or programme and the relevant environmental report to the other **Contracting Party as well as to the Secretariat**.

2. Where a **Contracting Party** is sent a copy of a draft plan or programme and an environmental report under paragraph 1, it shall indicate to the other **Contracting Party** whether it wishes to enter into consultations before the adoption of the plan or programme or its submission to the legislative procedure and, if it so indicates, the **parties** concerned shall enter into consultations concerning the likely transboundary environmental effects of implementing the plan or programme and the measures envisaged to reduce or eliminate such effects.

Where such consultations take place, the **parties** concerned shall agree on detailed arrangements to ensure that the authorities referred to in Article 6(3) and the public referred to in Article 6(4) in the **Contracting Party** likely to be significantly affected are informed and given an opportunity to

forward their opinion within a reasonable time-frame.

3. Where **Contracting Parties** are required under this Article to enter into consultations, they shall agree, at the beginning of such consultations, on a reasonable timeframe for the duration of the consultations.

Article 8

Decision making

The environmental report prepared pursuant to Article 5, the opinions expressed pursuant to Article 6 and the results of any transboundary consultations entered into pursuant to Article 7 shall be taken into account during the preparation of the plan or programme and before its adoption or submission to the legislative procedure.

Article 9

Information on the decision

1. **Contracting Parties** shall ensure that, when a plan or programme is adopted, the authorities referred to in Article 6(3), the public and any **party** consulted under Article 7 are informed and the following items are made available to those so informed:

- (a) the plan or programme as adopted;
- (b) a statement summarising how environmental considerations have been integrated into the plan or programme and how the environmental report prepared pursuant to Article 5, the opinions expressed pursuant to Article 6 and the results of consultations entered into pursuant to Article 7 have been taken into account in accordance with Article 8 and the reasons for choosing the plan or programme as adopted, in the light of the other reasonable alternatives dealt with; and,
- (c) the measures decided concerning monitoring in accordance with Article 10.

2. The detailed arrangements concerning the information referred to in paragraph 1 shall be determined by the **Contracting Parties**.

Article 10

Monitoring

1. **Contracting Parties** shall monitor the significant environmental effects of the implementation of plans and programmes in order, *inter alia*, to identify at an early stage unforeseen adverse effects, and to be able to undertake appropriate remedial action.

2. In order to comply with paragraph 1, existing monitoring arrangements may be used if appropriate, with a view to avoiding duplication of monitoring.

Article 11

Relationship with other Community legislation

1. An environmental assessment carried out under this Directive shall be without prejudice to any requirements under Directive **2011/92/EU** and to any other Community law requirements.
2. For plans and programmes for which the obligation to carry out assessments of the effects on the environment arises simultaneously from this Directive and other **Energy** Community legislation, **Contracting Parties** may provide for coordinated or joint procedures fulfilling the requirements of the relevant **Energy** Community legislation in order, *inter alia*, to avoid duplication of assessment.
3. For plans and programmes co-financed by **international financial institutions**, the environmental assessment in accordance with this Directive shall be carried out in conformity with the specific provisions in relevant **Energy** Community legislation.

Article 12

Information, reporting and review

1. **Contracting Parties** and the **Secretariat** shall exchange information on the experience gained in applying this Directive.
2. **Contracting Parties** shall ensure that environmental reports are of a sufficient quality to meet the requirements of this Directive and shall communicate to the **Secretariat** any measures they take concerning the quality of these reports.
3. <...>
4. <...>²

Article 13

Implementation of the Directive

1. **Contracting Parties shall inform the Energy Community Secretariat of the laws, regulations and administrative provisions brought into force to comply with the relevant provisions of Directive 2001/42/EC in accordance with Article 12 of the Treaty establishing the Energy Community by 1 January 2018.**

When Contracting Parties adopt those provisions, they shall contain a reference to this Decision and Directive 2001/42/EC 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 Contracting Parties.

2. **Contracting Parties shall communicate to the Energy Community Secretariat the text of the main provisions of national law which they adopt in the field covered by this Decision and Directive 2001/42/EC.**

Contracting Parties shall implement the provisions adopted according to this Decision by

² Not applicable in accordance with Article 2(2) of Decision 2016/13/MC-EnC.

31 March 2018.³

3. The obligation referred to in Article 4(1) shall apply to the plans and programmes of which the first formal preparatory act is subsequent to the date referred to in paragraph 1. Plans and programmes of which the first formal preparatory act is before that date and which are adopted or submitted to the legislative procedure more than 24 months thereafter, shall be made subject to the obligation referred to in Article 4(1) unless **Contracting Parties** decide on a case by case basis that this is not feasible and inform the public of their decision.

4. Before 21 July 2004, **Contracting Parties** shall communicate to the **Secretariat**, in addition to the measures referred to in paragraph 1, separate information on the types of plans and programmes which, in accordance with Article 3, would be subject to an environmental assessment pursuant to this Directive. The **Secretariat** shall make this information available to the **Contracting Parties**. The information will be updated on a regular basis.

Article 14

Entry into force

This Decision shall enter into force on the date of its adoption.⁴

Article 15

Addressees

This Decision is addressed to the Contracting Parties of the Treaty establishing the Energy Community.

³ The text displayed here corresponds to Article 3 of Decision 2016/13/MC-EnC.

⁴ The text displayed here corresponds to Article 4 of Decision 2016/13/MC-EnC.

ANNEX I

Information referred to in Article 5(1)

The information to be provided under Article 5(1), subject to Article 5(2) and (3), is the following:

- (a) an outline of the contents, main objectives of the plan or programme and relationship with other relevant plans and programmes;
- (b) the relevant aspects of the current state of the environment and the likely evolution thereof without implementation of the plan or programme;
- (c) the environmental characteristics of areas likely to be significantly affected;
- (d) any existing environmental problems which are relevant to the plan or programme including, in particular, those relating to any areas of a particular environmental importance, such as areas designated pursuant to Directives 79/409/EEC and 92/43/EEC;
- (e) the environmental protection objectives, established at international, Community or **Contracting Party** level, which are relevant to the plan or programme and the way those objectives and any environmental considerations have been taken into account during its preparation;
- (f) the likely significant effects⁵ on the environment, including on issues such as biodiversity, population, human health, fauna, flora, soil, water, air, climatic factors, material assets, cultural heritage including architectural and archaeological heritage, landscape and the interrelationship between the above factors;
- (g) the measures envisaged to prevent, reduce and as fully as possible offset any significant adverse effects on the environment of implementing the plan or programme;
- (h) an outline of the reasons for selecting the alternatives dealt with, and a description of how the assessment was undertaken including any difficulties (such as technical deficiencies or lack of know-how) encountered in compiling the required information;
- (i) a description of the measures envisaged concerning monitoring in accordance with Article 10;
- (j) a non-technical summary of the information provided under the above headings.

⁵ These effects should include secondary, cumulative, synergistic, short, medium and long-term permanent and temporary, positive and negative effects.

ANNEX II

Criteria for determining the likely significance of effects referred to in Article 3(5)

1. The characteristics of plans and programmes, having regard, in particular, to
 - the degree to which the plan or programme sets a framework for projects and other activities, either with regard to the location, nature, size and operating conditions or by allocating resources,
 - the degree to which the plan or programme influences other plans and programmes including those in a hierarchy,
 - the relevance of the plan or programme for the integration of environmental considerations in particular with a view to promoting sustainable development,
 - environmental problems relevant to the plan or programme,
 - the relevance of the plan or programme for the implementation of Community legislation on the environment (e.g. plans and programmes linked to waste-management or water protection).
2. Characteristics of the effects and of the area likely to be affected, having regard, in particular, to
 - the probability, duration, frequency and reversibility of the effects,
 - the cumulative nature of the effects,
 - the transboundary nature of the effects,
 - the risks to human health or the environment (e.g. due to accidents),
 - the magnitude and spatial extent of the effects (geographical area and size of the population likely to be affected),
 - the value and vulnerability of the area likely to be affected due to:
 - special natural characteristics or cultural heritage,
 - exceeded environmental quality standards or limit values,
 - intensive land-use,
 - the effects on areas or landscapes which have a recognised national, Community or international protection status.

PART II

ACQUIS COMMUNAUTAIRE

RENEWABLE ENERGY

DIRECTIVE 2009/28/EC of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC

Incorporated and adapted by Ministerial Council Decision 2012/04/MC-EnC of 18 October 2012 on the implementation of Council Directive 2009/28/EC and amending Article 20 of the Energy Community Treaty.

*The adaptations made by Ministerial Council Decision 2012/04/MC-EnC are highlighted in **bold and blue**.*

Whereas:

(1) The control of European energy consumption and the increased use of energy from renewable sources, together with energy savings and increased energy efficiency, constitute important parts of the package of measures needed to reduce greenhouse gas emissions and comply with the Kyoto Protocol to the United Nations Framework Convention on Climate Change, and with further Community and international greenhouse gas emission reduction commitments beyond 2012. Those factors also have an important part to play in promoting the security of energy supply, promoting technological development and innovation and providing opportunities for employment and regional development, especially in rural and isolated areas.

(2) In particular, increasing technological improvements, incentives for the use and expansion of public transport, the use of energy efficiency technologies and the use of energy from renewable sources in transport are some of the most effective tools by which the Community can reduce its dependence on imported oil in the transport sector, in which the security of energy supply problem is most acute, and influence the fuel market for transport.

(3) The opportunities for establishing economic growth through innovation and a sustainable competitive energy policy have been recognised. Production of energy from renewable sources often depends on local or regional small and medium-sized enterprises (SMEs). The opportunities for growth and employment that investment in regional and local production of energy from renewable sources bring about in the Member States and their regions are important. The Commission and the Member States should therefore support national and regional development measures in those areas, encourage the exchange of best practices in production of energy from renewable sources between local and regional development initiatives and promote the use of structural funding in this area.

(4) When favouring the development of the market for renewable energy sources, it is necessary to take into account the positive impact on regional and local development opportunities, export prospects, social cohesion and employment opportunities, in particular as concerns SMEs and independent energy producers.

(5) In order to reduce greenhouse gas emissions within the Community and reduce its dependence on energy imports, the development of energy from renewable sources should be closely linked to increased energy efficiency.

(6) It is appropriate to support the demonstration and commercialisation phase of decentralised renewable energy technologies. The move towards decentralised energy production has many benefits, including the utilisation of local energy sources, increased local security of energy supply, shorter

transport distances and reduced energy transmission losses. Such decentralisation also fosters community development and cohesion by providing income sources and creating jobs locally.

(7) Directive 2001/77/EC of the European Parliament and of the Council of 27 September 2001 on the promotion of electricity produced from renewable energy sources in the internal electricity market and Directive 2003/30/EC of the European Parliament and of the Council of 8 May 2003 on the promotion of the use of biofuels or other renewable fuels for transport established definitions for different types of energy from renewable sources. Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity established definitions for the electricity sector in general. In the interests of legal certainty and clarity it is appropriate to use the same or similar definitions in this Directive.

(8) The Commission communication of 10 January 2007 entitled "Renewable Energy Roadmap - Renewable energies in the 21st century: building a more sustainable future" demonstrated that a 20% target for the overall share of energy from renewable sources and a 10% target for energy from renewable sources in transport would be appropriate and achievable objectives, and that a framework that includes mandatory targets should provide the business community with the long-term stability it needs to make rational, sustainable investments in the renewable energy sector which are capable of reducing dependence on imported fossil fuels and boosting the use of new energy technologies. Those targets exist in the context of the 20% improvement in energy efficiency by 2020 set out in the Commission communication of 19 October 2006 entitled "Action Plan for Energy Efficiency: Realising the Potential", which was endorsed by the European Council of March 2007, and by the European Parliament in its resolution of 31 January 2008 on that Action Plan.

(9) The European Council of March 2007 reaffirmed the Community's commitment to the Community-wide development of energy from renewable sources beyond 2010. It endorsed a mandatory target of a 20% share of energy from renewable sources in overall Community energy consumption by 2020 and a mandatory 10% minimum target to be achieved by all Member States for the share of biofuels in transport petrol and diesel consumption by 2020, to be introduced in a cost-effective way. It stated that the binding character of the biofuel target is appropriate, subject to production being sustainable, second-generation biofuels becoming commercially available and Directive 98/70/EC of the European Parliament and of the Council of 13 October 1998 relating to the quality of petrol and diesel fuels being amended to allow for adequate levels of blending. The European Council of March 2008 repeated that it is essential to develop and fulfil effective sustainability criteria for biofuels and ensure the commercial availability of second-generation biofuels. The European Council of June 2008 referred again to the sustainability criteria and the development of second-generation biofuels, and underlined the need to assess the possible impacts of biofuel production on agricultural food products and to take action, if necessary, to address shortcomings. It also stated that further assessment should be made of the environmental and social consequences of the production and consumption of biofuels.

(10) In its resolution of 25 September 2007 on the Road Map for Renewable Energy in Europe, the European Parliament called on the Commission to present, by the end of 2007, a proposal for a legislative framework for energy from renewable sources, referring to the importance of setting targets for the shares of energy from renewable sources at Community and Member State level.

(11) It is necessary to set transparent and unambiguous rules for calculating the share of energy from renewable sources and for defining those sources. In this context, the energy present in oceans and other water bodies in the form of waves, marine currents, tides, ocean thermal energy gradients or

salinity gradients should be included.

(12) The use of agricultural material such as manure, slurry and other animal and organic waste for biogas production has, in view of the high greenhouse gas emission saving potential, significant environmental advantages in terms of heat and power production and its use as biofuel. Biogas installations can, as a result of their decentralised nature and the regional investment structure, contribute significantly to sustainable development in rural areas and offer farmers new income opportunities.

(13) In the light of the positions taken by the European Parliament, the Council and the Commission, it is appropriate to establish mandatory national targets consistent with a 20% share of energy from renewable sources and a 10% share of energy from renewable sources in transport in Community energy consumption by 2020.

(14) The main purpose of mandatory national targets is to provide certainty for investors and to encourage continuous development of technologies which generate energy from all types of renewable sources. Deferring a decision about whether a target is mandatory until a future event takes place is thus not appropriate.

(15) The starting point, the renewable energy potential and the energy mix of each Member State vary. It is therefore necessary to translate the Community 20% target into individual targets for each Member State, with due regard to a fair and adequate allocation taking account of Member States' different starting points and potentials, including the existing level of energy from renewable sources and the energy mix. It is appropriate to do this by sharing the required total increase in the use of energy from renewable sources between Member States on the basis of an equal increase in each Member State's share weighted by their GDP, modulated to reflect their starting points, and by accounting in terms of gross final consumption of energy, with account being taken of Member States' past efforts with regard to the use of energy from renewable sources.

(16) By contrast, it is appropriate for the 10% target for energy from renewable sources in transport to be set at the same level for each Member State in order to ensure consistency in transport fuel specifications and availability. Because transport fuels are traded easily, Member States with low endowments of the relevant resources will easily be able to obtain biofuels from elsewhere. While it would technically be possible for the Community to meet its target for the use of energy from renewable sources in transport solely from domestic production, it is both likely and desirable that the target will in fact be met through a combination of domestic production and imports. To this end, the Commission should monitor the supply of the Community market for biofuels, and should, as appropriate, propose relevant measures to achieve a balanced approach between domestic production and imports, taking into account, *inter alia*, the development of multilateral and bilateral trade negotiations, environmental, social and economic considerations, and the security of energy supply.

(17) The improvement of energy efficiency is a key objective of the Community, and the aim is to achieve a 20% improvement in energy efficiency by 2020. That aim, together with existing and future legislation including Directive 2002/91/EC of the European Parliament and of the Council of 16 December 2002 on the energy performance of buildings, Directive 2005/32/EC of the European Parliament and of the Council of 6 July 2005 establishing a framework for the setting of ecodesign requirements for energy-using products, and Directive 2006/32/EC of the European Parliament and of the Council of 5 April 2006 on energy end-use efficiency and energy services, has a critical role to play in ensuring that the climate and energy objectives are being achieved at least cost, and can also provide new opportunities for the European Union's economy. Energy efficiency and energy saving

policies are some of the most effective methods by which Member States can increase the percentage share of energy from renewable sources, and Member States will thus more easily achieve the overall national and transport targets for energy from renewable sources laid down by this Directive.

(18) It will be incumbent upon Member States to make significant improvements in energy efficiency in all sectors in order more easily to achieve their targets for energy from renewable sources, which are expressed as a percentage of gross final consumption of energy. The need for energy efficiency in the transport sector is imperative because a mandatory percentage target for energy from renewable sources is likely to become increasingly difficult to achieve sustainably if overall demand for energy for transport continues to rise. The mandatory 10% target for transport to be achieved by all Member States should therefore be defined as that share of final energy consumed in transport which is to be achieved from renewable sources as a whole, and not from biofuels alone.

(19) To ensure that the mandatory national overall targets are achieved, Member States should work towards an indicative trajectory tracing a path towards the achievement of their final mandatory targets. They should establish a national renewable energy action plan including information on sectoral targets, while having in mind that there are different uses of biomass and therefore it is essential to mobilise new biomass resources. In addition, Member States should set out measures to achieve those targets. Each Member State should assess, when evaluating its expected gross final consumption of energy in its national renewable energy action plan, the contribution which energy efficiency and energy saving measures can make to achieving its national targets. Member States should take into account the optimal combination of energy efficiency technologies with energy from renewable sources.

(20) To permit the benefits of technological progress and economies of scale to be reaped, the indicative trajectory should take into account the possibility of a more rapid growth in the use of energy from renewable sources in the future. Thus special attention can be given to sectors that suffer disproportionately from the absence of technological progress and economies of scale and therefore remain under-developed, but which, in future, could significantly contribute to reaching the targets for 2020.

(21) The indicative trajectory should take 2005 as its starting point because that is the latest year for which reliable data on national shares of energy from renewable sources are available.

(22) The achievement of the objectives of this Directive requires that the Community and Member States dedicate a significant amount of financial resources to research and development in relation to renewable energy technologies. In particular, the European Institute of Innovation and Technology should give high priority to the research and development of renewable energy technologies.

(23) Member States may encourage local and regional authorities to set targets in excess of national targets and to involve local and regional authorities in drawing up national renewable energy action plans and in raising awareness of the benefits of energy from renewable sources.

(24) In order to exploit the full potential of biomass, the Community and the Member States should promote greater mobilisation of existing timber reserves and the development of new forestry systems.

(25) Member States have different renewable energy potentials and operate different schemes of support for energy from renewable sources at the national level. The majority of Member States apply support schemes that grant benefits solely to energy from renewable sources that is produced on their territory. For the proper functioning of national support schemes it is vital that Member

States can control the effect and costs of their national support schemes according to their different potentials. One important means to achieve the aim of this Directive is to guarantee the proper functioning of national support schemes, as under Directive 2001/77/EC, in order to maintain investor confidence and allow Member States to design effective national measures for target compliance. This Directive aims at facilitating cross-border support of energy from renewable sources without affecting national support schemes. It introduces optional cooperation mechanisms between Member States which allow them to agree on the extent to which one Member State supports the energy production in another and on the extent to which the energy production from renewable sources should count towards the national overall target of one or the other. In order to ensure the effectiveness of both measures of target compliance, i.e. national support schemes and cooperation mechanisms, it is essential that Member States are able to determine if and to what extent their national support schemes apply to energy from renewable sources produced in other Member States and to agree on this by applying the cooperation mechanisms provided for in this Directive.

(26) It is desirable that energy prices reflect external costs of energy production and consumption, including, as appropriate, environmental, social and healthcare costs.

(27) Public support is necessary to reach the Community's objectives with regard to the expansion of electricity produced from renewable energy sources, in particular for as long as electricity prices in the internal market do not reflect the full environmental and social costs and benefits of energy sources used.

(28) The Community and the Member States should strive to reduce total consumption of energy in transport and increase energy efficiency in transport. The principal means of reducing consumption of energy in transport include transport planning, support for public transport, increasing the share of electric cars in production and producing cars which are more energy efficient and smaller both in size and in engine capacity.

(29) Member States should aim to diversify the mix of energy from renewable sources in all transport sectors. The Commission should present a report to the European Parliament and the Council by 1 June 2015 outlining the potential for increasing the use of energy from renewable sources in each transport sector.

(30) In calculating the contribution of hydropower and wind power for the purposes of this Directive, the effects of climatic variation should be smoothed through the use of a normalisation rule. Further, electricity produced in pumped storage units from water that has previously been pumped uphill should not be considered to be electricity produced from renewable energy sources.

(31) Heat pumps enabling the use of aerothermal, geothermal or hydrothermal heat at a useful temperature level need electricity or other auxiliary energy to function. The energy used to drive heat pumps should therefore be deducted from the total usable heat. Only heat pumps with an output that significantly exceeds the primary energy needed to drive it should be taken into account.

(32) Passive energy systems use building design to harness energy. This is considered to be saved energy. To avoid double counting, energy harnessed in this way should not be taken into account for the purposes of this Directive.

(33) Some Member States have a large share of aviation in their gross final consumption of energy. In view of the current technological and regulatory constraints that prevent the commercial use of biofuels in aviation, it is appropriate to provide a partial exemption for such Member States, by excluding from the calculation of their gross final consumption of energy in national air transport, the

amount by which they exceed one-and-a-half times the Community average gross final consumption of energy in aviation in 2005, as assessed by Eurostat, i.e. 6.18%. Cyprus and Malta, due to their insular and peripheral character, rely on aviation as a mode of transport, which is essential for their citizens and their economy. As a result, Cyprus and Malta have a gross final consumption of energy in national air transport which is disproportionately high, i.e. more than three times the Community average in 2005, and are thus disproportionately affected by the current technological and regulatory constraints. For those Member States it is therefore appropriate to provide that the exemption should cover the amount by which they exceed the Community average gross final consumption of energy in aviation in 2005 as assessed by Eurostat, i.e. 4.12%.

(34) To obtain an energy model that supports energy from renewable sources there is a need to encourage strategic cooperation between Member States, involving, as appropriate, regions and local authorities.

(35) Whilst having due regard to the provisions of this Directive, Member States should be encouraged to pursue all appropriate forms of cooperation in relation to the objectives set out in this Directive. Such cooperation can take place at all levels, bilaterally or multilaterally. Apart from the mechanisms with effect on target calculation and target compliance, which are exclusively provided for in this Directive, namely statistical transfers between Member States, joint projects and joint support schemes, cooperation can also take the form of, for example, exchanges of information and best practices, as provided for, in particular, in the transparency platform established by this Directive, and other voluntary coordination between all types of support schemes.

(36) To create opportunities for reducing the cost of achieving the targets laid down in this Directive, it is appropriate both to facilitate the consumption in Member States of energy produced from renewable sources in other Member States, and to enable Member States to count energy from renewable sources consumed in other Member States towards their own national targets. For this reason, flexibility measures are required, but they remain under Member States' control in order not to affect their ability to reach their national targets. Those flexibility measures take the form of statistical transfers, joint projects between Member States or joint support schemes.

(37) It should be possible for imported electricity, produced from renewable energy sources outside the Community, to count towards Member States' targets. However, to avoid a net increase in greenhouse gas emissions through the diversion of existing renewable sources and their complete or partial replacement by conventional energy sources, only electricity produced by renewable energy installations that become operational after the entry into force of this Directive or by the increased capacity of an installation that was refurbished after that date should be eligible to be counted. In order to guarantee an adequate effect of energy from renewable sources replacing conventional energy in the Community as well as in third countries it is appropriate to ensure that such imports can be tracked and accounted for in a reliable way. Agreements with third countries concerning the organisation of such trade in electricity from renewable energy sources will be considered. If, by virtue of a decision taken under the Energy Community Treaty to that effect, the contracting parties to that treaty become bound by the relevant provisions of this Directive, the measures of cooperation between Member States provided for in this Directive will be applicable to them.

(38) When Member States undertake joint projects with one or more third countries regarding the production of electricity from renewable energy sources, it is appropriate that those joint projects relate only to newly constructed installations or to installations with newly increased capacity. This will help ensure that the proportion of energy from renewable sources in the third country's total

energy consumption is not reduced due to the importation of energy from renewable sources into the Community. In addition, the Member States concerned should facilitate the domestic use by the third country concerned of part of the production of electricity by the installations covered by the joint project. Furthermore, the third country concerned should be encouraged by the Commission and Member States to develop a renewable energy policy, including ambitious targets.

(39) Noting that projects of high European interest in third countries, such as the Mediterranean Solar Plan, may need a long lead-time before being fully interconnected to the territory of the Community, it is appropriate to facilitate their development by allowing Member States to take into account in their national targets a limited amount of electricity produced by such projects during the construction of the interconnection.

(40) The procedure used by the administration responsible for supervising the authorisation, certification and licensing of renewable energy plants should be objective, transparent, non-discriminatory and proportionate when applying the rules to specific projects. In particular, it is appropriate to avoid any unnecessary burden that could arise by classifying renewable energy projects under installations which represent a high health risk.

(41) The lack of transparent rules and coordination between the different authorisation bodies has been shown to hinder the deployment of energy from renewable sources. Therefore the specific structure of the renewable energy sector should be taken into account when national, regional and local authorities review their administrative procedures for giving permission to construct and operate plants and associated transmission and distribution network infrastructures for the production of electricity, heating and cooling or transport fuels from renewable energy sources. Administrative approval procedures should be streamlined with transparent timetables for installations using energy from renewable sources. Planning rules and guidelines should be adapted to take into consideration cost-effective and environmentally beneficial renewable heating and cooling and electricity equipment.

(42) For the benefit of rapid deployment of energy from renewable sources and in view of their overall high sustainable and environmental beneficial quality, Member States should, when applying administrative rules, planning structures and legislation which are designed for licensing installations with respect to pollution reduction and control for industrial plants, for combating air pollution and for the prevention or minimisation of the discharge of dangerous substances in the environment, take into account the contribution of renewable energy sources towards meeting environmental and climate change objectives, in particular when compared to non-renewable energy installations.

(43) In order to stimulate the contribution by individual citizens to the objectives set out in this Directive, the relevant authorities should consider the possibility of replacing authorisations by simple notifications to the competent body when installing small decentralised devices for producing energy from renewable sources.

(44) The coherence between the objectives of this Directive and the Community's other environmental legislation should be ensured. In particular, during the assessment, planning or licensing procedures for renewable energy installations, Member States should take account of all Community environmental legislation and the contribution made by renewable energy sources towards meeting environmental and climate change objectives, in particular when compared to non-renewable energy installations.

(45) National technical specifications and other requirements falling within the scope of Directive

98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and rules on Information Society services, relating for example to levels of quality, testing methods or conditions of use, should not create barriers for trade in renewable energy equipment and systems. Therefore, support schemes for energy from renewable sources should not prescribe national technical specifications which deviate from existing Community standards or require the supported equipment or systems to be certified or tested in a specified location or by a specified entity.

(46) It is appropriate for Member States to consider mechanisms for the promotion of district heating and cooling from energy from renewable sources.

(47) At national and regional level, rules and obligations for minimum requirements for the use of energy from renewable sources in new and renovated buildings have led to considerable increases in the use of energy from renewable sources. Those measures should be encouraged in a wider Community context, while promoting the use of more energy-efficient applications of energy from renewable sources through building regulations and codes.

(48) It may be appropriate for Member States, in order to facilitate and accelerate the setting of minimum levels for the use of energy from renewable sources in buildings, to provide that such levels are achieved by incorporating a factor for energy from renewable sources in meeting minimum energy performance requirements under Directive 2002/91/EC, relating to a cost-optimal reduction of carbon emissions per building.

(49) Information and training gaps, especially in the heating and cooling sector, should be removed in order to encourage the deployment of energy from renewable sources.

(50) In so far as the access or pursuit of the profession of installer is a regulated profession, the pre-conditions for the recognition of professional qualifications are laid down in Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications. This Directive therefore applies without prejudice to Directive 2005/36/EC.

(51) While Directive 2005/36/EC lays down requirements for the mutual recognition of professional qualifications, including for architects, there is a further need to ensure that architects and planners properly consider an optimal combination of renewable energy sources and high-efficiency technologies in their plans and designs. Member States should therefore provide clear guidance in this regard. This should be done without prejudice to the provisions of Directive 2005/36/EC and in particular Articles 46 and 49 thereof.

(52) Guarantees of origin issued for the purpose of this Directive have the sole function of proving to a final customer that a given share or quantity of energy was produced from renewable sources. A guarantee of origin can be transferred, independently of the energy to which it relates, from one holder to another. However, with a view to ensuring that a unit of electricity from renewable energy sources is disclosed to a customer only once, double counting and double disclosure of guarantees of origin should be avoided. Energy from renewable sources in relation to which the accompanying guarantee of origin has been sold separately by the producer should not be disclosed or sold to the final customer as energy from renewable sources. It is important to distinguish between green certificates used for support schemes and guarantees of origin.

(53) It is appropriate to allow the emerging consumer market for electricity from renewable energy sources to contribute to the construction of new installations for energy from renewable sources. Member States should therefore be able to require electricity suppliers who disclose their energy mix

to final customers in accordance with Article 3(6) of Directive 2003/54/EC, to include a minimum percentage of guarantees of origin from recently constructed installations producing energy from renewable sources, provided that such a requirement is in conformity with Community law.

(54) It is important to provide information on how the supported electricity is allocated to final customers in accordance with Article 3(6) of Directive 2003/54/EC. In order to improve the quality of that information to consumers, in particular as regards the amount of energy from renewable sources produced by new installations, the Commission should assess the effectiveness of the measures taken by Member States.

(55) Directive 2004/8/EC of the European Parliament and of the Council of 11 February 2004 on the promotion of cogeneration based on a useful heat demand in the internal energy market provides for guarantees of origin for proving the origin of electricity produced from high-efficiency cogeneration plants. Such guarantees of origin cannot be used when disclosing the use of energy from renewable sources in accordance with Article 3(6) of Directive 2003/54/EC as this might result in double counting and double disclosure.

(56) Guarantees of origin do not by themselves confer a right to benefit from national support schemes.

(57) There is a need to support the integration of energy from renewable sources into the transmission and distribution grid and the use of energy storage systems for integrated intermittent production of energy from renewable sources.

(58) The development of renewable energy projects, including renewable energy projects of European interest under the Trans-European Network for Energy (TEN-E) programme should be accelerated. To that end, the Commission should also analyse how the financing of such projects can be improved. Particular attention should be paid to renewable energy projects that will contribute to a significant increase in security of energy supply in the Community and neighbouring countries.

(59) Interconnection among countries facilitates integration of electricity from renewable energy sources. Besides smoothing out variability, interconnection can reduce balancing costs, encourage true competition bringing about lower prices, and support the development of networks. Also, the sharing and optimal use of transmission capacity could help avoid excessive need for newly built capacity.

(60) Priority access and guaranteed access for electricity from renewable energy sources are important for integrating renewable energy sources into the internal market in electricity, in line with Article 11(2) and developing further Article 11(3) of Directive 2003/54/EC. Requirements relating to the maintenance of the reliability and safety of the grid and to the dispatching may differ according to the characteristics of the national grid and its secure operation. Priority access to the grid provides an assurance given to connected generators of electricity from renewable energy sources that they will be able to sell and transmit the electricity from renewable energy sources in accordance with connection rules at all times, whenever the source becomes available. In the event that the electricity from renewable energy sources is integrated into the spot market, guaranteed access ensures that all electricity sold and supported obtains access to the grid, allowing the use of a maximum amount of electricity from renewable energy sources from installations connected to the grid. However, this does not imply any obligation on the part of Member States to support or introduce purchase obligations for energy from renewable sources. In other systems, a fixed price is defined for electricity from renewable energy sources, usually in combination with a purchase obligation for the system

operator. In such a case, priority access has already been given.

(61) In certain circumstances it is not possible fully to ensure transmission and distribution of electricity produced from renewable energy sources without affecting the reliability or safety of the grid system. In such circumstances it may be appropriate for financial compensation to be given to those producers. Nevertheless, the objectives of this Directive require a sustained increase in the transmission and distribution of electricity produced from renewable energy sources without affecting the reliability or safety of the grid system. To this end, Member States should take appropriate measures in order to allow a higher penetration of electricity from renewable energy sources, *inter alia*, by taking into account the specificities of variable resources and resources which are not yet storable. To the extent required by the objectives set out in this Directive, the connection of new renewable energy installations should be allowed as soon as possible. In order to accelerate grid connection procedures, Member States may provide for priority connection or reserved connection capacities for new installations producing electricity from renewable energy sources.

(62) The costs of connecting new producers of electricity and gas from renewable energy sources to the electricity and gas grids should be objective, transparent and non-discriminatory and due account should be taken of the benefit that embedded producers of electricity from renewable energy sources and local producers of gas from renewable sources bring to the electricity and gas grids.

(63) Electricity producers who want to exploit the potential of energy from renewable sources in the peripheral regions of the Community, in particular in island regions and regions of low population density, should, whenever feasible, benefit from reasonable connection costs in order to ensure that they are not unfairly disadvantaged in comparison with producers situated in more central, more industrialised and more densely populated areas.

(64) Directive 2001/77/EC lays down the framework for the integration into the grid of electricity from renewable energy sources. However, there is a significant variation between Member States in the degree of integration actually achieved. For this reason it is necessary to strengthen the framework and to review its application periodically at national level.

(65) Biofuel production should be sustainable. Biofuels used for compliance with the targets laid down in this Directive, and those that benefit from national support schemes, should therefore be required to fulfil sustainability criteria.

(66) The Community should take appropriate steps in the context of this Directive, including the promotion of sustainability criteria for biofuels and the development of second and third-generation biofuels in the Community and worldwide, and to strengthen agricultural research and knowledge creation in those areas.

(67) The introduction of sustainability criteria for biofuels will not achieve its objective if those products that do not fulfil the criteria and would otherwise have been used as biofuels are used, instead, as bioliquids in the heating or electricity sectors. For this reason, the sustainability criteria should also apply to bioliquids in general.

(68) The European Council of March 2007 invited the Commission to propose a comprehensive Directive on the use of all renewable energy sources, which could contain criteria and provisions to ensure sustainable provision and use of bioenergy. Such sustainability criteria should form a coherent part of a wider scheme covering all bioliquids and not biofuels alone. Such sustainability criteria should therefore be included in this Directive. In order to ensure a coherent approach between energy and environment policies, and to avoid the additional costs to business and the environmental in-

coherence that would be associated with an inconsistent approach, it is essential to provide the same sustainability criteria for the use of biofuels for the purposes of this Directive on the one hand, and Directive 98/70/EC on the other. For the same reasons, double reporting should be avoided in this context. Furthermore, the Commission and the competent national authorities should coordinate their activities in the framework of a committee specifically responsible for sustainability aspects. The Commission should, in addition, in 2009, review the possible inclusion of other biomass applications and the modalities relating thereto.

(69) The increasing worldwide demand for biofuels and bioliquids, and the incentives for their use provided for in this Directive, should not have the effect of encouraging the destruction of biodiverse lands. Those finite resources, recognised in various international instruments to be of value to all mankind, should be preserved. Consumers in the Community would, in addition, find it morally unacceptable that their increased use of biofuels and bioliquids could have the effect of destroying biodiverse lands. For these reasons, it is necessary to provide sustainability criteria ensuring that biofuels and bioliquids can qualify for the incentives only when it can be guaranteed that they do not originate in biodiverse areas or, in the case of areas designated for nature protection purposes or for the protection of rare, threatened or endangered ecosystems or species, the relevant competent authority demonstrates that the production of the raw material does not interfere with those purposes. The sustainability criteria should consider forest as biodiverse where it is a primary forest in accordance with the definition used by the Food and Agriculture Organisation of the United Nations (FAO) in its Global Forest Resource Assessment, which countries use worldwide to report on the extent of primary forest or where it is protected by national nature protection law. Areas where collection of non-wood forest products occurs should be included, provided the human impact is small. Other types of forests as defined by the FAO, such as modified natural forests, semi-natural forests and plantations, should not be considered as primary forests. Having regard, furthermore, to the highly biodiverse nature of certain grasslands, both temperate and tropical, including highly biodiverse savannahs, steppes, scrublands and prairies, biofuels made from raw materials originating in such lands should not qualify for the incentives provided for by this Directive. The Commission should establish appropriate criteria and geographical ranges to define such highly biodiverse grasslands in accordance with the best available scientific evidence and relevant international standards.

(70) If land with high stocks of carbon in its soil or vegetation is converted for the cultivation of raw materials for biofuels or bioliquids, some of the stored carbon will generally be released into the atmosphere, leading to the formation of carbon dioxide. The resulting negative greenhouse gas impact can offset the positive greenhouse gas impact of the biofuels or bioliquids, in some cases by a wide margin. The full carbon effects of such conversion should therefore be accounted for in calculating the greenhouse gas emission saving of particular biofuels and bioliquids. This is necessary to ensure that the greenhouse gas emission saving calculation takes into account the totality of the carbon effects of the use of biofuels and bioliquids.

(71) In calculating the greenhouse gas impact of land conversion, economic operators should be able to use actual values for the carbon stocks associated with the reference land use and the land use after conversion. They should also be able to use standard values. The work of the Intergovernmental Panel on Climate Change is the appropriate basis for such standard values. That work is not currently expressed in a form that is immediately applicable by economic operators. The Commission should therefore produce guidance drawing on that work to serve as the basis for the calculation of carbon stock changes for the purposes of this Directive, including such changes to forested areas with a

canopy cover of between 10 to 30%, savannahs, scrublands and prairies.

(72) It is appropriate for the Commission to develop methodologies with a view to assessing the impact of the drainage of peatlands on greenhouse gas emissions.

(73) Land should not be converted for the production of biofuels if its carbon stock loss upon conversion could not, within a reasonable period, taking into account the urgency of tackling climate change, be compensated by the greenhouse gas emission saving resulting from the production of biofuels or bioliquids. This would prevent unnecessary, burdensome research by economic operators and the conversion of high-carbon-stock land that would prove to be ineligible for producing raw materials for biofuels and bioliquids. Inventories of worldwide carbon stocks indicate that wetlands and continuously forested areas with a canopy cover of more than 30% should be included in that category. Forested areas with a canopy cover of between 10 and 30% should also be included, unless there is evidence demonstrating that their carbon stock is sufficiently low to justify their conversion in accordance with the rules laid down in this Directive. The reference to wetlands should take into account the definition laid down in the Convention on Wetlands of International Importance, especially as Waterfowl Habitat, adopted on 2 February 1971 in Ramsar.

(74) The incentives provided for in this Directive will encourage increased production of biofuels and bioliquids worldwide. Where biofuels and bioliquids are made from raw material produced within the Community, they should also comply with Community environmental requirements for agriculture, including those concerning the protection of groundwater and surface water quality, and with social requirements. However, there is a concern that production of biofuels and bioliquids in certain third countries might not respect minimum environmental or social requirements. It is therefore appropriate to encourage the development of multilateral and bilateral agreements and voluntary international or national schemes that cover key environmental and social considerations, in order to promote the production of biofuels and bioliquids worldwide in a sustainable manner. In the absence of such agreements or schemes, Member States should require economic operators to report on those issues.

(75) The requirements for a sustainability scheme for energy uses of biomass, other than bioliquids and biofuels, should be analysed by the Commission in 2009, taking into account the need for biomass resources to be managed in a sustainable manner.

(76) Sustainability criteria will be effective only if they lead to changes in the behaviour of market actors. Those changes will occur only if biofuels and bioliquids meeting those criteria command a price premium compared to those that do not. According to the mass balance method of verifying compliance, there is a physical link between the production of biofuels and bioliquids meeting the sustainability criteria and the consumption of biofuels and bioliquids in the Community, providing an appropriate balance between supply and demand and ensuring a price premium that is greater than in systems where there is no such link. To ensure that biofuels and bioliquids meeting the sustainability criteria can be sold at a higher price, the mass balance method should therefore be used to verify compliance. This should maintain the integrity of the system while at the same time avoiding the imposition of an unreasonable burden on industry. Other verification methods should, however, be reviewed.

(77) Where appropriate, the Commission should take due account of the Millennium Ecosystem Assessment which contains useful data for the conservation of at least those areas that provide basic ecosystem services in critical situations such as watershed protection and erosion control.

(78) It is appropriate to monitor the impact of biomass cultivation, such as through land-use changes, including displacement, the introduction of invasive alien species and other effects on biodiversity, and effects on food production and local prosperity. The Commission should consider all relevant sources of information, including the FAO hunger map. Biofuels should be promoted in a manner that encourages greater agricultural productivity and the use of degraded land.

(79) It is in the interests of the Community to encourage the development of multilateral and bilateral agreements and voluntary international or national schemes that set standards for the production of sustainable biofuels and bioliquids, and that certify that the production of biofuels and bioliquids meets those standards. For that reason, provision should be made for such agreements or schemes to be recognised as providing reliable evidence and data, provided that they meet adequate standards of reliability, transparency and independent auditing.

(80) It is necessary to lay down clear rules for the calculation of greenhouse gas emissions from biofuels and bioliquids and their fossil fuel comparators.

(81) Co-products from the production and use of fuels should be taken into account in the calculation of greenhouse gas emissions. The substitution method is appropriate for the purposes of policy analysis, but not for the regulation of individual economic operators and individual consignments of transport fuels. In those cases the energy allocation method is the most appropriate method, as it is easy to apply, is predictable over time, minimises counter-productive incentives and produces results that are generally comparable with those produced by the substitution method. For the purposes of policy analysis the Commission should also, in its reporting, present results using the substitution method.

(82) In order to avoid a disproportionate administrative burden, a list of default values should be laid down for common biofuel production pathways and that list should be updated and expanded when further reliable data is available. Economic operators should always be entitled to claim the level of greenhouse gas emission saving for biofuels and bioliquids established by that list. Where the default value for greenhouse gas emission saving from a production pathway lies below the required minimum level of greenhouse gas emission saving, producers wishing to demonstrate their compliance with this minimum level should be required to show that actual emissions from their production process are lower than those that were assumed in the calculation of the default values.

(83) It is appropriate for the data used in the calculation of the default values to be obtained from independent, scientifically expert sources and to be updated as appropriate as those sources progress their work. The Commission should encourage those sources to address, when they update their work, emissions from cultivation, the effect of regional and climatological conditions, the effects of cultivation using sustainable agricultural and organic farming methods, and the scientific contribution of producers, within the Community and in third countries, and civil society.

(84) In order to avoid encouraging the cultivation of raw materials for biofuels and bioliquids in places where this would lead to high greenhouse gas emissions, the use of default values for cultivation should be limited to regions where such an effect can reliably be ruled out. However, to avoid a disproportionate administrative burden, it is appropriate for Member States to establish national or regional averages for emissions from cultivation, including from fertiliser use.

(85) Global demand for agricultural commodities is growing. Part of that increased demand will be met through an increase in the amount of land devoted to agriculture. The restoration of land that has been severely degraded or heavily contaminated and therefore cannot be used, in its present

state, for agricultural purposes is a way of increasing the amount of land available for cultivation. The sustainability scheme should promote the use of restored degraded land because the promotion of biofuels and bioliquids will contribute to the growth in demand for agricultural commodities. Even if biofuels themselves are made using raw materials from land already in arable use, the net increase in demand for crops caused by the promotion of biofuels could lead to a net increase in the cropped area. This could affect high carbon stock land, which would result in damaging carbon stock losses. To alleviate that risk, it is appropriate to introduce accompanying measures to encourage an increased rate of productivity on land already used for crops, the use of degraded land, and the adoption of sustainability requirements, comparable to those laid down in this Directive for Community biofuel consumption, in other biofuel-consuming countries. The Commission should develop a concrete methodology to minimise greenhouse gas emissions caused by indirect land-use changes. To this end, the Commission should analyse, on the basis of best available scientific evidence, in particular, the inclusion of a factor for indirect land-use changes in the calculation of greenhouse gas emissions and the need to incentivise sustainable biofuels which minimise the impacts of land-use change and improve biofuel sustainability with respect to indirect land-use change. In developing that methodology, the Commission should address, *inter alia*, the potential indirect land-use changes resulting from biofuels produced from non-food cellulosic material and from ligno-cellulosic material.

(86) In order to permit the achievement of an adequate market share of biofuels, it is necessary to ensure the placing on the market of higher blends of biodiesel in diesel than those envisaged by standard EN590/2004.

(87) In order to ensure that biofuels that diversify the range of feedstocks used become commercially viable, those biofuels should receive an extra weighting under national biofuel obligations.

(88) Regular reporting is needed to ensure a continuing focus on progress in the development of energy from renewable sources at national and Community level. It is appropriate to require the use of a harmonised template for national renewable energy action plans which Member States should submit. Such plans could include estimated costs and benefits of the measures envisaged, measures relating to the necessary extension or reinforcement of the existing grid infrastructure, estimated costs and benefits to develop energy from renewable sources in excess of the level required by the indicative trajectory, information on national support schemes and information on their use of energy from renewable sources in new or renovated buildings.

(89) When designing their support systems, Member States may encourage the use of biofuels which give additional benefits, including the benefits of diversification offered by biofuels made from waste, residues, non-food cellulosic material, ligno-cellulosic material and algae, as well as non-irrigated plants grown in arid areas to fight desertification, by taking due account of the different costs of producing energy from traditional biofuels on the one hand and of those biofuels that give additional benefits on the other. Member States may encourage investment in research and development in relation to those and other renewable energy technologies that need time to become competitive.

(90) The implementation of this Directive should reflect, where relevant, the provisions of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, in particular as implemented through Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information.

(91) The measures necessary for the implementation of this Directive should be adopted in accord-

ance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission.

(92) In particular, the Commission should be empowered to adapt the methodological principles and values necessary for assessing whether sustainability criteria have been fulfilled in relation to biofuels and bioliquids, to adapt the energy content of transport fuels to technical and scientific progress, to establish criteria and geographic ranges for determining highly biodiverse grassland, and to establish detailed definitions for severely degraded or contaminated land. Since those measures are of general scope and are designed to amend non-essential elements of this Directive, *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.

(93) Those provisions of Directive 2001/77/EC and Directive 2003/30/EC that overlap with the provisions of this Directive should be deleted from the latest possible moment for transposition of this Directive. Those that deal with targets and reporting for 2010 should remain in force until the end of 2011. It is therefore necessary to amend Directive 2001/77/EC and Directive 2003/30/EC accordingly.

(94) Since the measures provided for in Articles 17 to 19 also have an effect on the functioning of the internal market by harmonising the sustainability criteria for biofuels and bioliquids for the target accounting purposes under this Directive, and thus facilitate, in accordance with Article 17(8), trade between Member States in biofuels and bioliquids which comply with those conditions, they are based on Article 95 of the Treaty.

(95) The sustainability scheme should not prevent Member States from taking into account, in their national support schemes, the higher production cost of biofuels and bioliquids that deliver benefits that exceed the minima laid down in the sustainability scheme.

(96) Since the general objectives of this Directive, namely to achieve a 20% share of energy from renewable sources in the Community's gross final consumption of energy and a 10% share of energy from renewable sources in each Member State's transport energy consumption by 2020, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale of the action, 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 Directive does not go beyond what is necessary in order to achieve those objectives.

(97) In accordance with point 34 of the Interinstitutional agreement on better law-making, Member States are encouraged to draw up, for themselves and in the interest of the Community, their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures and to make them public.

Article 1

Subject matter and scope

This Directive establishes a common framework for the promotion of energy from renewable sources. It sets mandatory national targets for the overall share of energy from renewable sources in gross final consumption of energy and for the share of energy from renewable sources in transport. It lays down rules relating to statistical transfers between **Contracting Parties**, joint projects between

Contracting Parties and with third countries, guarantees of origin, administrative procedures, information and training, and access to the electricity grid for energy from renewable sources. It establishes sustainability criteria for biofuels and bioliquids.

Article 2

Definitions

For the purposes of this Directive, the definitions in Directive 2003/54/EC apply.

The following definitions also apply:

- (a) "energy from renewable sources" means energy from renewable non-fossil sources, namely wind, solar, aerothermal, geothermal, hydrothermal and ocean energy, hydropower, biomass, land-fill gas, sewage treatment plant gas and biogases;
- (b) "aerothermal energy" means energy stored in the form of heat in the ambient air;
- (c) "geothermal energy" means energy stored in the form of heat beneath the surface of solid earth;
- (d) "hydrothermal energy" means energy stored in the form of heat in surface water;
- (e) "biomass" means the biodegradable fraction of products, waste and residues from biological origin from agriculture (including vegetal and animal substances), forestry and related industries including fisheries and aquaculture, as well as the biodegradable fraction of industrial and municipal waste;
- (f) "gross final consumption of energy" means the energy commodities delivered for energy purposes to industry, transport, households, services including public services, agriculture, forestry and fisheries, including the consumption of electricity and heat by the energy branch for electricity and heat production and including losses of electricity and heat in distribution and transmission;
- (g) "district heating" or "district cooling" means the distribution of thermal energy in the form of steam, hot water or chilled liquids, from a central source of production through a network to multiple buildings or sites, for the use of space or process heating or cooling;
- (h) "bioliquids" means liquid fuel for energy purposes other than for transport, including electricity and heating and cooling, produced from biomass;
- (i) "biofuels" means liquid or gaseous fuel for transport produced from biomass;
- (j) "guarantee of origin" means an electronic document which has the sole function of providing proof to a final customer that a given share or quantity of energy was produced from renewable sources as required by Article 3(6) of Directive 2003/54/EC;
- (k) "support scheme" means any instrument, scheme or mechanism applied by a **Contracting Party** or a group of **Contracting Parties**, that promotes the use of energy from renewable sources by reducing the cost of that energy, increasing the price at which it can be sold, or increasing, by means of a renewable energy obligation or otherwise, the volume of such energy purchased. This includes, but is not restricted to, investment aid, tax exemptions or reductions, tax refunds, renewable energy obligation support schemes including those using green certificates, and direct price support schemes including feed-in tariffs and premium payments;
- (l) "renewable energy obligation" means a national support scheme requiring energy producers to include a given proportion of energy from renewable sources in their production, requiring energy

suppliers to include a given proportion of energy from renewable sources in their supply, or requiring energy consumers to include a given proportion of energy from renewable sources in their consumption. This includes schemes under which such requirements may be fulfilled by using green certificates;

(m) "actual value" means the greenhouse gas emission saving for some or all of the steps of a specific biofuel production process calculated in accordance with the methodology laid down in part C of Annex V;

(n) "typical value" means an estimate of the representative greenhouse gas emission saving for a particular biofuel production pathway;

(o) "default value" means a value derived from a typical value by the application of pre-determined factors and that may, in circumstances specified in this Directive, be used in place of an actual value.

Article 3

Mandatory national overall targets and measures for the use of energy from renewable sources

1. Each **Contracting Party** shall ensure that the share of energy from renewable sources, calculated in accordance with Articles 5 to 11, in gross final consumption of energy in 2020 is at least its national overall target for the share of energy from renewable sources in that year, as set out in the third column of the table in part A of Annex I. <...> In order to achieve the targets laid down in this Article more easily, each **Contracting Party** shall promote and encourage energy efficiency and energy saving.

2. **Contracting Parties** shall introduce measures effectively designed to ensure that the share of energy from renewable sources equals or exceeds that shown in the indicative trajectory set out in part B of Annex I.

3. In order to reach the targets set in paragraphs 1 and 2 of this Article **Contracting Parties** may, *inter alia*, apply the following measures:

(a) support schemes;

(b) measures of cooperation between different **Contracting Parties** and with third countries for achieving their national overall targets in accordance with Articles 5 to 11.

Without prejudice to **Article 18(1)(c) and 18(2) of the Energy Community Treaty**, **Contracting Parties** shall have the right to decide, in accordance with Articles 5 to 11 of this Directive, to which extent they support energy from renewable sources which is produced in a different **Contracting Party**.

4. Each **Contracting Party** shall ensure that the share of energy from renewable sources in all forms of transport in 2020 is at least 10% of the final consumption of energy in transport in that **Contracting Party**.

For the purposes of this paragraph, the following provisions shall apply:

(a) for the calculation of the denominator, that is the total amount of energy consumed in transport for the purposes of the first subparagraph, only petrol, diesel, biofuels consumed in road and rail transport, and electricity shall be taken into account;

(b) for the calculation of the numerator, that is the amount of energy from renewable sources consumed in transport for the purposes of the first subparagraph, all types of energy from renewable sources consumed in all forms of transport shall be taken into account;

(c) for the calculation of the contribution from electricity produced from renewable sources and consumed in all types of electric vehicles for the purpose of points (a) and (b), **Contracting Parties** may choose to use either the average share of electricity from renewable energy sources in the **Energy Community** or the share of electricity from renewable energy sources in their own country as measured two years before the year in question. Furthermore, for the calculation of the electricity from renewable energy sources consumed by electric road vehicles, that consumption shall be considered to be 2.5 times the energy content of the input of electricity from renewable energy sources.

Article 4

National renewable energy action plans

1. Each **Contracting Party** shall adopt a national renewable energy action plan. The national renewable energy action plans shall set out **Contracting Parties'** national targets for the share of energy from renewable sources consumed in transport, electricity and heating and cooling in 2020, taking into account the effects of other policy measures relating to energy efficiency on final consumption of energy, and adequate measures to be taken to achieve those national overall targets, including cooperation between local, regional and national authorities, planned statistical transfers or joint projects, national policies to develop existing biomass resources and mobilise new biomass resources for different uses, and the measures to be taken to fulfil the requirements of Articles 13 to 19.

<...>

Contracting Parties shall present their National Renewable Energy Action Plans in the form of the template adopted by the Commission under the second subparagraph of Article 4(1) of the Directive.¹

2. **Contracting Parties** shall notify their national renewable energy action plans to the **Energy Community Secretariat** by **30 June 2013**.

3. Each **Contracting Party** shall publish and notify to the **Energy Community Secretariat**, six months before its national renewable energy action plan is due, a forecast document indicating:

(a) its estimated excess production of energy from renewable sources compared to the indicative trajectory which could be transferred to other **Contracting Parties** in accordance with Articles 6 to 11, as well as its estimated potential for joint projects, until 2020; and

(b) its estimated demand for energy from renewable sources to be satisfied by means other than domestic production until 2020.

That information may include elements relating to cost and benefits and financing. That forecast shall be updated in the reports of the **Contracting Parties** as set out in Article 22(1)(l) and (m).

4. A **Contracting Party** whose share of energy from renewable sources fell below the indicative trajectory in the immediately preceding two-year period set out in part B of Annex I, shall submit an amended national renewable energy action plan to the **Energy Community Secretariat** by 30 June

¹ Article 5(2) of Decision 2012/04/MC-EnC, referring to Commission Decision 2009/548/EC of 30 June 2009 establishing a template for National Renewable Energy Action Plans under Directive 2009/28/EC.

of the following year, setting out adequate and proportionate measures to rejoin, within a reasonable timetable, the indicative trajectory in part B of Annex I.

The Energy Community Secretariat may, if the Contracting Party has not met the indicative trajectory by a limited margin, and taking due account of the current and future measures taken by the Contracting Party, propose to the Permanent High Level Group to adopt a decision to release the Contracting Party from the obligation to submit an amended National Renewable Energy Action Plan.

5. The **Energy Community Secretariat** shall evaluate the national renewable energy action plans, notably the adequacy of the measures envisaged by the **Contracting Party** in accordance with Article 3(2). In response to a national renewable energy action plan or to an amended national renewable energy action plan, the **Energy Community Secretariat** may issue a recommendation.

Article 5

Calculation of the share of energy from renewable sources

1. The gross final consumption of energy from renewable sources in each **Contracting Party** shall be calculated as the sum of:

- (a) gross final consumption of electricity from renewable energy sources;
- (b) gross final consumption of energy from renewable sources for heating and cooling; and
- (c) final consumption of energy from renewable sources in transport.

Gas, electricity and hydrogen from renewable energy sources shall be considered only once in point (a), (b), or (c) of the first subparagraph, for calculating the share of gross final consumption of energy from renewable sources.

Subject to the second subparagraph of Article 17(1), biofuels and bioliquids that do not fulfil the sustainability criteria set out in Article 17(2) to (6) shall not be taken into account.

2. Where a **Contracting Party** considers that, due to force majeure, it is impossible for it to meet its share of energy from renewable sources in gross final consumption of energy in 2020 set out in the third column of the table in Annex I, it shall inform the **Energy Community Secretariat** accordingly as soon as possible. **The Energy Community Secretariat shall issue an opinion on whether force majeure has been demonstrated. In the event that the Energy Community Secretariat considers that force majeure has been demonstrated, the Permanent High Level Group shall decide on whether an adjustment that shall be made to the Contracting Party's gross final consumption of energy from renewable sources for the year 2020 and the level of that adjustment.**²

3. For the purposes of paragraph 1(a), gross final consumption of electricity from renewable energy sources shall be calculated as the quantity of electricity produced in a **Contracting Party** from renewable energy sources, excluding the production of electricity in pumped storage units from water that has previously been pumped uphill.

² According to Article 12 of Decision 2012/04/MC-EnC ('Decisions of the Permanent High Level Group')

"1. Decisions of the Permanent High Level Group taken in application of Directive 2009/28/EC, as adapted by the present Decision, shall be adopted by majority of its members, which must include a vote in favour by the European Union.

2. The Permanent High Level Group shall adopt a procedural act on the implementation of the present article."

In multi-fuel plants using renewable and conventional sources, only the part of electricity produced from renewable energy sources shall be taken into account. For the purposes of this calculation, the contribution of each energy source shall be calculated on the basis of its energy content.

The electricity generated by hydropower and wind power shall be accounted for in accordance with the normalisation rules set out in Annex II.

4. For the purposes of paragraph 1(b), the gross final consumption of energy from renewable sources for heating and cooling shall be calculated as the quantity of district heating and cooling produced in a **Contracting Party** from renewable sources, plus the consumption of other energy from renewable sources in industry, households, services, agriculture, forestry and fisheries, for heating, cooling and processing purposes.

In multi-fuel plants using renewable and conventional sources, only the part of heating and cooling produced from renewable energy sources shall be taken into account. For the purposes of this calculation, the contribution of each energy source shall be calculated on the basis of its energy content.

Aerothermal, geothermal and hydrothermal heat energy captured by heat pumps shall be taken into account for the purposes of paragraph 1(b) provided that the final energy output significantly exceeds the primary energy input required to drive the heat pumps. The quantity of heat to be considered as energy from renewable sources for the purposes of this Directive shall be calculated in accordance with the methodology laid down in Annex VII.

Thermal energy generated by passive energy systems, under which lower energy consumption is achieved passively through building design or from heat generated by energy from non-renewable sources, shall not be taken into account for the purposes of paragraph 1(b).

5. The energy content of the transport fuels listed in Annex III shall be taken to be as set out in that Annex. Annex III may be adapted to technical and scientific progress. Those measures, designed to amend non-essential elements of this Directive, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 25(4).

6. The share of energy from renewable sources shall be calculated as the gross final consumption of energy from renewable sources divided by the gross final consumption of energy from all energy sources, expressed as a percentage.

For the purposes of the first subparagraph, the sum referred to in paragraph 1 shall be adjusted in accordance with Articles 6, 8, 10 and 11.

In calculating a **Contracting Party's** gross final energy consumption for the purpose of measuring its compliance with the targets and indicative trajectory laid down in this Directive, the amount of energy consumed in aviation shall, as a proportion of that **Contracting Party's** gross final consumption of energy, be considered to be no more than 6.18%. For Cyprus and Malta the amount of energy consumed in aviation shall, as a proportion of those **Contracting Parties**³ gross final consumption of energy, be considered to be no more than 4.12%.

7. The methodology and definitions used in the calculation of the share of energy from renewable sources shall be those of Regulation (EC) No 1099/2008 of the European Parliament and of the Council of 22 October 2008 on energy statistics.

Contracting Parties shall ensure coherence of statistical information used in calculating those sectoral and overall shares and statistical information reported to the **Energy Community Secretariat** under Regulation (EC) No 1099/2008.

³ Cyprus and Malta are not Contracting Parties of the Energy Community.

Article 6

Statistical transfers between Contracting Parties

1. **Contracting Parties** may agree on and may make arrangements for the statistical transfer of a specified amount of energy from renewable sources from one **Contracting Party** to another **Contracting Party**. The transferred quantity shall be:

(a) deducted from the amount of energy from renewable sources that is taken into account in measuring compliance by the **Contracting Party** making the transfer with the requirements of Article 3(1) and (2); and

(b) added to the amount of energy from renewable sources that is taken into account in measuring compliance by another **Contracting Party** accepting the transfer with the requirements of Article 3(1) and (2).

A statistical transfer shall not affect the achievement of the national target of the **Contracting Party** making the transfer.

2. The arrangements referred to in paragraph 1 may have a duration of one or more years. They shall be notified to the **Energy Community Secretariat** no later than three months after the end of each year in which they have effect. The information sent to the **Energy Community Secretariat** shall include the quantity and price of the energy involved.

3. Transfers shall become effective only after all **Contracting Parties** involved in the transfer have notified the transfer to the **Energy Community Secretariat**.

Article 8 of Decision 2012/04/MC-EnC

Statistical transfers from Contracting Parties to Member States of the European Union

1. Upon motivated request from an interested Contracting Party, the Ministerial Council may decide⁴ that this Contracting Party may agree on statistical transfers of a specified amount of energy from renewable sources to a Member State of the European Union. The Ministerial Council shall ask the Secretariat for an opinion on the request.

2. The transferred quantity shall be deducted from the amount of energy from renewable sources that is taken into account in measuring compliance by the Contracting Party making the transfer with the requirements of Article 3(1) and (2) of Directive 2009/28/EC, as adapted by this decision.

A statistical transfer shall not affect the achievement of the national target of the Contracting Party making the transfer.

⁴ According to Article 11 of Decision 2012/04/MC-EnC,

"1. The Decision of the Ministerial Council referred to in Article 8 and 9 of this Decision shall be adopted by majority of the Members of the Ministerial Council, which must include a vote in favour by the European Union.

2. The Decision shall be positive only if all the following conditions are met:

a) that the Contracting Party has fully transposed Directive 2009/28/EC, as adapted by this Decision;

b) that the envisaged statistical transfers or distribution rules (as appropriate) are based on reliable and accurate energy statistics that are compiled in accordance with the European Union's methodology on energy statistics, and

c) that the Contracting Party is expected to exceed the indicative trajectory and binding target without including potential contributions from joint projects with third countries.

3. The Ministerial Council shall adopt a procedural act on the implementation of the present article."

3. The arrangements for the statistical transfer to a Member State of the European Union may have a duration of one or more years. They shall be notified by the Contracting Party to the Secretariat no later than three months after the end of each year in which they have effect. The information sent to the Secretariat shall include the quantity and price of the energy involved.

4. Transfers shall become effective only after the Contracting Party involved has notified the transfer to the Secretariat.

5. The provisions in this Article are without prejudice to more stringent requirements agreed by the parties involved in the statistical transfer.

Article 13 of Decision 2012/04/MC-EnC

External Audits

1. The implementation of Article 8 <...> of this Decision shall be subject to an external audit on a biennial basis of which the results shall be sent to the Secretariat. Where the result of the audit shows that the conditions laid down in this Decision for applying the cooperation mechanisms of the Directive were not met, the involved transfers will be annulled.

2. The Contracting Party concerned shall arrange for the independent audit referred to in paragraph 1. The auditor needs to be accredited by a member of the International Accreditation Body and must have implemented relevant international standards to ensure its competence.

Article 7

Joint projects between Contracting Parties

1. Two or more **Contracting Parties** may cooperate on all types of joint projects relating to the production of electricity, heating or cooling from renewable energy sources. That cooperation may involve private operators.

2. **Contracting Parties** shall notify the **Energy Community Secretariat** of the proportion or amount of electricity, heating or cooling from renewable energy sources produced by any joint project in their territory, that became operational after **18 December 2012**, or by the increased capacity of an installation that was refurbished after that date, which is to be regarded as counting towards the national overall target of another **Contracting Party** for the purposes of measuring compliance with the requirements of this Directive.

3. The notification referred to in paragraph 2 shall:

- (a) describe the proposed installation or identify the refurbished installation;
- (b) specify the proportion or amount of electricity or heating or cooling produced from the installation which is to be regarded as counting towards the national overall target of another **Contracting Party**;
- (c) identify the **Contracting Party** in whose favour the notification is being made; and

(d) specify the period, in whole calendar years, during which the electricity or heating or cooling produced by the installation from renewable energy sources is to be regarded as counting towards the national overall target of the other **Contracting Party**.

4. The period specified under paragraph 3(d) shall not extend beyond 2020. The duration of a joint project may extend beyond 2020.

5. A notification made under this Article shall not be varied or withdrawn without the joint agreement of the **Contracting Party** making the notification and the **Contracting Party** identified in accordance with paragraph 3(c).

Article 8

Effects of joint projects between Contracting Parties

1. Within three months of the end of each year falling within the period specified under Article 7(3) (d), the **Contracting Party** that made the notification under Article 7 shall issue a letter of notification stating:

(a) the total amount of electricity or heating or cooling produced during the year from renewable energy sources by the installation which was the subject of the notification under Article 7; and

(b) the amount of electricity or heating or cooling produced during the year from renewable energy sources by that installation which is to count towards the national overall target of another **Contracting Party** in accordance with the terms of the notification.

2. The notifying **Contracting Party** shall send the letter of notification to the **Contracting Party** in whose favour the notification was made and to the **Energy Community Secretariat**.

3. For the purposes of measuring target compliance with the requirements of this Directive concerning national overall targets, the amount of electricity or heating or cooling from renewable energy sources notified in accordance with paragraph 1(b) shall be:

(a) deducted from the amount of electricity or heating or cooling from renewable energy sources that is taken into account, in measuring compliance by the **Contracting Party** issuing the letter of notification under paragraph 1; and

(b) added to the amount of electricity or heating or cooling from renewable energy sources that is taken into account, in measuring compliance by the **Contracting Party** receiving the letter of notification in accordance with paragraph 2.

Article 9

Joint projects between Contracting Parties and third countries⁵

1. One or more **Contracting Parties** may cooperate with one or more third countries on all types of joint projects regarding the production of electricity from renewable energy sources. Such cooperation may involve private operators.

⁵ According to Recital 6 of Decision 2012/04/MC-EnC, joint projects between Member States and Contracting Parties remain possible under Articles 9 and 10 of the Directive. Article 9 of the Directive in its original form thus remains also relevant.

2. Electricity from renewable energy sources produced in a third country shall be taken into account only for the purposes of measuring compliance with the requirements of this Directive concerning national overall targets if the following conditions are met:

(a) the electricity is consumed in the **Energy Community**, a requirement that is deemed to be met where:

(i) an equivalent amount of electricity to the electricity accounted for has been firmly nominated to the allocated interconnection capacity by all responsible transmission system operators in the country of origin, the country of destination and, if relevant, each third country of transit;

(ii) an equivalent amount of electricity to the electricity accounted for has been firmly registered in the schedule of balance by the responsible transmission system operator on the **Energy Community** side of an interconnector; and

(iii) the nominated capacity and the production of electricity from renewable energy sources by the installation referred to in paragraph 2(b) refer to the same period of time;

(b) the electricity is produced by a newly constructed installation that became operational after **18 December 2012** or by the increased capacity of an installation that was refurbished after that date, under a joint project as referred to in paragraph 1; and

(c) the amount of electricity produced and exported has not received support from a support scheme of a third country other than investment aid granted to the installation.

3. **Contracting Parties** may apply to the **Energy Community Secretariat**, for the purposes of Article 5, for account to be taken of electricity from renewable energy sources produced and consumed in a third country, in the context of the construction of an interconnector with a very long lead-time between a **Contracting Party** and a third country if the following conditions are met:

(a) construction of the interconnector started by 31 December 2016;

(b) it is not possible for the interconnector to become operational by 31 December 2020;

(c) it is possible for the interconnector to become operational by 31 December 2022;

(d) after it becomes operational, the interconnector will be used for the export to the **Energy Community**, in accordance with paragraph 2, of electricity generated from renewable energy sources;

(e) the application relates to a joint project that fulfils the criteria in points (b) and (c) of paragraph 2 and that will use the interconnector after it becomes operational, and to a quantity of electricity that is no greater than the quantity that will be exported to the **Energy Community** after the interconnector becomes operational.

4. The proportion or amount of electricity produced by any installation in the territory of a third country, which is to be regarded as counting towards the national overall target of one or more **Contracting Parties** for the purposes of measuring compliance with Article 3, shall be notified to the **Energy Community Secretariat**. When more than one **Contracting Party** is concerned, the distribution between **Contracting Parties** of this proportion or amount shall be notified to the **Energy Community Secretariat**. This proportion or amount shall not exceed the proportion or amount actually exported to, and consumed in, the **Energy Community**, corresponding to the amount referred to in paragraph 2(a)(i) and (ii) of this Article and meeting the conditions as set out in its paragraph (2)(a). The notification shall be made by each **Contracting Party** towards whose overall national target the proportion or amount of electricity is to count.

5. The notification referred to in paragraph 4 shall:

- (a) describe the proposed installation or identify the refurbished installation;
 - (b) specify the proportion or amount of electricity produced from the installation which is to be regarded as counting towards the national target of a **Contracting Party** as well as, subject to confidentiality requirements, the corresponding financial arrangements;
 - (c) specify the period, in whole calendar years, during which the electricity is to be regarded as counting towards the national overall target of the **Contracting Party**; and
 - (d) include a written acknowledgement of points (b) and (c) by the third country in whose territory the installation is to become operational and the proportion or amount of electricity produced by the installation which will be used domestically by that third country.
6. The period specified under paragraph 5(c) shall not extend beyond 2020. The duration of a joint project may extend beyond 2020.
7. A notification made under this Article may not be varied or withdrawn without the joint agreement of the **Contracting Party** making the notification and the third country that has acknowledged the joint project in accordance with paragraph 5(d).
8. **Contracting Parties** and the **Energy Community** shall encourage the relevant bodies of the **Energy Community Treaty** to take, in conformity with the **Energy Community Treaty**, the measures which are necessary so that the **Contracting Parties** to that Treaty can apply the provisions on cooperation laid down in this Directive between **Contracting Parties**.

Article 10

Effects of joint projects between **Contracting Parties** and third countries⁶

1. Within three months of the end of each year falling within the period specified under Article 9(5) (c), the **Contracting Party** having made the notification under Article 9 shall issue a letter of notification stating:
- (a) the total amount of electricity produced during that year from renewable energy sources by the installation which was the subject of the notification under Article 9;
 - (b) the amount of electricity produced during the year from renewable energy sources by that installation which is to count towards its national overall target in accordance with the terms of the notification under Article 9; and
 - (c) proof of compliance with the conditions set out in Article 9(2).
2. The **Contracting Party** shall send the letter of notification to the third country which has acknowledged the project in accordance with Article 9(5)(d) and to the **Energy Community Secretariat**.
3. For the purposes of measuring target compliance with the requirements of this Directive concerning national overall targets, the amount of electricity produced from renewable energy sources notified in accordance with paragraph 1(b) shall be added to the amount of energy from renewable sources that is taken into account, in measuring compliance by the **Contracting Party** issuing the letter of notification.

⁶ According to Recital 6 of Decision 2012/04/MC-EnC, joint projects between Member States and Contracting Parties remain possible under Articles 9 and 10 of the Directive. Article 10 of the Directive in its original form thus remains also relevant.

Article 11

Joint support schemes

1. Without prejudice to the obligations of **Contracting Parties** under Article 3, two or more **Contracting Parties** may decide, on a voluntary basis, to join or partly coordinate their national support schemes. In such cases, a certain amount of energy from renewable sources produced in the territory of one participating **Contracting Party** may count towards the national overall target of another participating **Contracting Party** if the **Contracting Parties** concerned:

(a) make a statistical transfer of specified amounts of energy from renewable sources from one **Contracting Party** to another **Contracting Party** in accordance with Article 6; or

(b) set up a distribution rule agreed by participating **Contracting Parties** that allocates amounts of energy from renewable sources between the participating **Contracting Parties**. Such a rule shall be notified to the **Energy Community Secretariat** no later than three months after the end of the first year in which it takes effect.

2. Within three months of the end of each year each **Contracting Party** having made a notification under paragraph 1(b) shall issue a letter of notification stating the total amount of electricity or heating or cooling from renewable energy sources produced during the year which is to be the subject of the distribution rule.

3. For the purposes of measuring compliance with the requirements of this Directive concerning national overall targets, the amount of electricity or heating or cooling from renewable energy sources notified in accordance with paragraph 2 shall be reallocated between the concerned **Contracting Parties** in accordance with the notified distribution rule.

Article 9 of Decision 2012/04/MC-EnC

Joint support schemes between Contracting Parties and Member States of the European Union

1. One or more **Contracting Parties** and one or more **EU Member States** may decide, on a voluntary basis, to join or partly coordinate their national support schemes. In such cases, a certain amount of energy from renewable sources produced in the territory of one participating **Contracting Party** or **Member State** may count towards the national overall target of another participating **Contracting Party(ies)** or **Member State(s)** if the involved **Parties** concerned:

(a) make a statistical transfer of specified amounts of energy from renewable sources from one **Party** to another **Party** in accordance with Article 8 of this Decision; or

(b) set up a distribution rule agreed by the participating **Contracting Party** and **Member State** that allocates amounts of energy from renewable sources between the participating **Parties**. Such a rule shall be notified to the **Secretariat** by the **Contracting Party** no later than three months after the end of the first year in which it takes effect.

2. Upon motivated request from an interested Contracting Party, which shall include the information referred in Article 7(3) of Directive 2009/28, the Ministerial Council may decide⁷ that this Contracting Party may agree on a joint support scheme with a Member State of the European Union. The Ministerial Council shall ask the Secretariat for an opinion on the request.

3. Within three months of the end of each year each Contracting Party having made a notification under paragraph 1(b) shall issue a letter of notification stating the total amount of electricity or heating or cooling from renewable energy sources produced during the year which is to be the subject of the distribution rule.

4. For the purposes of measuring compliance with the requirements of this Directive concerning national overall targets, the amount of electricity or heating or cooling from renewable energy sources notified in accordance with paragraph 2 shall be reallocated between the concerned Contracting Party(ies) and Member State(s) in accordance with the notified distribution rule.

5. The provisions in this Article are without prejudice to more stringent requirements agreed by the parties coordinating their national support schemes.

Article 13 of Decision 2012/04/MC-EnC

External Audits

1. The implementation of Article <...> 9 of this Decision shall be subject to an external audit on a biennial basis of which the results shall be sent to the Secretariat. Where the result of the audit shows that the conditions laid down in this Decision for applying the cooperation mechanisms of the Directive were not met, the involved transfers will be annulled.

2. The Contracting Party concerned shall arrange for the independent audit referred to in paragraph 1. The auditor needs to be accredited by a member of the International Accreditation Body and must have implemented relevant international standards to ensure its competence.

Article 12

Capacity increases

For the purpose of Article 7(2) and Article 9(2)(b), units of energy from renewable sources imputable to an increase in the capacity of an installation shall be treated as if they were produced by a separate installation becoming operational at the moment at which the increase of capacity occurred.

⁷ According to Article 11 of Decision 2012/04/MC-EnC,

"1. The Decision of the Ministerial Council referred to in Article 8 and 9 of this Decision shall be adopted by majority of the Members of the Ministerial Council, which must include a vote in favour by the European Union.

2. The Decision shall be positive only if all the following conditions are met:

a) that the Contracting Party has fully transposed Directive 2009/28/EC, as adapted by this Decision;

b) that the envisaged statistical transfers or distribution rules (as appropriate) are based on reliable and accurate energy statistics that are compiled in accordance with the European Union's methodology on energy statistics, and

c) that the Contracting Party is expected to exceed the indicative trajectory and binding target without including potential contributions from joint projects with third countries.

3. The Ministerial Council shall adopt a procedural act on the implementation of the present article."

Article 13

Administrative procedures, regulations and codes

1. **Contracting Parties** shall ensure that any national rules concerning the authorisation, certification and licensing procedures that are applied to plants and associated transmission and distribution network infrastructures for the production of electricity, heating or cooling from renewable energy sources, and to the process of transformation of biomass into biofuels or other energy products, are proportionate and necessary.

Contracting Parties shall, in particular, take the appropriate steps to ensure that:

(a) subject to differences between **Contracting Parties** in their administrative structures and organisation, the respective responsibilities of national, regional and local administrative bodies for authorisation, certification and licensing procedures including spatial planning are clearly coordinated and defined, with transparent timetables for determining planning and building applications;

(b) comprehensive information on the processing of authorisation, certification and licensing applications for renewable energy installations and on available assistance to applicants are made available at the appropriate level;

(c) administrative procedures are streamlined and expedited at the appropriate administrative level;

(d) rules governing authorisation, certification and licensing are objective, transparent, proportionate, do not discriminate between applicants and take fully into account the particularities of individual renewable energy technologies;

(e) administrative charges paid by consumers, planners, architects, builders and equipment and system installers and suppliers are transparent and cost-related; and

(f) simplified and less burdensome authorisation procedures, including through simple notification if allowed by the applicable regulatory framework, are established for smaller projects and for decentralised devices for producing energy from renewable sources, where appropriate.

2. **Contracting Parties** shall clearly define any technical specifications which must be met by renewable energy equipment and systems in order to benefit from support schemes. Where European standards exist, including eco-labels, energy labels and other technical reference systems established by the European standardisation bodies, such technical specifications shall be expressed in terms of those standards. Such technical specifications shall not prescribe where the equipment and systems are to be certified and should not impede the operation of the internal market.

3. **Contracting Parties** shall recommend to all actors, in particular local and regional administrative bodies to ensure equipment and systems are installed for the use of electricity, heating and cooling from renewable energy sources and for district heating and cooling when planning, designing, building and renovating industrial or residential areas. **Contracting Parties** shall, in particular, encourage local and regional administrative bodies to include heating and cooling from renewable energy sources in the planning of city infrastructure, where appropriate.

4. **Contracting Parties** shall introduce in their building regulations and codes appropriate measures in order to increase the share of all kinds of energy from renewable sources in the building sector.

In establishing such measures or in their regional support schemes, **Contracting Parties** may take into account national measures relating to substantial increases in energy efficiency and relating to cogeneration and to passive, low or zero-energy buildings.

By 31 December 2014, **Contracting Parties** shall, in their building regulations and codes or by other means with equivalent effect, where appropriate, require the use of minimum levels of energy from renewable sources in new buildings and in existing buildings that are subject to major renovation. **Contracting Parties** shall permit those minimum levels to be fulfilled, *inter alia*, through district heating and cooling produced using a significant proportion of renewable energy sources.

The requirements of the first subparagraph shall apply to the armed forces, only to the extent that its application does not cause any conflict with the nature and primary aim of the activities of the armed forces and with the exception of material used exclusively for military purposes.

5. **Contracting Parties** shall ensure that new public buildings, and existing public buildings that are subject to major renovation, at national, regional and local level fulfil an exemplary role in the context of this Directive from 1 January 2012 onwards. **Contracting Parties** may, *inter alia*, allow that obligation to be fulfilled by complying with standards for zero energy housing, or by providing that the roofs of public or mixed private-public buildings are used by third parties for installations that produce energy from renewable sources.

6. With respect to their building regulations and codes, **Contracting Parties** shall promote the use of renewable energy heating and cooling systems and equipment that achieve a significant reduction of energy consumption. **Contracting Parties** shall use energy or eco-labels or other appropriate certificates or standards developed at national or **Energy Community** level, where these exist, as the basis for encouraging such systems and equipment.

In the case of biomass, **Contracting Parties** shall promote conversion technologies that achieve a conversion efficiency of at least 85% for residential and commercial applications and at least 70% for industrial applications.

In the case of heat pumps, **Contracting Parties** shall promote those that fulfil the minimum requirements of eco-labelling established in Commission Decision 2007/742/EC of 9 November 2007 establishing the ecological criteria for the award of the Community eco-label to electrically driven, gas driven or gas absorption heat pumps.

In the case of solar thermal energy, **Contracting Parties** shall promote certified equipment and systems based on European standards where these exist, including eco-labels, energy labels and other technical reference systems established by the European standardisation bodies.

In assessing the conversion efficiency and input/output ratio of systems and equipment for the purposes of this paragraph, **Contracting Parties** shall use **Energy Community** or, in their absence, international procedures if such procedures exist.

Article 14

Information and training

1. **Contracting Parties** shall ensure that information on support measures is made available to all relevant actors, such as consumers, builders, installers, architects, and suppliers of heating, cooling and electricity equipment and systems and of vehicles compatible with the use of energy from renewable sources.

2. **Contracting Parties** shall ensure that information on the net benefits, cost and energy efficiency of equipment and systems for the use of heating, cooling and electricity from renewable energy sources is made available either by the supplier of the equipment or system or by the national com-

petent authorities.

3. **Contracting Parties** shall ensure that certification schemes or equivalent qualification schemes become or are available by 31 December 2012 for installers of small-scale biomass boilers and stoves, solar photovoltaic and solar thermal systems, shallow geothermal systems and heat pumps. Those schemes may take into account existing schemes and structures as appropriate, and shall be based on the criteria laid down in Annex IV. Each **Contracting Party** shall recognise certification awarded by other **Contracting Parties** in accordance with those criteria.

4. **Contracting Parties** shall make available to the public information on certification schemes or equivalent qualification schemes as referred to in paragraph 3. **Contracting Parties** may also make available the list of installers who are qualified or certified in accordance with the provisions referred to in paragraph 3.

5. **Contracting Parties** shall ensure that guidance is made available to all relevant actors, notably for planners and architects so that they are able properly to consider the optimal combination of renewable energy sources, of high-efficiency technologies and of district heating and cooling when planning, designing, building and renovating industrial or residential areas.

6. **Contracting Parties**, with the participation of local and regional authorities, shall develop suitable information, awareness-raising, guidance or training programmes in order to inform citizens of the benefits and practicalities of developing and using energy from renewable sources.

Article 15

Guarantees of origin of electricity, heating and cooling produced from renewable energy sources

1. For the purposes of proving to final customers the share or quantity of energy from renewable sources in an energy supplier's energy mix in accordance with Article 3(6) of Directive 2003/54/EC, **Contracting Parties** shall ensure that the origin of electricity produced from renewable energy sources can be guaranteed as such within the meaning of this Directive, in accordance with objective, transparent and non-discriminatory criteria.

2. To that end, **Contracting Parties** shall ensure that a guarantee of origin is issued in response to a request from a producer of electricity from renewable energy sources. **Contracting Parties** may arrange for guarantees of origin to be issued in response to a request from producers of heating and cooling from renewable energy sources. Such an arrangement may be made subject to a minimum capacity limit. A guarantee of origin shall be of the standard size of 1 MWh. No more than one guarantee of origin shall be issued in respect of each unit of energy produced.

Contracting Parties shall ensure that the same unit of energy from renewable sources is taken into account only once.

Contracting Parties may provide that no support be granted to a producer when that producer receives a guarantee of origin for the same production of energy from renewable sources.

The guarantee of origin shall have no function in terms of a **Contracting Party's** compliance with Article 3. Transfers of guarantees of origin, separately or together with the physical transfer of energy, shall have no effect on the decision of **Contracting Parties** to use statistical transfers, joint projects or joint support schemes for target compliance or on the calculation of the gross final con-

sumption of energy from renewable sources in accordance with Article 5.

3. Any use of a guarantee of origin shall take place within 12 months of production of the corresponding energy unit. A guarantee of origin shall be cancelled once it has been used.

4. **Contracting Parties** or designated competent bodies shall supervise the issuance, transfer and cancellation of guarantees of origin. The designated competent bodies shall have non-overlapping geographical responsibilities, and be independent of production, trade and supply activities.

5. **Contracting Parties** or the designated competent bodies shall put in place appropriate mechanisms to ensure that guarantees of origin shall be issued, transferred and cancelled electronically and are accurate, reliable and fraud-resistant.

6. A guarantee of origin shall specify at least:

(a) the energy source from which the energy was produced and the start and end dates of production;

(b) whether it relates to:

(i) electricity; or

(ii) heating or cooling;

(c) the identity, location, type and capacity of the installation where the energy was produced;

(d) whether and to what extent the installation has benefited from investment support, whether and to what extent the unit of energy has benefited in any other way from a national support scheme, and the type of support scheme;

(e) the date on which the installation became operational; and

(f) the date and country of issue and a unique identification number.

7. Where an electricity supplier is required to prove the share or quantity of energy from renewable sources in its energy mix for the purposes of Article 3(6) of Directive 2003/54/EC, it may do so by using its guarantees of origin.

8. The amount of energy from renewable sources corresponding to guarantees of origin transferred by an electricity supplier to a third party shall be deducted from the share of energy from renewable sources in its energy mix for the purposes of Article 3(6) of Directive 2003/54/EC.

9. **Contracting Parties** shall recognise guarantees of origin issued by other **Contracting Parties** in accordance with this Directive exclusively as proof of the elements referred to in paragraph 1 and paragraph 6(a) to (f). A **Contracting Party** may refuse to recognise a guarantee of origin only when it has well-founded doubts about its accuracy, reliability or veracity. The **Contracting Party** shall notify the **Energy Community Secretariat** of such a refusal and its justification.

10. If the Energy Community Secretariat finds that a refusal to recognise a guarantee of origin is unfounded, the Energy Community Secretariat may issue an opinion inviting the Contracting Party in question to recognise it.

11. A **Contracting Party** may introduce, in conformity with **Energy Community** law, objective, transparent and non-discriminatory criteria for the use of guarantees of origin in complying with the obligations laid down in Article 3(6) of Directive 2003/54/EC.

12. Where energy suppliers market energy from renewable sources to consumers with a reference to environmental or other benefits of energy from renewable sources, **Contracting Parties** may require those energy suppliers to make available, in summary form, information on the amount or

share of energy from renewable sources that comes from installations or increased capacity that became operational after **18 December 2012**.

Article 16

Access to and operation of the grids

1. **Contracting Parties** shall take the appropriate steps to develop transmission and distribution grid infrastructure, intelligent networks, storage facilities and the electricity system, in order to allow the secure operation of the electricity system as it accommodates the further development of electricity production from renewable energy sources, including interconnection between **Contracting Parties** and between **Contracting Parties** and third countries. **Contracting Parties** shall also take appropriate steps to accelerate authorisation procedures for grid infrastructure and to coordinate approval of grid infrastructure with administrative and planning procedures.

2. Subject to requirements relating to the maintenance of the reliability and safety of the grid, based on transparent and non-discriminatory criteria defined by the competent national authorities:

(a) **Contracting Parties** shall ensure that transmission system operators and distribution system operators in their territory guarantee the transmission and distribution of electricity produced from renewable energy sources;

(b) **Contracting Parties** shall also provide for either priority access or guaranteed access to the grid-system of electricity produced from renewable energy sources;

(c) **Contracting Parties** shall ensure that when dispatching electricity generating installations, transmission system operators shall give priority to generating installations using renewable energy sources in so far as the secure operation of the national electricity system permits and based on transparent and non-discriminatory criteria. **Contracting Parties** shall ensure that appropriate grid and market-related operational measures are taken in order to minimise the curtailment of electricity produced from renewable energy sources. If significant measures are taken to curtail the renewable energy sources in order to guarantee the security of the national electricity system and security of energy supply, **Contracting Parties** shall ensure that the responsible system operators report to the competent regulatory authority on those measures and indicate which corrective measures they intend to take in order to prevent inappropriate curtailments.

3. **Contracting Parties** shall require transmission system operators and distribution system operators to set up and make public their standard rules relating to the bearing and sharing of costs of technical adaptations, such as grid connections and grid reinforcements, improved operation of the grid and rules on the non-discriminatory implementation of the grid codes, which are necessary in order to integrate new producers feeding electricity produced from renewable energy sources into the interconnected grid.

Those rules shall be based on objective, transparent and non-discriminatory criteria taking particular account of all the costs and benefits associated with the connection of those producers to the grid and of the particular circumstances of producers located in peripheral regions and in regions of low population density. Those rules may provide for different types of connection.

4. Where appropriate, **Contracting Parties** may require transmission system operators and distribution system operators to bear, in full or in part, the costs referred to in paragraph 3. **Contracting**

Parties shall review and take the necessary measures to improve the frameworks and rules for the bearing and sharing of costs referred to in paragraph 3 by 30 June 2011 and every two years thereafter to ensure the integration of new producers as referred to in that paragraph.

5. **Contracting Parties** shall require transmission system operators and distribution system operators to provide any new producer of energy from renewable sources wishing to be connected to the system with the comprehensive and necessary information required, including:

- (a) a comprehensive and detailed estimate of the costs associated with the connection;
- (b) a reasonable and precise timetable for receiving and processing the request for grid connection;
- (c) a reasonable indicative timetable for any proposed grid connection.

Contracting Parties may allow producers of electricity from renewable energy sources wishing to be connected to the grid to issue a call for tender for the connection work.

6. The sharing of costs referred in paragraph 3 shall be enforced by a mechanism based on objective, transparent and non-discriminatory criteria taking into account the benefits which initially and subsequently connected producers as well as transmission system operators and distribution system operators derive from the connections.

7. **Contracting Parties** shall ensure that the charging of transmission and distribution tariffs does not discriminate against electricity from renewable energy sources, including in particular electricity from renewable energy sources produced in peripheral regions, such as island regions, and in regions of low population density. **Contracting Parties** shall ensure that the charging of transmission and distribution tariffs does not discriminate against gas from renewable energy sources.

8. **Contracting Parties** shall ensure that tariffs charged by transmission system operators and distribution system operators for the transmission and distribution of electricity from plants using renewable energy sources reflect realisable cost benefits resulting from the plant's connection to the network. Such cost benefits could arise from the direct use of the low-voltage grid.

9. Where relevant, **Contracting Parties** shall assess the need to extend existing gas network infrastructure to facilitate the integration of gas from renewable energy sources.

10. Where relevant, **Contracting Parties** shall require transmission system operators and distribution system operators in their territory to publish technical rules in line with Article 6 of Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning the common rules for the internal market in natural gas, in particular regarding network connection rules that include gas quality, gas odour and gas pressure requirements. **Contracting Parties** shall also require transmission and distribution system operators to publish the connection tariffs to connect renewable gas sources based on transparent and non-discriminatory criteria.

11. **Contracting Parties** in their national renewable energy action plans shall assess the necessity to build new infrastructure for district heating and cooling produced from renewable energy sources in order to achieve the 2020 national target referred to in Article 3(1). Subject to that assessment, **Contracting Parties** shall, where relevant, take steps with a view to developing a district heating infrastructure to accommodate the development of heating and cooling production from large biomass, solar and geothermal facilities.

Article 17

Sustainability criteria for biofuels and bioliquids

1. Irrespective of whether the raw materials were cultivated inside or outside the territory of the **Energy Community**, energy from biofuels and bioliquids shall be taken into account for the purposes referred to in points (a), (b) and (c) only if they fulfil the sustainability criteria set out in paragraphs 2 to 6:

- (a) measuring compliance with the requirements of this Directive concerning national targets;
- (b) measuring compliance with renewable energy obligations;
- (c) eligibility for financial support for the consumption of biofuels and bioliquids.

However, biofuels and bioliquids produced from waste and residues, other than agricultural, aquaculture, fisheries and forestry residues, need only fulfil the sustainability criteria set out in paragraph 2 in order to be taken into account for the purposes referred to in points (a), (b) and (c).

2. The greenhouse gas emission saving from the use of biofuels and bioliquids taken into account for the purposes referred to in points (a), (b) and (c) of paragraph 1 shall be at least 35%.

With effect from 1 January 2017, the greenhouse gas emission saving from the use of biofuels and bioliquids taken into account for the purposes referred to in points (a), (b) and (c) of paragraph 1 shall be at least 50%. From 1 January 2018 that greenhouse gas emission saving shall be at least 60% for biofuels and bioliquids produced in installations in which production started on or after 1 January 2017.

The greenhouse gas emission saving from the use of biofuels and bioliquids shall be calculated in accordance with Article 19(1).

In the case of biofuels and bioliquids produced by installations that were in operation on 23 January 2008, the first subparagraph shall apply from 1 April 2013.

3. Biofuels and bioliquids taken into account for the purposes referred to in points (a), (b) and (c) of paragraph 1 shall not be made from raw material obtained from land with high biodiversity value, namely land that had one of the following statuses in or after January 2008, whether or not the land continues to have that status:

(a) primary forest and other wooded land, namely forest and other wooded land of native species, where there is no clearly visible indication of human activity and the ecological processes are not significantly disturbed;

(b) areas designated:

- (i) by law or by the relevant competent authority for nature protection purposes; or
- (ii) for the protection of rare, threatened or endangered ecosystems or species recognised by international agreements or included in lists drawn up by intergovernmental organisations or the International Union for the Conservation of Nature, subject to their recognition in accordance with the second subparagraph of Article 18(4);⁸

unless evidence is provided that the production of that raw material did not interfere with those nature protection purposes;

⁸ Under Article 3(1)(f) of Decision 2012/04/MC-EnC, the second subparagraph of Article 18(4) of the Directive is not applicable.

(c) highly biodiverse grassland that is:

(i) natural, namely grassland that would remain grassland in the absence of human intervention and which maintains the natural species composition and ecological characteristics and processes; or

(ii) non-natural, namely grassland that would cease to be grassland in the absence of human intervention and which is species-rich and not degraded, unless evidence is provided that the harvesting of the raw material is necessary to preserve its grassland status.

4. Biofuels and bioliquids taken into account for the purposes referred to in points (a), (b) and (c) of paragraph 1 shall not be made from raw material obtained from land with high carbon stock, namely land that had one of the following statuses in January 2008 and no longer has that status:

(a) wetlands, namely land that is covered with or saturated by water permanently or for a significant part of the year;

(b) continuously forested areas, namely land spanning more than one hectare with trees higher than five metres and a canopy cover of more than 30%, or trees able to reach those thresholds *in situ*;

(c) land spanning more than one hectare with trees higher than five metres and a canopy cover of between 10% and 30%, or trees able to reach those thresholds *in situ*, unless evidence is provided that the carbon stock of the area before and after conversion is such that, when the methodology laid down in part C of Annex V is applied, the conditions laid down in paragraph 2 of this Article would be fulfilled.

The provisions of this paragraph shall not apply if, at the time the raw material was obtained, the land had the same status as it had in January 2008.

5. Biofuels and bioliquids taken into account for the purposes referred to in points (a), (b) and (c) of paragraph 1 shall not be made from raw material obtained from land that was peatland in January 2008, unless evidence is provided that the cultivation and harvesting of that raw material does not involve drainage of previously undrained soil.

6. Agricultural raw materials cultivated in the **Energy Community** and used for the production of biofuels and bioliquids taken into account for the purposes referred to in points (a), (b) and (c) of paragraph 1 shall be obtained in accordance with the requirements and standards under the provisions referred to under the heading "Environment" in part A and in point 9 of Annex II to Council Regulation (EC) No 73/2009 of 19 January 2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers and in accordance with the minimum requirements for good agricultural and environmental condition defined pursuant to Article 6(1) of that Regulation.

7. <...>

8. For the purposes referred to in points (a), (b) and (c) of paragraph 1, Contracting Parties shall not refuse to take into account, on other sustainability grounds, biofuels and bioliquids obtained in compliance with this Article.

9. <...>

Article 18

Verification of compliance with the sustainability criteria for biofuels and bioliquids

1. Where biofuels and bioliquids are to be taken into account for the purposes referred to in points (a), (b) and (c) of Article 17(1), **Contracting Parties** shall require economic operators to show that the sustainability criteria set out in Article 17(2) to (5) have been fulfilled. For that purpose they shall require economic operators to use a mass balance system which:

(a) allows consignments of raw material or biofuel with differing sustainability characteristics to be mixed;

(b) requires information about the sustainability characteristics and sizes of the consignments referred to in point (a) to remain assigned to the mixture; and

(c) provides for the sum of all consignments withdrawn from the mixture to be described as having the same sustainability characteristics, in the same quantities, as the sum of all consignments added to the mixture.

2. <...>

3. **Contracting Parties** shall take measures to ensure that economic operators submit reliable information and make available to the **Contracting Party**, on request, the data that were used to develop the information. **Contracting Parties** shall require economic operators to arrange for an adequate standard of independent auditing of the information submitted, and to provide evidence that this has been done. The auditing shall verify that the systems used by economic operators are accurate, reliable and protected against fraud. It shall evaluate the frequency and methodology of sampling and the robustness of the data.

The information referred to in the first subparagraph shall include in particular information on compliance with the sustainability criteria set out in Article 17(2) to (5), appropriate and relevant information on measures taken for soil, water and air protection, the restoration of degraded land, the avoidance of excessive water consumption in areas where water is scarce and appropriate and relevant information concerning measures taken in order to take into account the issues referred to in the second subparagraph of Article 17(7).

<...>

The obligations laid down in this paragraph shall apply whether the biofuels or bioliquids are produced within the **Energy Community** or imported.

Contracting Parties shall submit to the **Energy Community Secretariat**, in aggregated form, the information referred to in the first subparagraph of this paragraph. The **Energy Community Secretariat** shall publish that information on the transparency platform referred to in Article 24 in summary form preserving the confidentiality of commercially sensitive information.

4. The **Energy Community** shall endeavour to conclude bilateral or multilateral agreements with third countries containing provisions on sustainability criteria that correspond to those of this Directive. <...> When those agreements are concluded, due consideration shall be given to measures taken for the conservation of areas that provide, in critical situations, basic ecosystem services (such as watershed protection and erosion control), for soil, water and air protection, indirect land-use changes, the restoration of degraded land, the avoidance of excessive water consumption in areas

where water is scarce and to the issues referred to in the second subparagraph of Article 17(7).⁹

5. **[Voluntary national or international schemes setting standards for the production of biomass products must meet]** adequate standards of reliability, transparency and independent auditing. In the case of schemes to measure greenhouse gas emission saving, such schemes shall also comply with the methodological requirements in Annex V. Lists of areas of high biodiversity value as referred to in Article 17(3)(b)(ii) shall meet adequate standards of objectivity and coherence with internationally recognised standards and provide for appropriate appeal procedures.¹⁰

6. <...>

7. When an economic operator provides proof or data obtained in accordance with an agreement or scheme that has been the subject of a decision pursuant to paragraph 4,¹¹ to the extent covered by that decision, a **Contracting Party** shall not require the supplier to provide further evidence of compliance with the sustainability criteria set out in Article 17(2) to (5) nor information on measures referred to in the second subparagraph of paragraph 3 of this Article.

8. <...>

9. <...>

Article 19

Calculation of the greenhouse gas impact of biofuels and bioliquids

1. For the purposes of Article 17(2), the greenhouse gas emission saving from the use of biofuel and bioliquids shall be calculated as follows:

(a) where a default value for greenhouse gas emission saving for the production pathway is laid down in part A or B of Annex V and where the el value for those biofuels or bioliquids calculated in accordance with point 7 of part C of Annex V is equal to or less than zero, by using that default value;

(b) by using an actual value calculated in accordance with the methodology laid down in part C of Annex V; or

(c) by using a value calculated as the sum of the factors of the formula referred to in point 1 of part C of Annex V, where disaggregated default values in part D or E of Annex V may be used for some factors, and actual values, calculated in accordance with the methodology laid down in part C of Annex V, for all other factors.

2. By 31 March 2010, **Contracting Parties** shall submit to the **Energy Community Secretariat** a report including a list of those areas on their territory classified as level 2 in the nomenclature of territorial units for statistics (NUTS) or as a more disaggregated NUTS level in accordance with Regulation (EC) No 1059/2003 of the European Parliament and of the Council of 26 May 2003 on the establishment of a common classification of territorial units for statistics (NUTS) where the typical greenhouse gas emissions from cultivation of agricultural raw materials can be expected to be lower than or equal to the emissions reported under the heading 'Disaggregated default values for

⁹ Under Article 3(1)(f) of Decision 2012/04/MC-EnC, Article 17(7) of the Directive is not applicable.

¹⁰ Article 18(5) of Directive 2009/28/EC relates to decision-making powers of the European Commission.

¹¹ Not displayed here.

cultivation' in part D of Annex V to this Directive, accompanied by a description of the method and data used to establish that list. That method shall take into account soil characteristics, climate and expected raw material yields.

3. The default values in part A of Annex V for biofuels, and the disaggregated default values for cultivation in part D of Annex V for biofuels and bioliquids, may be used only when their raw materials are:

- (a) cultivated outside the **Energy Community**;
- (b) cultivated in the **Energy Community** in areas included in the lists referred to in paragraph 2; or
- (c) waste or residues other than agricultural, aquaculture and fisheries residues.

For biofuels and bioliquids not falling under points (a), (b) or (c), actual values for cultivation shall be used.

4. <...>

5. <...>

6. <...>

7. Annex V may be adapted to technical and scientific progress, including by the addition of values for further biofuel production pathways for the same or for other raw materials and by modifying the methodology laid down in part C. <...>

8. Detailed definitions, including technical specifications required for the categories set out in point 9 of part C of Annex V shall be established. <...>

Article 20

Implementing measures

The implementing measures referred to in the second subparagraph of Article 17(3), the third subparagraph of Article 18(3), Article 18(6), Article 18(8), Article 19(5), the first subparagraph of Article 19(7), and Article 19(8) shall also take full account of the purposes of Article 7a of Directive 98/70/EC.

Article 21

Specific provisions related to energy from renewable sources in transport

1. **Contracting Parties** shall ensure that information is given to the public on the availability and environmental benefits of all different renewable sources of energy for transport. When the percentages of biofuels, blended in mineral oil derivatives, exceed 10% by volume, **Contracting Parties** shall require this to be indicated at the sales points.

2. For the purposes of demonstrating compliance with national renewable energy obligations placed on operators and the target for the use of energy from renewable sources in all forms of transport referred to in Article 3(4), the contribution made by biofuels produced from wastes, residues, non-food cellulosic material, and ligno-cellulosic material shall be considered to be twice that made by other biofuels.

Article 22

Reporting by the Contracting Parties

Contracting Parties shall submit a report to the Secretariat on progress in the promotion and use of energy from renewable sources by 31 December 2014 and every two years thereafter. This progress report should cover those points referred to in Article 22 of Directive 2009/28/EC.¹²

The report shall detail, in particular:

- (a) the sectoral (electricity, heating and cooling, and transport) and overall shares of energy from renewable sources in the preceding two calendar years and the measures taken or planned at national level to promote the growth of energy from renewable sources taking into account the indicative trajectory in part B of Annex I, in accordance with Article 5;
- (b) the introduction and functioning of support schemes and other measures to promote energy from renewable sources, and any developments in the measures used with respect to those set out in the **Contracting Party's** national renewable energy action plan, and information on how supported electricity is allocated to final customers for purposes of Article 3(6) of Directive 2003/54/EC;
- (c) how, where applicable, the **Contracting Party** has structured its support schemes to take into account renewable energy applications that give additional benefits in relation to other, comparable applications, but may also have higher costs, including biofuels made from wastes, residues, non-food cellulosic material, and ligno-cellulosic material;
- (d) the functioning of the system of guarantees of origin for electricity and heating and cooling from renewable energy sources and the measures taken to ensure the reliability and protection against fraud of the system;
- (e) progress made in evaluating and improving administrative procedures to remove regulatory and non-regulatory barriers to the development of energy from renewable sources;
- (f) measures taken to ensure the transmission and distribution of electricity produced from renewable energy sources, and to improve the framework or rules for bearing and sharing of costs referred to in Article 16(3);
- (g) developments in the availability and use of biomass resources for energy purposes;
- (h) changes in commodity prices and land use within the **Contracting Party** associated with its increased use of biomass and other forms of energy from renewable sources;
- (i) the development and share of biofuels made from wastes, residues, non-food cellulosic material, and ligno-cellulosic material;
- (j) the estimated impact of the production of biofuels and bioliquids on biodiversity, water resources, water quality and soil quality within the **Contracting Party**;
- (k) the estimated net greenhouse gas emission saving due to the use of energy from renewable sources;
- (l) the estimated excess production of energy from renewable sources compared to the indicative trajectory which could be transferred to other **Contracting Parties**, as well as the estimated potential for joint projects, until 2020;

¹² The text displayed here corresponds to Article 15(1) of Decision 2012/04/MC-EnC.

(m) the estimated demand for energy from renewable sources to be satisfied by means other than domestic production until 2020; and

(n) information on how the share of biodegradable waste in waste used for producing energy has been estimated, and what steps have been taken to improve and verify such estimates.

2. In estimating net greenhouse gas emission saving from the use of biofuels, the **Contracting Party** may, for the purpose of the reports referred to in paragraph 1, use the typical values given in part A and part B of Annex V.

3. In its first report, the **Contracting Party** shall outline whether it intends to:

(a) establish a single administrative body responsible for processing authorisation, certification and licensing applications for renewable energy installations and providing assistance to applicants;

(b) provide for automatic approval of planning and permit applications for renewable energy installations where the authorising body has not responded within the set time limits; or

(c) indicate geographical locations suitable for exploitation of energy from renewable sources in land-use planning and for the establishment of district heating and cooling.

4. In each report the **Contracting Party** may correct the data of the previous reports.

Article 23

Monitoring and reporting by the **Energy Community Secretariat**

The Secretariat shall monitor and review the application of Directive 2009/28/EC in the Contracting Parties. It shall submit an overall progress report to the Ministerial Council for the first time by 30 June 2015, and thereafter every two years. This progress report should cover those points referred to in Article 23 of Directive 2009/28/EC.¹³

1. The **Energy Community Secretariat** shall monitor the origin of biofuels and bioliquids consumed in the **Energy Community** and the impact of their production, including impact as a result of displacement, on land use in the **Energy Community** and the main third countries of supply. Such monitoring shall be based on **Contracting Parties'** reports, submitted pursuant to Article 22(1), and those of relevant third countries, intergovernmental organisations, scientific studies and any other relevant pieces of information. The **Energy Community Secretariat** shall also monitor the commodity price changes associated with the use of biomass for energy and any associated positive and negative effects on food security. The **Energy Community Secretariat** shall monitor all installations to which Article 19(6) applies.¹⁴

2. The **Energy Community Secretariat** shall maintain a dialogue and exchange information with third countries and biofuel producers, consumer organisations and civil society concerning the general implementation of the measures in this Directive relating to biofuels and bioliquids. It shall,

¹³ The text displayed here corresponds to Article 15(2) of Decision 2012/04/MC-EnC.

¹⁴ The second subparagraph of Article 19(6) of Directive 2009/28/EC (not displayed here) reads as follows: *"Such a proposal [by the Commission, related to a methodology for emissions from carbon stock changes caused by indirect land-use changes] shall include the necessary safeguards to provide certainty for investment undertaken before that methodology is applied. With respect to installations that produced biofuels before the end of 2013, the application of the measures referred to in the first subparagraph shall not, until 31 December 2017, lead to biofuels produced by those installations being deemed to have failed to comply with the sustainability requirements of this Directive if they would otherwise have done so, provided that those biofuels achieve a greenhouse gas emission saving of at least 45%. This shall apply to the capacities of the installations of biofuels at the end of 2012."*

within that framework, pay particular attention to the impact biofuel production may have on food prices.

3. <...>

4. In reporting on greenhouse gas emission saving from the use of biofuels, the **Energy Community Secretariat** shall use the values reported by **Contracting Parties** and shall evaluate whether and how the estimate would change if co-products were accounted for using the substitution approach.

5. In its reports, the **Energy Community Secretariat** shall, in particular, analyse:

(a) the relative environmental benefits and costs of different biofuels, the effects of the **Energy Community's** import policies thereon, the security of supply implications and the ways of achieving a balanced approach between domestic production and imports;

(b) the impact of increased demand for biofuel on sustainability in the **Energy Community** and in third countries, considering economic and environmental impacts, including impacts on biodiversity;

(c) the scope for identifying, in a scientifically objective manner, geographical areas of high biodiversity value that are not covered in Article 17(3);

(d) the impact of increased demand for biomass on biomass using sectors;

(e) the availability of biofuels made from waste, residues, non-food cellulosic material and ligno-cellulosic material; and

(f) indirect land-use changes in relation to all production pathways.

The **Energy Community Secretariat** shall, if appropriate, propose corrective action.

6. On the basis of the reports submitted by **Contracting Parties** pursuant to Article 22(3), the **Energy Community Secretariat** shall analyse the effectiveness of measures taken by **Contracting Parties** on establishing a single administrative body responsible for processing authorisation, certification and licensing applications and providing assistance to applicants.

7. <...>

8. **For the first time by 30 June 2015, and thereafter every two years**¹⁵ the **Energy Community Secretariat** shall present a report, addressing, in particular, the following elements:

(a) a review of the minimum greenhouse gas emission saving thresholds to apply from the dates referred to in the second subparagraph of Article 17(2), on the basis of an impact assessment taking into account, in particular, technological developments, available technologies and the availability of first and second-generation bio-fuels with a high level of greenhouse gas emission saving;

(b) with respect to the target referred to in Article 3(4), a review of:

(i) the cost-efficiency of the measures to be implemented to achieve the target;

(ii) an assessment of the feasibility of reaching the target whilst ensuring the sustainability of biofuels production in the **Energy Community** and in third countries, and considering economic, environmental and social impacts, including indirect effects and impacts on biodiversity, as well as the commercial availability of second-generation biofuels;

(iii) the impact of the implementation of the target on the availability of foodstuffs at affordable prices;

(iv) the commercial availability of electric, hybrid and hydrogen powered vehicles, as well as the

¹⁵ Article 15(2) of Decision 2012/04/MC-EnC.

methodology chosen to calculate the share of energy from renewable sources consumed in the transport sector;

(v) the evaluation of specific market conditions, considering, in particular, markets on which transport fuels represent more than half of the final energy consumption, and markets which are fully dependent on imported biofuels;

(c) an evaluation of the implementation of this Directive, in particular with regard to cooperation mechanisms, in order to ensure that, together with the possibility for the **Contracting Parties** to continue to use national support schemes referred to in Article 3(3), those mechanisms enable Contracting Parties to achieve the national targets defined in Annex I on the best cost-benefit basis, of technological developments, <...>

<...>

9. <...>

10. <...>

Article 24

Transparency platform

1. The **Energy Community Secretariat** shall establish an online public transparency platform. That platform shall serve to increase transparency, and facilitate and promote cooperation between **Contracting Parties**, in particular concerning statistical transfers referred to in Article 6 and joint projects referred to in Articles 7 and 9. In addition, the platform may be used to make public relevant information which the **Energy Community Secretariat** or a **Contracting Party** deems to be of key importance to this Directive and to the achievement of its objectives.

2. The **Energy Community Secretariat** shall make public on the transparency platform the following information, where appropriate in aggregated form, preserving the confidentiality of commercially sensitive information:

- (a) **Contracting Parties'** national renewable energy action plans;
- (b) **Contracting Parties'** forecast documents referred to in Article 4(3), complemented as soon as possible with the **Energy Community Secretariat's** summary of excess production and estimated import demand;
- (c) **Contracting Parties'** offers to cooperate on statistical transfers or joint projects, upon request of the **Contracting Party** concerned;
- (d) the information referred to in Article 6(2) on the statistical transfers between **Contracting Parties**;
- (e) the information referred to in Article 7(2) and (3) and Article 9(4) and (5) on joint projects;
- (f) **Contracting Parties'** national reports referred to in Article 22;
- (g) the **Energy Community Secretariat** reports referred to in Article 23(3).

However, upon request of the **Contracting Party** that submitted the information, the **Energy Community Secretariat** shall not make public **Contracting Parties'** forecast documents referred to in Article 4(3), or the information in **Contracting Parties'** national reports referred to in Article 22(1) (l) and (m).

Article 25**Committees**

<...>

Article 26**Amendments and repeal**

<...>

Article 27**Transposition¹⁶**

1. Without prejudice to Article 4(1), (2) and (3), each **Contracting Party shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive, as adapted by the present Decision, by 1 January 2014.**¹⁷ They shall forthwith inform the Energy Community Secretariat thereof.

When **Contracting Parties** adopt measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Contracting Parties.

2. Contracting Parties shall communicate to the Energy Community Secretariat the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 10 of Decision 2012/04/MC-EnC**Guidelines**

1. The Energy Community shall endeavour to adopt Guidelines from the European Commission under Annexes IV, V and VII of Directive 2009/28/EC.

2. The relevant Guidelines, which may need to be adapted to the institutional framework of the Energy Community, shall be adopted by the Permanent High Level Group, following the procedure laid down in Article 79 of the Treaty.

Article 16 of Decision 2012/04/MC-EnC**Review based on the experience**

Based on the experience and progress in compliance with the requirements of EUROSTAT methodology for energy statistics, and taking into account the reports presented by the Secretariat under Article 15(2), the Ministerial Council, based on a proposal from the European Commission, may review the scope of the adaptations provided for in the present decision.

¹⁶ Adapted by Article 2 of Decision 2012/04/MC-EnC.

¹⁷ In accordance with the Accession Protocol, the corresponding date for Georgia is 31 December 2018.

The European Commission may make such a proposal upon duly motivated request by a Contracting Party.

Articles 28 and 29

Entry into force and Addressees¹⁸

This Decision enters into force upon its adoption and is addressed to the Contracting Parties.

¹⁸ The text displayed here corresponds to Article 17 of Decision 2012/04/MC-EnC.

ANNEX I

NATIONAL OVERALL TARGETS FOR THE SHARE OF ENERGY FROM RENEWABLE SOURCES IN GROSS FINAL CONSUMPTION OF ENERGY IN 2020¹⁹A. *National overall targets*

	Share of energy from renewable sources in gross final consumption of energy, 2009 (S ₂₀₀₉)	Target for share of energy from renewable sources in gross final consumption of energy, 2020 (S ₂₀₂₀)
Albania	31.2%	38%
Bosnia and Herzegovina	34.0%	40%
Croatia	12.6% ²⁰	20%
Former Yugoslav Republic of Macedonia	21.9%	28%
Moldova	11.9%	17%
Montenegro	26.3%	33%
Serbia	21.2%	27%
Ukraine	5.5%	11%
Kosovo*	18.9%	25%

* This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo declaration of independence.

B. *Indicative trajectory*

The indicative trajectory referred to in Article 3(2) shall consist of the following shares of energy from renewable sources:

$S_{2009} + 0.20 (S_{2020} - S_{2009})$, as an average for the two-year period 2011 to 2012;

$S_{2009} + 0.30 (S_{2020} - S_{2009})$, as an average for the two-year period 2013 to 2014;

$S_{2009} + 0.45 (S_{2020} - S_{2009})$, as an average for the two-year period 2015 to 2016; and

$S_{2009} + 0.65 (S_{2020} - S_{2009})$, as an average for the two-year period 2017 to 2018,

where

S_{2009} = the share for that **Contracting Party** in 2009 as indicated in the table in part A,

and

S_{2020} = the share for that **Contracting Party** in 2020 as indicated in the table in part A.

¹⁹ In order to be able to achieve the national objectives set out in this Annex, it is underlined that the State aid guidelines for environmental protection recognise the continued need for national mechanisms of support for the promotion of energy from renewable sources.

²⁰ The base year for Croatia is 2005, not 2009.

ANNEX II

NORMALISATION RULE FOR ACCOUNTING FOR ELECTRICITY GENERATED FROM HYDROPOWER AND WIND POWER

The following rule shall be applied for the purpose of accounting for electricity generated from hydropower in a given **Contracting Party**:

$$Q_{N(\text{norm})} = C_N \times \left[\sum_{i=N-14}^N \frac{Q_i}{C_i} \right] / 15$$

where:

N = reference year;

$Q_{N(\text{norm})}$ = normalised electricity generated by all hydropower plants of the **Contracting Party** in year N, for accounting purposes;

Q_i = the quantity of electricity actually generated in year i by all hydropower plants of the **Contracting Party** measured in GWh, excluding production from pumped storage units using water that has previously been pumped uphill;

C_i = the total installed capacity, net of pumped storage, of all hydropower plants of the **Contracting Party** at the end of year i, measured in MW.

The following rule shall be applied for the purpose of accounting for electricity generated from wind power in a given **Contracting Party**:

$$Q_{N(\text{norm})} = \frac{C_N + C_{N-1}}{2} \times \frac{\sum_{i=N-n}^N Q_i}{\sum_{j=N-n}^N \left(\frac{C_j + C_{j-1}}{2} \right)}$$

where:

N = reference year;

$Q_{N(\text{norm})}$ = normalised electricity generated by all wind power plants of the **Contracting Party** in year N, for accounting purposes;

Q_i = the quantity of electricity actually generated in year i by all wind power plants of the **Contracting Party** measured in GWh;

C_j = the total installed capacity of all the wind power plants of the **Contracting Party** at the end of year j, measured in MW;

n = 4 or the number of years preceding year N for which capacity and production data are available for the **Contracting Party** in question, whichever is lower.

ANNEX III

ENERGY CONTENT OF TRANSPORT FUELS

Fuel	Energy content by weight (lower calorific value, MJ/kg)	Energy content by volume (lower calorific value MJ/l)
Bioethanol (ethanol produced from biomass)	27	21
Bio-ETBE (ethyl-tertio-butyl-ether produced on the basis of bioethanol)	36 (of which 37% from renewable sources)	27 (of which 37% from renewable sources)
Biomethanol (methanol produced from biomass, to be used as biofuel)	20	16
Bio-MTBE (methyl-tertio-butyl-ether produced on the basis of bio-methanol)	35 (of which 22% from renewable sources)	26 (of which 22% from renewable sources)
Bio-DME (dimethylether produced from biomass, to be used as biofuel)	28	19
Bio-TAFE (tertiary-amyl-ethyl-ether produced on the basis of bio-ethanol)	38 (of which 29% from renewable sources)	29 (of which 29% from renewable sources)
Biobutanol (butanol produced from biomass, to be used as biofuel)	33	27
Biodiesel (methyl-ester produced from vegetable or animal oil, of diesel quality, to be used as biofuel)	37	33
Fischer-Tropsch diesel (a synthetic hydrocarbon or mixture of synthetic hydrocarbons produced from biomass)	44	34
Hydrotreated vegetable oil (vegetable oil thermochemically treated with hydrogen)	44	34
Pure vegetable oil (oil produced from oil plants through pressing, extraction or comparable procedures, crude or refined but chemically unmodified, when compatible with the type of engines involved and the corresponding emission requirements)	37	34
Biogas (a fuel gas produced from biomass and/or from the biodegradable fraction of waste, that can be purified to natural gas quality, to be used as biofuel, or wood gas)	50	34
Petrol	43	32
Diesel	43	36

ANNEX IV

CERTIFICATION OF INSTALLERS

The certification schemes or equivalent qualification schemes referred to in Article 14(3) shall be based on the following criteria:

1. The certification or qualification process shall be transparent and clearly defined by the **Contracting Party** or the administrative body they appoint.
2. Biomass, heat pump, shallow geothermal and solar photovoltaic and solar thermal installers shall be certified by an accredited training programme or training provider.
3. The accreditation of the training programme or provider shall be effected by **Contracting Parties** or administrative bodies they appoint. The accrediting body shall ensure that the training programme offered by the training provider has continuity and regional or national coverage. The training provider shall have adequate technical facilities to provide practical training, including some laboratory equipment or corresponding facilities to provide practical training. The training provider shall also offer in addition to the basic training, shorter refresher courses on topical issues, including on new technologies, to enable life-long learning in installations. The training provider may be the manufacturer of the equipment or system, institutes or associations.
4. The training leading to installer certification or qualification shall include both theoretical and practical parts. At the end of the training, the installer must have the skills required to install the relevant equipment and systems to meet the performance and reliability needs of the customer, incorporate quality craftsmanship, and comply with all applicable codes and standards, including energy and eco-labelling.
5. The training course shall end with an examination leading to a certificate or qualification. The examination shall include a practical assessment of successfully installing biomass boilers or stoves, heat pumps, shallow geothermal installations, solar photovoltaic or solar thermal installations.
6. The certification schemes or equivalent qualification schemes referred to in Article 14(3) shall take due account of the following guidelines:
 - (a) Accredited training programmes should be offered to installers with work experience, who have undergone, or are undergoing, the following types of training:
 - (i) in the case of biomass boiler and stove installers: training as a plumber, pipe fitter, heating engineer or technician of sanitary and heating or cooling equipment as a prerequisite;
 - (ii) in the case of heat pump installers: training as a plumber or refrigeration engineer and have basic electrical and plumbing skills (cutting pipe, soldering pipe joints, gluing pipe joints, lagging, sealing fittings, testing for leaks and installation of heating or cooling systems) as a prerequisite;
 - (iii) in the case of a solar photovoltaic or solar thermal installer: training as a plumber or electrician and have plumbing, electrical and roofing skills, including knowledge of soldering pipe joints, gluing pipe joints, sealing fittings, testing for plumbing leaks, ability to connect wiring, familiar with basic roof materials, flashing and sealing methods as a prerequisite; or
 - (iv) a vocational training scheme to provide an installer with adequate skills corresponding to a three years education in the skills referred to in point (a), (b) or (c) including both classroom and workplace learning.

(b) The theoretical part of the biomass stove and boiler installer training should give an overview of the market situation of biomass and cover ecological aspects, biomass fuels, logistics, fire protection, related subsidies, combustion techniques, firing systems, optimal hydraulic solutions, cost and profitability comparison as well as the design, installation, and maintenance of biomass boilers and stoves. The training should also provide good knowledge of any European standards for technology and biomass fuels, such as pellets, and biomass related national and **Energy Community** law.

(c) The theoretical part of the heat pump installer training should give an overview of the market situation for heat pumps and cover geothermal resources and ground source temperatures of different regions, soil and rock identification for thermal conductivity, regulations on using geothermal resources, feasibility of using heat pumps in buildings and determining the most suitable heat pump system, and knowledge about their technical requirements, safety, air filtering, connection with the heat source and system layout. The training should also provide good knowledge of any European standards for heat pumps, and of relevant national and **Energy Community** law. The installer should demonstrate the following key competences:

- (i) a basic understanding of the physical and operation principles of a heat pump, including characteristics of the heat pump circle: context between low temperatures of the heat sink, high temperatures of the heat source, and the efficiency of the system, determination of the coefficient of performance (COP) and seasonal performance factor (SPF);
- (ii) an understanding of the components and their function within a heat pump circle, including the compressor, expansion valve, evaporator, condenser, fixtures and fittings, lubricating oil, refrigerant, superheating and sub-cooling and cooling possibilities with heat pumps; and
- (iii) the ability to choose and size the components in typical installation situations, including determining the typical values of the heat load of different buildings and for hot water production based on energy consumption, determining the capacity of the heat pump on the heat load for hot water production, on the storage mass of the building and on interruptible current supply; determine buffer tank component and its volume and integration of a second heating system.

(d) The theoretical part of the solar photovoltaic and solar thermal installer training should give an overview of the market situation of solar products and cost and profitability comparisons, and cover ecological aspects, components, characteristics and dimensioning of solar systems, selection of accurate systems and dimensioning of components, determination of the heat demand, fire protection, related subsidies, as well as the design, installation, and maintenance of solar photovoltaic and solar thermal installations. The training should also provide good knowledge of any European standards for technology, and certification such as Solar Keymark, and related national and **Energy Community** law. The installer should demonstrate the following key competences:

- (i) the ability to work safely using the required tools and equipment and implementing safety codes and standards and identify plumbing, electrical and other hazards associated with solar installations;
- (ii) the ability to identify systems and their components specific to active and passive systems, including the mechanical design, and determine the components' location and system layout and configuration;
- (iii) the ability to determine the required installation area, orientation and tilt for the solar photovoltaic and solar water heater, taking account of shading, solar access, structural integrity, the appropriateness of the installation for the building or the climate and identify different in-

stallation methods suitable for roof types and the balance of system equipment required for the installation; and

(iv) for solar photovoltaic systems in particular, the ability to adapt the electrical design, including determining design currents, selecting appropriate conductor types and ratings for each electrical circuit, determining appropriate size, ratings and locations for all associated equipment and subsystems and selecting an appropriate interconnection point.

(e) The installer certification should be time restricted, so that a refresher seminar or event would be necessary for continued certification.

ANNEX V

RULES FOR CALCULATING THE GREENHOUSE GAS IMPACT OF BIOFUELS, BIOLIQUIDS AND THEIR FOSSIL FUEL COMPARATORS

A. Typical and default values for biofuels if produced with no net carbon emissions from land-use change

Biofuel production pathway	Typical greenhouse gas emission saving	Default greenhouse gas emission saving
sugar beet ethanol	61 %	52 %
wheat ethanol (process fuel not specified)	32 %	16 %
wheat ethanol (lignite as process fuel in CHP plant)	32 %	16 %
wheat ethanol (natural gas as process fuel in conventional boiler)	45 %	34 %
wheat ethanol (natural gas as process fuel in CHP plant)	53 %	47 %
wheat ethanol (straw as process fuel in CHP plant)	69 %	69 %
corn (maize) ethanol, Community produced (natural gas as process fuel in CHP plant)	56 %	49 %
sugar cane ethanol	71 %	71 %
the part from renewable sources of ethyl-tertio-butyl-ether (ETBE)	Equal to that of ethanol production pathway used	
the part from renewable sources of tertiary-amyl-ethyl-ether (TAEE)	Equal to that of ethanol production pathway used	
rape seed biodiesel	45 %	38 %
sunflower biodiesel	58 %	51 %
soybean biodiesel	40 %	31 %
palm oil biodiesel (process not specified)	36 %	19 %
palm oil biodiesel (process with methane capture at oil mill)	62 %	56 %
waste vegetable or animal (*) oil biodiesel	88 %	83 %
hydrotreated vegetable oil from rape seed	51 %	47 %
hydrotreated vegetable oil from sunflower	65 %	62 %
hydrotreated vegetable oil from palm oil (process not specified)	40 %	26 %
hydrotreated vegetable oil from palm oil (process with methane capture at oil mill)	68 %	65 %
pure vegetable oil from rape seed	58 %	57 %
biogas from municipal organic waste as compressed natural gas	80 %	73 %
biogas from wet manure as compressed natural gas	84 %	81 %
biogas from dry manure as compressed natural gas	86 %	82 %

(*) Not including animal oil produced from animal by-products classified as category 3 material in accordance with Regulation (EC) No 1774/2002 of the European Parliament and of the Council of 3 October 2002 laying down health rules on animal-by products not intended for human consumption.

B. Estimated typical and default values for future biofuels that were not on the market or were on the market only in negligible quantities in January 2008, if produced with no net carbon emissions from land-use change

Biofuel production pathway	Typical green-house gas emission saving	Default green-house gas emission saving
wheat straw ethanol	87%	85%
waste wood ethanol	80%	74%
farmed wood ethanol	76%	70%
waste wood Fischer-Tropsch diesel	95%	95%
farmed wood Fischer-Tropsch diesel	93%	93%
waste wood dimethylether (DME)	95%	95%
farmed wood DME	92%	92%
waste wood methanol	94%	94%
farmed wood methanol	91%	91%
the part from renewable sources of methyl-tertio-butyl-ether (MTBE)	Equal to that of methanol production pathway used	

C. Methodology

1. Greenhouse gas emissions from the production and use of transport fuels, biofuels and bioliquids shall be calculated as:

$$E = e_{ec} + e_l + e_p + e_{td} + e_u - e_{sca} - e_{ccs} - e_{ccr} - e_{ee},$$

where

E = total emissions from the use of the fuel;

e_{ec} = emissions from the extraction or cultivation of raw materials;

e_l = annualised emissions from carbon stock changes caused by land-use change;

e_p = emissions from processing;

e_{td} = emissions from transport and distribution;

e_u = emissions from the fuel in use;

e_{sca} = emission saving from soil carbon accumulation via improved agricultural management;

e_{ccs} = emission saving from carbon capture and geological storage;

e_{ccr} = emission saving from carbon capture and replacement; and

e_{ee} = emission saving from excess electricity from cogeneration.

Emissions from the manufacture of machinery and equipment shall not be taken into account.

2. Greenhouse gas emissions from fuels, E, shall be expressed in terms of grams of CO₂ equivalent per MJ of fuel, gCO_{2eq}/MJ.

3. By derogation from point 2, for transport fuels, values calculated in terms of gCO_{2eq}/MJ may be adjusted to take into account differences between fuels in useful work done, expressed in terms of

km/MJ. Such adjustments shall be made only where evidence of the differences in useful work done is provided.

4. Greenhouse gas emission saving from biofuels and bioliquids shall be calculated as:

$$\text{SAVING} = (E_F - E_B)/E_F,$$

where

E_B = total emissions from the biofuel or bioliquid; and

E_F = total emissions from the fossil fuel comparator.

5. The greenhouse gases taken into account for the purposes of point 1 shall be CO_2 , N_2O and CH_4 . For the purpose of calculating CO_2 equivalence, those gases shall be valued as follows:

CO_2 : 1

N_2O : 296

CH_4 : 23

6. Emissions from the extraction or cultivation of raw materials, e_{ecr} , shall include emissions from the extraction or cultivation process itself; from the collection of raw materials; from waste and leakages; and from the production of chemicals or products used in extraction or cultivation. Capture of CO_2 in the cultivation of raw materials shall be excluded. Certified reductions of greenhouse gas emissions from flaring at oil production sites anywhere in the world shall be deducted. Estimates of emissions from cultivation may be derived from the use of averages calculated for smaller geographical areas than those used in the calculation of the default values, as an alternative to using actual values.

7. Annualised emissions from carbon stock changes caused by land-use change, e_l , shall be calculated by dividing total emissions equally over 20 years. For the calculation of those emissions the following rule shall be applied:

$$e_l = (\text{CS}_R - \text{CS}_A) \times 3.664 \times 1/20 \times 1/P - e_b \text{ } ^{(1)},$$

⁽¹⁾ The quotient obtained by dividing the molecular weight of CO_2 (44,010 g/mol) by the molecular weight of carbon (12,011 g/mol) is equal to 3,664.

where

e_l = annualised greenhouse gas emissions from carbon stock change due to land-use change (measured as mass of CO_2 -equivalent per unit biofuel energy);

CS_R = the carbon stock per unit area associated with the reference land use (measured as mass of carbon per unit area, including both soil and vegetation). The reference land use shall be the land use in January 2008 or 20 years before the raw material was obtained, whichever was the later;

CS_A = the carbon stock per unit area associated with the actual land use (measured as mass of carbon per unit area, including both soil and vegetation). In cases where the carbon stock accumulate over more than one year, the value attributed to CS_A shall be the estimated stock per unit area after 20 years or when the crop reaches maturity, whichever the earlier,

P = the productivity of the crop (measured as biofuel or bioliquid energy per unit area per year); and

e_b = bonus of 29 $\text{gCO}_{2\text{eq}}/\text{MJ}$ biofuel of bioliquid if biomass is obtained from restored degraded land under the conditions provided for in point 8.

8. The bonus of $29 \text{ gCO}_{2\text{eq}}/\text{MJ}$ shall be attributed if evidence is provided that the land:

- (a) was not in use for agriculture or any other activity in January 2008; and
- (b) falls into one of the following categories:
 - (i) severely degraded land, including such land that was formerly in agricultural use;
 - (ii) heavily contaminated land.

The bonus of $29 \text{ gCO}_{2\text{eq}}/\text{MJ}$ shall apply for a period of up to 10 years from the date of conversion of the land to agricultural use, provided that a steady increase in carbon stocks as well as a sizable reduction in erosion phenomena for land falling under (i) are ensured and that soil contamination for land falling under (ii) is reduced.

9. The categories referred to in point 8(b) are defined as follows:

- (a) "severely degraded land" means land that, for a significant period of time, has either been significantly salinated or presented significantly low organic matter content and has been severely eroded;
- (b) "heavily contaminated land" means land that is unfit for the cultivation of food and feed due to soil contamination.

Such land shall include land that has been the subject of a Commission decision in accordance with the fourth subparagraph of Article 18(4).²¹

10. The Commission shall adopt, by 31 December 2009, guidelines for the calculation of land carbon stocks drawing on the 2006 IPCC Guidelines for National Greenhouse Gas Inventories - volume 4. The Commission guidelines shall serve as the basis for the calculation of land carbon stocks for the purposes of this Directive.

11. Emissions from processing, e_p , shall include emissions from the processing itself; from waste and leakages; and from the production of chemicals or products used in processing.

In accounting for the consumption of electricity not produced within the fuel production plant, the greenhouse gas emission intensity of the production and distribution of that electricity shall be assumed to be equal to the average emission intensity of the production and distribution of electricity in a defined region. By derogation from this rule, producers may use an average value for an individual electricity production plant for electricity produced by that plant, if that plant is not connected to the electricity grid.

12. Emissions from transport and distribution, e_{td} , shall include emissions from the transport and storage of raw and semi-finished materials and from the storage and distribution of finished materials. Emissions from transport and distribution to be taken into account under point 6 shall not be covered by this point.

13. Emissions from the fuel in use, e_u , shall be taken to be zero for biofuels and bioliquids.

14. Emission saving from carbon capture and geological storage e_{ccs} , that have not already been accounted for in e_p , shall be limited to emissions avoided through the capture and sequestration of emitted CO_2 directly related to the extraction, transport, processing and distribution of fuel.

15. Emission saving from carbon capture and replacement, e_{ccr} , shall be limited to emissions avoided through the capture of CO_2 of which the carbon originates from biomass and which is used to replace fossil-derived CO_2 used in commercial products and services.

²¹ Under Article 3(1)(f) of Decision 2012/04/MC-EnC, the fourth subparagraph of Article 18(4) of the Directive is not applicable.

16. Emission saving from excess electricity from cogeneration, e_{ee} , shall be taken into account in relation to the excess electricity produced by fuel production systems that use cogeneration except where the fuel used for the cogeneration is a co-product other than an agricultural crop residue. In accounting for that excess electricity, the size of the cogeneration unit shall be assumed to be the minimum necessary for the cogeneration unit to supply the heat that is needed to produce the fuel. The greenhouse gas emission saving associated with that excess electricity shall be taken to be equal to the amount of greenhouse gas that would be emitted when an equal amount of electricity was generated in a power plant using the same fuel as the cogeneration unit.

17. Where a fuel production process produces, in combination, the fuel for which emissions are being calculated and one or more other products (co-products), greenhouse gas emissions shall be divided between the fuel or its intermediate product and the co-products in proportion to their energy content (determined by lower heating value in the case of co-products other than electricity).

18. For the purposes of the calculation referred to in point 17, the emissions to be divided shall be $e_{ec} + e_l$ + those fractions of e_p , e_{td} and e_{ee} that take place up to and including the process step at which a co-product is produced. If any allocation to co-products has taken place at an earlier process step in the life-cycle, the fraction of those emissions assigned in the last such process step to the intermediate fuel product shall be used for this purpose instead of the total of those emissions.

In the case of biofuels and bioliquids, all co-products, including electricity that does not fall under the scope of point 16, shall be taken into account for the purposes of that calculation, except for agricultural crop residues, including straw, bagasse, husks, cobs and nut shells. Co-products that have a negative energy content shall be considered to have an energy content of zero for the purpose of the calculation.

Wastes, agricultural crop residues, including straw, bagasse, husks, cobs and nut shells, and residues from processing, including crude glycerine (glycerine that is not refined), shall be considered to have zero life-cycle greenhouse gas emissions up to the process of collection of those materials.

In the case of fuels produced in refineries, the unit of analysis for the purposes of the calculation referred to in point 17 shall be the refinery.

19. For biofuels, for the purposes of the calculation referred to in point 4, the fossil fuel comparator E_f shall be the latest available actual average emissions from the fossil part of petrol and diesel consumed in the **Energy Community** as reported under Directive 98/70/EC. If no such data are available, the value used shall be $83.8 \text{ gCO}_{2eq}/\text{MJ}$.

For bioliquids used for electricity production, for the purposes of the calculation referred to in point 4, the fossil fuel comparator E_f shall be $91 \text{ gCO}_{2eq}/\text{MJ}$.

For bioliquids used for heat production, for the purposes of the calculation referred to in point 4, the fossil fuel comparator E_f shall be $77 \text{ gCO}_{2eq}/\text{MJ}$.

For bioliquids used for cogeneration, for the purposes of the calculation referred to in point 4, the fossil fuel comparator E_f shall be $85 \text{ gCO}_{2eq}/\text{MJ}$.

D. Disaggregated default values for biofuels and bioliquids

Disaggregated default values for cultivation: "e_{ec}" as defined in part C of this Annex

Biofuel production pathway	Typical greenhouse gas emissions (gCO _{2e} /MJ)	Default greenhouse gas emissions (gCO _{2e} /MJ)
sugar beet ethanol	12	12
wheat ethanol	23	23
corn (maize) ethanol, Community produced	20	20
sugar cane ethanol	14	14
the part from renewable sources of ETBE	Equal to that of ethanol production pathway used	
the part from renewable sources of TAE	Equal to that of ethanol production pathway used	
rape seed biodiesel	29	29
sunflower biodiesel	18	18
soybean biodiesel	19	19
palm oil biodiesel	14	14
waste vegetable or animal (*) oil biodiesel	0	0
hydrotreated vegetable oil from rape seed	30	30
hydrotreated vegetable oil from sunflower	18	18
hydrotreated vegetable oil from palm oil	15	15
pure vegetable oil from rape seed	30	30
biogas from municipal organic waste as compressed natural gas	0	0
biogas from wet manure as compressed natural gas	0	0
biogas from dry manure as compressed natural gas	0	0

(*) Not including animal oil produced from animal by-products classified as category 3 material in accordance with Regulation (EC) 1774/2002.

Disaggregated default values for processing (including excess electricity): " $e_p - e_{ee}$ " as defined in part C of this Annex

Biofuel and bioliquid production pathway	Typical greenhouse gas emissions (gCO _{2e} q/MJ)	Default greenhouse gas emissions (gCO _{2e} q/MJ)
sugar beet ethanol	19	26
wheat ethanol (process not specified)	32	45
wheat ethanol (lignite as process fuel in CHP plant)	32	45
wheat ethanol (natural gas as process fuel in conventional boiler)	21	30
wheat ethanol (natural gas as process fuel in CHP plant)	14	19

Biofuel and bioliquid production pathway	Typical greenhouse gas emissions (gCO _{2e} q/MJ)	Default greenhouse gas emissions (gCO _{2e} q/MJ)
wheat ethanol	1	1
corn (maize) ethanol, Community produced (natural gas as process fuel in CHP plant)	15	21
sugar cane ethanol	1	1
the part from renewable sources of ETBE	Equal to that of ethanol production pathway used	
the part from renewable sources of TAAE	Equal to that of ethanol production pathway used	
rape seed biodiesel	16	22
sunflower biodiesel	16	22
soybean biodiesel	18	26
palm oil biodeisel (process not specified)	35	49
palm oil biodeisel (process with methane capture at oil mill)	13	18
waste vegetable or animal oil biodiesel	9	13
hydrotreated vegetable oil from rape seed	10	13
hydrotreated vegetable oil from sunflower	10	13
hydrotreated vegetable oil from palm oil (process not specified)	30	42
hydrotreated vegetable oil from palm oil (process with methane capture at oil mill)	7	9
pure vegetable oil from rape seed	4	5
biogas from municipal organic waste as compressed natural gas	14	20
biogas from wet manure as compressed natural gas	8	11
biogas from dry manure as compressed natural gas	8	11

Disaggregated default values for transport and distribution: " e_{td} " as defined in part C of this Annex

Biofuel and bioliquid production pathway	Typical greenhouse gas emissions ($gCO_{2e}/q/MJ$)	Default greenhouse gas emissions ($gCO_{2e}/q/MJ$)
sugar beet ethanol	2	2
wheat ethanol	2	2
corn (maize) ethanol, Community produced (natural gas as process fuel in CHP plant)	2	2
sugar cane ethanol	9	9
the part from renewable sources of ETBE	Equal to that of ethanol production pathway used	
the part from renewable sources of TAE	Equal to that of ethanol production pathway used	
rape seed biodiesel	1	1
sunflower biodiesel	1	1
soybean biodiesel	13	13
palm oil biodeisel	5	5
waste vegetable or animal oil biodiesel	1	1
hydrotreated vegetable oil from rape seed	1	1
hydrotreated vegetable oil from sunflower	1	1
hydrotreated vegetable oil from palm oil	5	5
pure vegetable oil from rape seed	1	1
biogas from municipal organic waste as compressed natural gas	3	3
biogas from wet manure as compressed natural gas	5	5
biogas from dry manure as compressed natural gas	4	4

Total for cultivation, processing, transport and distribution

Biofuel and bioliquid production pathway	Typical greenhouse gas emissions (gCO _{2e} q/MJ)	Default greenhouse gas emissions (gCO _{2e} q/MJ)
sugar beet ethanol	33	40
wheat ethanol (process not specified)	57	70
wheat ethanol (lignite as process fuel in CHP plant)	57	70
wheat ethanol (natural gas as process fuel in conventional boiler)	46	55
wheat ethanol (natural gas as process fuel in CHP plant)	39	44
wheat ethanol (straw as process fuel in CHP plant)	26	26
corn (maize) ethanol, Community produced (natural gas as process fuel in CHP plant)	37	43
sugar cane ethanol	24	24
the part from renewable sources of ETBE	Equal to that of ethanol production pathway used	
the part from renewable sources of TAAE	Equal to that of ethanol production pathway used	
rape seed biodiesel	46	52
sunflower biodiesel	35	41
soybean biodiesel	50	58
palm oil biodeisel (process not specified)	54	68
palm oil biodeisel (process with methane capture at oil mill)	32	37
waste vegetable or animal oil biodiesel	10	14
hydrotreated vegetable oil from rape seed	41	44
hydrotreated vegetable oil from sunflower	29	32
hydrotreated vegetable oil from palm oil (process not specified)	50	62
hydrotreated vegetable oil from palm oil (process with methane capture at oil mill)	27	29
pure vegetable oil from rape seed	35	36
biogas from municipal organic waste as compressed natural gas	17	23
biogas from wet manure as compressed natural gas	13	16
biogas from dry manure as compressed natural gas	12	15

E. Estimated disaggregated default values for future biofuels and bioliquids that were not on the market or were only on the market in negligible quantities in January 2008

Disaggregated default values for cultivation: " e_{ec} " as defined in part C of this Annex

Biofuel and bioliquid production pathway	Typical greenhouse gas emissions (gCO _{2e} q/MJ)	Default greenhouse gas emissions (gCO _{2e} q/MJ)
wheat straw ethanol	3	3
waste wood ethanol	1	1
farmed wood ethanol	6	6
waste wood Fischer-Tropsch diesel	1	1
farmed wood Fischer-Tropsch diesel	4	4
waste wood DME	1	1
farmed wood DME	5	5
waste wood methanol	1	1
farmed wood methanol	5	5
the part from renewable sources of MTBE	Equal to that of methanol production pathway	

Disaggregated default values for processing (including excess electricity): " $e_p - e_{ee}$ " as defined in part C of this Annex

Biofuel and bioliquid production pathway	Typical greenhouse gas emissions (gCO _{2e} q/MJ)	Default greenhouse gas emissions (gCO _{2e} q/MJ)
wheat straw ethanol	5	7
wood ethanol	12	17
wood Fischer-Tropsch diesel	0	0
wood DME	0	0
wood methanol	0	0
the part from renewable sources of MTBE	Equal to that of methanol production pathway	

Disaggregated default values for transport and distribution: " e_{td} " as defined in part C of this Annex

Biofuel and bioliquid production pathway	Typical greenhouse gas emissions (gCO _{2e} /MJ)	Default greenhouse gas emissions (gCO _{2e} /MJ)
wheat straw ethanol	2	2
waste wood ethanol	4	4
farmed wood ethanol	2	2
waste wood Fischer-Tropsch diesel	3	3
farmed wood Fischer-Tropsch diesel	2	2
waste wood DME	4	4
farmed wood DME	2	2
waste wood methanol	4	4
farmed wood methanol	2	2
the part from renewable sources of MTBE	Equal to that of methanol production pathway	

Total for cultivation, processing, transport and distribution

Biofuel and bioliquid production pathway	Typical greenhouse gas emissions (gCO _{2e} /MJ)	Default greenhouse gas emissions (gCO _{2e} /MJ)
wheat straw ethanol	11	13
waste wood ethanol	17	22
farmed wood ethanol	20	25
waste wood Fischer-Tropsch diesel	4	4
farmed wood Fischer-Tropsch diesel	6	6
waste wood DME	5	5
farmed wood DME	7	7
waste wood methanol	5	5
farmed wood methanol	7	7
the part from renewable sources of MTBE	Equal to that of methanol production pathway	

ANNEX VI

MINIMUM REQUIREMENTS FOR THE HARMONISED TEMPLATE FOR NATIONAL RENEWABLE ENERGY ACTION PLANS

1. *Expected final energy consumption:*

Gross final energy consumption in electricity, transport and heating and cooling for 2020 taking into account the effects of energy efficiency policy measures.

2. *National sectoral 2020 targets and estimated shares of energy from renewable sources in electricity, heating and cooling and transport:*

- (a) target share of energy from renewable sources in electricity in 2020;
- (b) estimated trajectory for the share of energy from renewable sources in electricity;
- (c) target share of energy from renewable sources in heating and cooling in 2020;
- (d) estimated trajectory for the share of energy from renewable sources in heating and cooling;
- (e) estimated trajectory for the share of energy from renewable sources in transport;
- (f) national indicative trajectory as referred to in Article 3(2) and part B of Annex I.

3. *Measures for achieving the targets:*

- (a) overview of all policies and measures concerning the promotion of the use of energy from renewable sources;
- (b) specific measures to fulfil the requirements of Articles 13, 14 and 16, including the need to extend or reinforce existing infrastructure to facilitate the integration of the quantities of energy from renewable sources needed to achieve the 2020 national target, measures to accelerate the authorisation procedures, measures to reduce non-technological barriers and measures concerning Articles 17 to 21;
- (c) support schemes for the promotion of the use of energy from renewable sources in electricity applied by the **Contracting Party** or a group of **Contracting Parties**;
- (d) support schemes for the promotion of the use of energy from renewable sources in heating and cooling applied by the **Contracting Party** or a group of **Contracting Parties**;
- (e) support schemes for the promotion of the use of energy from renewable sources in transport applied by the **Contracting Party** or a group of **Contracting Parties**;
- (f) specific measures on the promotion of the use of energy from biomass, especially for new biomass mobilisation taking into account:
 - (i) biomass availability: both domestic potential and imports;
 - (ii) measures to increase biomass availability, taking into account other biomass users (agriculture and forest-based sectors);
- (g) planned use of statistical transfers between **Contracting Parties** and planned participation in joint projects with other **Contracting Parties** and third countries:
 - (i) the estimated excess production of energy from renewable sources compared to the indicative trajectory which could be transferred to other **Contracting Parties**;
 - (ii) the estimated potential for joint projects;

(iii) the estimated demand for energy from renewable sources to be satisfied by means other than domestic production.

4. Assessments:

(a) the total contribution expected of each renewable energy technology to meet the mandatory 2020 targets and the indicative trajectory for the shares of energy from renewable sources in electricity, heating and cooling and transport;

(b) the total contribution expected of the energy efficiency and energy saving measures to meet the mandatory 2020 targets and the indicative trajectory for the shares of energy from renewable sources in electricity, heating and cooling and transport.

ANNEX VII

ACCOUNTING OF ENERGY FROM HEAT PUMPS

The amount of aerothermal, geothermal or hydrothermal energy captured by heat pumps to be considered energy from renewable sources for the purposes of this Directive, ERES, shall be calculated in accordance with the following formula:

$$E_{RES} = Q_{usable} * (1 - 1/SPF)$$

where

- Q_{usable} = the estimated total usable heat delivered by heat pumps fulfilling the criteria referred to in Article 5(4), implemented as follows: Only heat pumps for which $SPF > 1.15 * 1/\eta$ shall be taken into account,
- SPF = the estimated average seasonal performance factor for those heat pumps,
- η is the ratio between total gross production of electricity and the primary energy consumption for electricity production and shall be calculated as an EU average based on Eurostat data.

PART II

ACQUIS COMMUNAUTAIRE

ENERGY EFFICIENCY

DIRECTIVE 2012/27/EU of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC

Incorporated and adapted by Ministerial Council Decision 2015/08/MC-EnC of 16 October 2015 on the implementation of the EU Directive 2012/27/EU on energy efficiency

*The adaptations made by Ministerial Council Decision 2015/08/MC-EnC are highlighted in **bold and blue**.*

Whereas:

(1) The Union is facing unprecedented challenges resulting from increased dependence on energy imports and scarce energy resources, and the need to limit climate change and to overcome the economic crisis. Energy efficiency is a valuable means to address these challenges. It improves the Union's security of supply by reducing primary energy consumption and decreasing energy imports. It helps to reduce greenhouse gas emissions in a cost-effective way and thereby to mitigate climate change. Shifting to a more energy-efficient economy should also accelerate the spread of innovative technological solutions and improve the competitiveness of industry in the Union, boosting economic growth and creating high quality jobs in several sectors related to energy efficiency.

(2) The Conclusions of the European Council of 8 and 9 March 2007 emphasised the need to increase energy efficiency in the Union to achieve the objective of saving 20% of the Union's primary energy consumption by 2020 compared to projections. The conclusions of the European Council of 4 February 2011 emphasised that the 2020 20% energy efficiency target as agreed by the June 2010 European Council, which is presently not on track, must be delivered. Projections made in 2007 showed a primary energy consumption in 2020 of 1 842 Mtoe. A 20% reduction results in 1 474 Mtoe in 2020, i.e. a reduction of 368 Mtoe as compared to projections.

(3) The Conclusions of the European Council of 17 June 2010 confirmed the energy efficiency target as one of the headline targets of the Union's new strategy for jobs and smart, sustainable and inclusive growth ('Europe 2020 Strategy'). Under this process and in order to implement this objective at national level, Member States are required to set national targets in close dialogue with the Commission and to indicate, in their National Reform Programmes, how they intend to achieve them.

(4) The Commission Communication of 10 November 2010 on Energy 2020 places energy efficiency at the core of the Union energy strategy for 2020 and outlines the need for a new energy efficiency strategy that will enable all Member States to decouple energy use from economic growth.

(5) In its resolution of 15 December 2010 on the Revision of the Energy Efficiency Action Plan, the European Parliament called on the Commission to include in its revised Energy Efficiency Action Plan measures to close the gap to reach the overall Union energy efficiency objective in 2020.

(6) One of the initiatives of the Europe 2020 Strategy is the flagship resource-efficient Europe adopted by the Commission on 26 January 2011. This identifies energy efficiency as a major element in ensuring the sustainability of the use of energy resources.

(7) The Conclusions of the European Council of 4 February 2011 acknowledged that the Union energy efficiency target is not on track and that determined action is required to tap the considerable potential for higher energy savings in buildings, transport, products and processes. Those conclu-

sions also provide that the implementation of the Union energy efficiency target will be reviewed by 2013 and further measures considered if necessary.

(8) On 8 March 2011, the Commission adopted its Communication on an Energy Efficiency Plan 2011. The Communication confirmed that the Union is not on track to achieve its energy efficiency target. This is despite the progress in national energy efficiency policies outlined in the first National Energy Efficiency Action Plans submitted by Member States in fulfilment of the requirements of Directive 2006/32/EC of the European Parliament and of the Council of 5 April 2006 on energy end-use efficiency and energy services. Initial analysis of the second Action Plans confirms that the Union is not on track. To remedy that, the Energy Efficiency Plan 2011 spelled out a series of energy efficiency policies and measures covering the full energy chain, including energy generation, transmission and distribution; the leading role of the public sector in energy efficiency; buildings and appliances; industry; and the need to empower final customers to manage their energy consumption. Energy efficiency in the transport sector was considered in parallel in the White Paper on Transport, adopted on 28 March 2011. In particular, Initiative 26 of the White Paper calls for appropriate standards for CO₂ emissions of vehicles in all modes, where necessary supplemented by requirements on energy efficiency to address all types of propulsion systems.

(9) On 8 March 2011, the Commission also adopted a Roadmap for moving to a competitive low carbon economy in 2050, identifying the need from this perspective for more focus on energy efficiency.

(10) In this context it is necessary to update the Union's legal framework for energy efficiency with a Directive pursuing the overall objective of the energy efficiency target of saving 20% of the Union's primary energy consumption by 2020, and of making further energy efficiency improvements after 2020. To that end, this Directive should establish a common framework to promote energy efficiency within the Union and lay down specific actions to implement some of the proposals included in the Energy Efficiency Plan 2011 and achieve the significant unrealised energy saving potentials it identifies.

(11) Decision No 406/2009/EC of the European Parliament and of the Council of 23 April 2009 on the effort of Member States to reduce their greenhouse gas emissions to meet the Community's greenhouse gas emission reduction commitments up to 2020 requires the Commission to assess and report by 2012 on the progress of the Union and its Member States towards the objective of reducing energy consumption by 20% by 2020 compared to projections. It also states that, to help Member States meet the Union's greenhouse gas emission reduction commitments, the Commission should propose, by 31 December 2012, strengthened or new measures to accelerate energy efficiency improvements. This Directive responds to this requirement. It also contributes to meeting the goals set out in the Roadmap for moving to a competitive low carbon economy in 2050, in particular by reducing greenhouse gas emissions from the energy sector, and to achieving zero emission electricity production by 2050.

(12) An integrated approach has to be taken to tap all the existing energy saving potential, encompassing savings in the energy supply and the end-use sectors. At the same time, the provisions of Directive 2004/8/EC of the European Parliament and of the Council of 11 February 2004 on promotion of cogeneration based on a useful heat demand in the internal energy market and Directive 2006/32/EC should be strengthened.

(13) It would be preferable for the 20% energy efficiency target to be achieved as a result of the cu-

mulative implementation of specific national and European measures promoting energy efficiency in different fields. Member States should be required to set indicative national energy efficiency targets, schemes and programmes. These targets and the individual efforts of each Member State should be evaluated by the Commission, alongside data on the progress made, to assess the likelihood of achieving the overall Union target and the extent to which the individual efforts are sufficient to meet the common goal. The Commission should therefore closely monitor the implementation of national energy efficiency programmes through its revised legislative framework and within the Europe 2020 process. When setting the indicative national energy efficiency targets, Member States should be able to take into account national circumstances affecting primary energy consumption such as remaining cost-effective energy-saving potential, changes in energy imports and exports, development of all sources of renewable energies, nuclear energy, carbon capture and storage, and early action. When undertaking modelling exercises, the Commission should consult Member States on model assumptions and draft model results in a timely and transparent manner. Improved modelling of the impact of energy efficiency measures and of the stock and performance of technologies is needed.

(14) Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources states that Cyprus and Malta, due to their insular and peripheral character, rely on aviation as a mode of transport, which is essential for their citizens and their economy. As a result, Cyprus and Malta have a gross final consumption of energy in national air transport which is disproportionately high, i.e. more than three times the Community average in 2005, and are thus disproportionately affected by the current technological and regulatory constraints.

(15) The total volume of public spending is equivalent to 19% of the Union's gross domestic product. For this reason the public sector constitutes an important driver to stimulate market transformation towards more efficient products, buildings and services, as well as to trigger behavioural changes in energy consumption by citizens and enterprises. Furthermore, decreasing energy consumption through energy efficiency improvement measures can free up public resources for other purposes. Public bodies at national, regional and local level should fulfil an exemplary role as regards energy efficiency.

(16) Bearing in mind that the Council conclusions of 10 June 2011 on the Energy Efficiency Plan 2011 stressed that buildings represent 40% of the Union's final energy consumption, and in order to capture the growth and employment opportunities in the skilled trades and construction sectors, as well as in the production of construction products and in professional activities such as architecture, consultancy and engineering, Member States should establish a long-term strategy beyond 2020 for mobilising investment in the renovation of residential and commercial buildings with a view to improving the energy performance of the building stock. That strategy should address cost-effective deep renovations which lead to a refurbishment that reduces both the delivered and the final energy consumption of a building by a significant percentage compared with the pre-renovation levels leading to a very high energy performance. Such deep renovations could also be carried out in stages.

(17) The rate of building renovation needs to be increased, as the existing building stock represents the single biggest potential sector for energy savings. Moreover, buildings are crucial to achieving the Union objective of reducing greenhouse gas emissions by 80-95% by 2050 compared to 1990. Buildings owned by public bodies account for a considerable share of the building stock and have high visibility in public life. It is therefore appropriate to set an annual rate of renovation of buildings

owned and occupied by central government on the territory of a Member State to upgrade their energy performance. This renovation rate should be without prejudice to the obligations with regard to nearly-zero energy buildings set in Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings. The obligation to renovate central government buildings in this Directive complements that Directive, which requires Member States to ensure that when existing buildings undergo major renovation their energy performance is upgraded so that they meet minimum energy performance requirements. It should be possible for Member States to take alternative cost-efficient measures to achieve an equivalent improvement of the energy performance of the buildings within their central government estate. The obligation to renovate floor area of central government buildings should apply to the administrative departments whose competence extends over the whole territory of a Member State. When in a given Member State and for a given competence no such relevant administrative department exists that covers the whole territory, the obligation should apply to those administrative departments whose competences cover collectively the whole territory.

(18) A number of municipalities and other public bodies in the Member States have already put into place integrated approaches to energy saving and energy supply, for example via sustainable energy action plans, such as those developed under the Covenant of Mayors initiative, and integrated urban approaches which go beyond individual interventions in buildings or transport modes. Member States should encourage municipalities and other public bodies to adopt integrated and sustainable energy efficiency plans with clear objectives, to involve citizens in their development and implementation and to adequately inform them about their content and progress in achieving objectives. Such plans can yield considerable energy savings, especially if they are implemented by energy management systems that allow the public bodies concerned to better manage their energy consumption. Exchange of experience between cities, towns and other public bodies should be encouraged with respect to the more innovative experiences.

(19) With regard to the purchase of certain products and services and the purchase and rent of buildings, central governments which conclude public works, supply or service contracts should lead by example and make energy-efficient purchasing decisions. This should apply to the administrative departments whose competence extends over the whole territory of a Member State. When in a given Member State and for a given competence no such relevant administrative department exists that covers the whole territory, the obligation should apply to those administrative departments whose competences cover collectively the whole territory. The provisions of the Union's public procurement directives should not however be affected. For products other than those covered by the energy efficiency requirements for purchasing in this Directive, Member States should encourage public bodies to take into account the energy efficiency of purchase.

(20) An assessment of the possibility of establishing a 'white certificate' scheme at Union level has shown that, in the current situation, such a system would create excessive administrative costs and that there is a risk that energy savings would be concentrated in a number of Member States and not introduced across the Union. The objective of such a Union-level scheme could be better achieved, at least at this stage, by means of national energy efficiency obligation schemes for energy utilities or other alternative policy measures that achieve the same amount of energy savings. It is appropriate for the level of ambition of such schemes to be established in a common framework at Union level while providing significant flexibility to Member States to take fully into account the national organisation of market actors, the specific context of the energy sector and final customers' habits.

The common framework should give energy utilities the option of offering energy services to all final customers, not only to those to whom they sell energy. This increases competition in the energy market because energy utilities can differentiate their product by providing complementary energy services. The common framework should allow Member States to include requirements in their national scheme that pursue a social aim, in particular in order to ensure that vulnerable customers have access to the benefits of higher energy efficiency. Member States should determine, on the basis of objective and non-discriminatory criteria, which energy distributors or retail energy sales companies should be obliged to achieve the end-use energy savings target laid down in this Directive.

Member States should in particular be allowed not to impose this obligation on small energy distributors, small retail energy sales companies and small energy sectors to avoid disproportionate administrative burdens. The Commission Communication of 25 June 2008 sets out principles that should be taken into account by Member States that decide to abstain from applying this possibility. As a means of supporting national energy efficiency initiatives, obligated parties under national energy efficiency obligation schemes could fulfil their obligations by contributing annually to an Energy Efficiency National Fund an amount that is equal to the investments required under the scheme.

(21) Given the over-arching imperative of restoring sustainability to public finances and of fiscal consolidation, in the implementation of particular measures falling within the scope of this Directive, due regard should be accorded to the cost-effectiveness at Member State level of implementing energy efficiency measures on the basis of an appropriate level of analysis and evaluation.

(22) The requirement to achieve savings of the annual energy sales to final customers relative to what energy sales would have been does not constitute a cap on sales or energy consumption. Member States should be able to exclude all or part of the sales of energy, by volume, used in industrial activities listed in Annex I to Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community for the calculation of the energy sales to final customers, as it is recognised that certain sectors or subsectors within these activities may be exposed to a significant risk of carbon leakage. It is appropriate that Member States are aware of the costs of schemes in order to be able to accurately assess the costs of measures.

(23) Without prejudice to the requirements in Article 7 and with a view to limiting the administrative burden, each Member State may group all individual policy measures to implement Article 7 into a comprehensive national energy efficiency programme.

(24) To tap the energy savings potential in certain market segments where energy audits are generally not offered commercially (such as small and medium-sized enterprises (SMEs)), Member States should develop programmes to encourage SMEs to undergo energy audits. Energy audits should be mandatory and regular for large enterprises, as energy savings can be significant. Energy audits should take into account relevant European or International Standards, such as EN ISO 50001 (Energy Management Systems), or EN 16247-1 (Energy Audits), or, if including an energy audit, EN ISO 14000 (Environmental Management Systems) and thus be also in line with the provisions of Annex VI to this Directive as such provisions do not go beyond the requirements of these relevant standards. A specific European standard on energy audits is currently under development.

(25) Where energy audits are carried out by in-house experts, the necessary independence would require these experts not to be directly engaged in the activity audited.

(26) When designing energy efficiency improvement measures, account should be taken of efficien-

cy gains and savings obtained through the widespread application of cost-effective technological innovations such as smart meters. Where smart meters have been installed, they should not be used by companies for unjustified back billing.

(27) In relation to electricity, and in accordance with Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity, where the roll-out of smart meters is assessed positively, at least 80% of consumers should be equipped with intelligent metering systems by 2020. In relation to gas, and in accordance with 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, where the roll-out of intelligent metering systems is assessed positively, Member States or any competent authority they designate, should prepare a timetable for the implementation of intelligent metering systems.

(28) Use of individual meters or heat cost allocators for measuring individual consumption of heating in multi-apartment buildings supplied by district heating or common central heating is beneficial when final customers have a means to control their own individual consumption. Therefore, their use makes sense only in buildings where radiators are equipped with thermostatic radiator valves.

(29) In some multi-apartment buildings supplied by district heating or common central heating, the use of accurate individual heat meters would be technically complicated and costly due to the fact that the hot water used for heating enters and leaves the apartments at several points. It can be assumed that individual metering of heat consumption in multi-apartment buildings is, nevertheless, technically possible when the installation of individual meters would not require changing the existing in-house piping for hot water heating in the building. In such buildings, measurements of individual heat consumption can then be carried out by means of individual heat cost allocators installed on each radiator.

(30) Directive 2006/32/EC requires Member States to ensure that final customers are provided with competitively priced individual meters that accurately reflect their actual energy consumption and provide information on actual time of use. In most cases, this requirement is subject to the conditions that it should be technically possible, financially reasonable, and proportionate in relation to the potential energy savings. When a connection is made in a new building or a building undergoes major renovations, as defined in Directive 2010/31/EU, such individual meters should, however, always be provided. Directive 2006/32/EC also requires that clear billing based on actual consumption should be provided frequently enough to enable consumers to regulate their own energy use.

(31) Directives 2009/72/EC and 2009/73/EC require Member States to ensure the implementation of intelligent metering systems to assist the active participation of consumers in the electricity and gas supply markets. As regards electricity, where the roll-out of smart meters is found to be cost-effective, at least 80% of consumers must be equipped with intelligent metering systems by 2020. As regards natural gas, no deadline is given but the preparation of a timetable is required. Those Directives also state that final customers must be properly informed of actual electricity/gas consumption and costs frequently enough to enable them to regulate their own consumption.

(32) The impact of the provisions on metering and billing in Directives 2006/32/EC, 2009/72/EC and 2009/73/EC on energy saving has been limited. In many parts of the Union, these provisions have not led to customers receiving up-to-date information about their energy consumption, or billing based on actual consumption at a frequency which studies show is needed to enable customers to regulate their energy use. In the sectors of space heating and hot water in multi-apartment buildings

the insufficient clarity of these provisions has also led to numerous complaints from citizens.

(33) In order to strengthen the empowerment of final customers as regards access to information from the metering and billing of their individual energy consumption, bearing in mind the opportunities associated with the process of the implementation of intelligent metering systems and the roll out of smart meters in the Member States, it is important that the requirements of Union law in this area be made clearer. This should help reduce the costs of the implementation of intelligent metering systems equipped with functions enhancing energy saving and support the development of markets for energy services and demand management. Implementation of intelligent metering systems enables frequent billing based on actual consumption. However, there is also a need to clarify the requirements for access to information and fair and accurate billing based on actual consumption in cases where smart meters will not be available by 2020, including in relation to metering and billing of individual consumption of heating, cooling and hot water in multi-unit buildings supplied by district heating/cooling or own common heating system installed in such buildings.

(34) When designing energy efficiency improvement measures, Member States should take due account of the need to ensure the correct functioning of the internal market and the coherent implementation of the *acquis*, in accordance with the Treaty on the Functioning of the European Union.

(35) High-efficiency cogeneration and district heating and cooling has significant potential for saving primary energy, which is largely untapped in the Union. Member States should carry out a comprehensive assessment of the potential for high-efficiency cogeneration and district heating and cooling. These assessments should be updated, at the request of the Commission, to provide investors with information concerning national development plans and contribute to a stable and supportive investment environment. New electricity generation installations and existing installations which are substantially refurbished or whose permit or licence is updated should, subject to a cost-benefit analysis showing a cost-benefit surplus, be equipped with high-efficiency cogeneration units to recover waste heat stemming from the production of electricity. This waste heat could then be transported where it is needed through district heating networks. The events that trigger a requirement for authorisation criteria to be applied will generally be events that also trigger requirements for permits under Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions and for authorisation under Directive 2009/72/EC.

(36) It may be appropriate for nuclear power installations, or electricity generation installations that are intended to make use of geological storage permitted under Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide, to be located in places where the recovery of waste heat through high-efficiency cogeneration or by supplying a district heating or cooling network is not cost-effective. Member States should therefore be able to exempt those installations from the obligation to carry out a cost-benefit analysis for providing the installation with equipment allowing the recovery of waste heat by means of a high-efficiency cogeneration unit. It should also be possible to exempt peak-load and back-up electricity generation installations which are planned to operate under 1 500 operating hours per year as a rolling average over a period of five years from the requirement to also provide heat.

(37) It is appropriate for Member States to encourage the introduction of measures and procedures to promote cogeneration installations with a total rated thermal input of less than 20 MW in order to encourage distributed energy generation.

(38) High-efficiency cogeneration should be defined by the energy savings obtained by combined

production instead of separate production of heat and electricity. The definitions of cogeneration and high-efficiency cogeneration used in Union legislation should be without prejudice to the use of different definitions in national legislation for purposes other than those of the Union legislation in question. To maximise energy savings and avoid energy saving opportunities being missed, the greatest attention should be paid to the operating conditions of cogeneration units.

(39) To increase transparency for the final customer to be able to choose between electricity from cogeneration and electricity produced by other techniques, the origin of high-efficiency cogeneration should be guaranteed on the basis of harmonised efficiency reference values. Guarantee of origin schemes do not by themselves imply a right to benefit from national support mechanisms. It is important that all forms of electricity produced from high-efficiency cogeneration can be covered by guarantees of origin. Guarantees of origin should be distinguished from exchangeable certificates.

(40) The specific structure of the cogeneration and district heating and cooling sectors, which include many small and medium-sized producers, should be taken into account, especially when reviewing the administrative procedures for obtaining permission to construct cogeneration capacity or associated networks, in application of the 'Think Small First' principle.

(41) Most Union businesses are SMEs. They represent an enormous energy saving potential for the Union. To help them adopt energy efficiency measures, Member States should establish a favourable framework aimed at providing SMEs with technical assistance and targeted information.

(42) Directive 2010/75/EU includes energy efficiency among the criteria for determining the Best Available Techniques that should serve as a reference for setting the permit conditions for installations within its scope, including combustion installations with a total rated thermal input of 50 MW or more. However, that Directive gives Member States the option not to impose requirements relating to energy efficiency on combustion units or other units emitting carbon dioxide on the site, for the activities listed in Annex I to Directive 2003/87/EC. Member States could include information on energy efficiency levels in their reporting under Directive 2010/75/EU.

(43) Member States should establish, on the basis of objective, transparent and non-discriminatory criteria, rules governing the bearing and sharing of costs of grid connections and grid reinforcements and for technical adaptations needed to integrate new producers of electricity produced from high-efficiency cogeneration, taking into account guidelines and codes developed in accordance with Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and 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. Producers of electricity generated from high-efficiency cogeneration should be allowed to issue a call for tender for the connection work. Access to the grid system for electricity produced from high-efficiency cogeneration, especially for small scale and micro-cogeneration units, should be facilitated. In accordance with Article 3(2) of Directive 2009/72/EC and Article 3(2) of Directive 2009/73/EC, Member States may impose public service obligations, including in relation to energy efficiency, on undertakings operating in the electricity and gas sectors.

(44) Demand response is an important instrument for improving energy efficiency, since it significantly increases the opportunities for consumers or third parties nominated by them to take action on consumption and billing information and thus provides a mechanism to reduce or shift consumption, resulting in energy savings in both final consumption and, through the more optimal use of networks and generation assets, in energy generation, transmission and distribution.

(45) Demand response can be based on final customers' responses to price signals or on building automation. Conditions for, and access to, demand response should be improved, including for small final consumers. Taking into account the continuing deployment of smart grids, Member States should therefore ensure that national energy regulatory authorities are able to ensure that network tariffs and regulations incentivise improvements in energy efficiency and support dynamic pricing for demand response measures by final customers. Market integration and equal market entry opportunities for demand-side resources (supply and consumer loads) alongside generation should be pursued. In addition, Member States should ensure that national energy regulatory authorities take an integrated approach encompassing potential savings in the energy supply and the end-use sectors.

(46) A sufficient number of reliable professionals competent in the field of energy efficiency should be available to ensure the effective and timely implementation of this Directive, for instance as regards compliance with the requirements on energy audits and implementation of energy efficiency obligation schemes. Member States should therefore put in place certification schemes for the providers of energy services, energy audits and other energy efficiency improvement measures.

(47) It is necessary to continue developing the market for energy services to ensure the availability of both the demand for and the supply of energy services. Transparency, for example by means of lists of energy services providers, can contribute to this. Model contracts, exchange of best practice and guidelines, in particular for energy performance contracting, can also help stimulate demand. As in other forms of third-party financing arrangements, in an energy performance contract the beneficiary of the energy service avoids investment costs by using part of the financial value of energy savings to repay the investment fully or partially carried out by a third party.

(48) There is a need to identify and remove regulatory and non-regulatory barriers to the use of energy performance contracting and other third-party financing arrangements for energy savings. These barriers include accounting rules and practices that prevent capital investments and annual financial savings resulting from energy efficiency improvement measures from being adequately reflected in the accounts for the whole life of the investment. Obstacles to the renovating of the existing building stock based on a split of incentives between the different actors concerned should also be tackled at national level.

(49) Member States and regions should be encouraged to make full use of the Structural Funds and the Cohesion Fund to trigger investments in energy efficiency improvement measures. Investment in energy efficiency has the potential to contribute to economic growth, employment, innovation and a reduction in fuel poverty in households, and therefore makes a positive contribution to economic, social and territorial cohesion. Potential areas for funding include energy efficiency measures in public buildings and housing, and providing new skills to promote employment in the energy efficiency sector.

(50) Member States should encourage the use of financing facilities to further the objectives of this Directive. Such financing facilities could include financial contributions and fines from non-fulfilment of certain provisions of this Directive; resources allocated to energy efficiency under Article 10(3) of Directive 2003/87/EC; resources allocated to energy efficiency in the multiannual financial framework, in particular cohesion, structural and rural development funds, and dedicated European financial instruments, such as the European Energy Efficiency Fund.

(51) Financing facilities could be based, where applicable, on resources allocated to energy efficiency from Union project bonds; resources allocated to energy efficiency from the European Investment

Bank and other European financial institutions, in particular the European Bank for Reconstruction and Development and the Council of Europe Development Bank; resources leveraged in financial institutions; national resources, including through the creation of regulatory and fiscal frameworks encouraging the implementation of energy efficiency initiatives and programmes; revenues from annual emission allocations under Decision No 406/2009/EC.

(52) The financing facilities could in particular use those contributions, resources and revenues to enable and encourage private capital investment, in particular drawing on institutional investors, while using criteria ensuring the achievement of both environmental and social objectives for the granting of funds; make use of innovative financing mechanisms (e.g. loan guarantees for private capital, loan guarantees to foster energy performance contracting, grants, subsidised loans and dedicated credit lines, third party financing systems) that reduce the risks of energy efficiency projects and allow for cost-effective renovations even among low and medium revenue households; be linked to programmes or agencies which will aggregate and assess the quality of energy saving projects, provide technical assistance, promote the energy services market and help to generate consumer demand for energy services.

(53) The financing facilities could also provide appropriate resources to support training and certification programmes which improve and accredit skills for energy efficiency; provide resources for research on and demonstration and acceleration of uptake of small-scale and micro- technologies to generate energy and the optimisation of the connections of those generators to the grid; be linked to programmes undertaking action to promote energy efficiency in all dwellings to prevent energy poverty and stimulate landlords letting dwellings to render their property as energy-efficient as possible; provide appropriate resources to support social dialogue and standard-setting aiming at improving energy efficiency and ensuring good working conditions and health and safety at work.

(54) Available Union financial instruments and innovative financing mechanisms should be used to give practical effect to the objective of improving the energy performance of public bodies' buildings. In that respect, Member States may use their revenues from annual emission allocations under Decision No 406/2009/EC in the development of such mechanisms on a voluntary basis and taking into account national budgetary rules.

(55) In the implementation of the 20% energy efficiency target, the Commission will have to monitor the impact of new measures on Directive 2003/87/EC establishing the Union's emissions trading scheme (ETS) in order to maintain the incentives in the emissions trading system rewarding low carbon investments and preparing the ETS sectors for the innovations needed in the future. It will need to monitor the impact on those industry sectors which are exposed to a significant risk of carbon leakage as determined in Commission Decision 2010/2/EU of 24 December 2009 determining, pursuant to Directive 2003/87/EC of the European Parliament and of the Council, a list of sectors and subsectors which are deemed to be exposed to a significant risk of carbon leakage, in order to ensure that this Directive promotes and does not impede the development of these sectors.

(56) Directive 2006/32/EC requires Member States to adopt, and aim to achieve, an overall national indicative energy savings target of 9% by 2016, to be reached by deploying energy services and other energy efficiency improvement measures. That Directive states that the second Energy Efficiency Plan adopted by the Member States shall be followed, as appropriate and where necessary, by Commission proposals for additional measures, including extending the period of application of targets. If a report concludes that insufficient progress has been made towards achieving the indicative national targets laid down by that Directive, these proposals are to address the level and nature

of the targets. The impact assessment accompanying this Directive finds that the Member States are on track to achieve the 9% target, which is substantially less ambitious than the subsequently adopted 20% energy saving target for 2020, and therefore there is no need to address the level of the targets.

(57) The Intelligent Energy Europe Programme established by Decision No 1639/2006/EC of the European Parliament and of the Council of 24 October 2006 establishing a Competitiveness and Innovation Framework Programme (2007 to 2013) has been instrumental in creating an enabling environment for the proper implementation of the Union's sustainable energy policies, by removing market barriers such as insufficient awareness and capacity of market actors and institutions, national technical or administrative barriers to the proper functioning of the internal energy market or underdeveloped labour markets to match the low-carbon economy challenge. Many of those barriers are still relevant.

(58) In order to tap the considerable energy-saving potential of energy-related products, the implementation of Directive 2009/125/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for the setting of ecodesign requirements for energy-related products and Directive 2010/30/EU of the European Parliament and of the Council of 19 May 2010 on the indication by labelling and standard product information of the consumption of energy and other resources by energy-related products should be accelerated and widened. Priority should be given to products offering the highest energy-saving potential as identified by the Ecodesign Working Plan and the revision, where appropriate, of existing measures.

(59) In order to clarify the conditions under which Member States can set energy performance requirements under Directive 2010/31/EU whilst respecting Directive 2009/125/EC and its implementing measures, Directive 2009/125/EC should be amended accordingly.

(60) Since the objective of this Directive, namely to achieve the Union's energy efficiency target of 20% by 2020 and pave the way towards further energy efficiency improvements beyond 2020, cannot be sufficiently achieved by the Member States without taking additional energy efficiency measures, and can be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

(61) In order to permit adaptation to technical progress and changes in the distribution of energy sources, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of the review of the harmonised efficiency reference values laid down on the basis of Directive 2004/8/EC and in respect of the values, calculation methods, default primary energy coefficient and requirements in the Annexes to this Directive. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and the Council.

(62) In order to ensure uniform conditions for the implementation of this Directive, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member

States of the Commission's exercise of implementing powers.

(63) All substantive provisions of Directives 2004/8/EC and 2006/32/EC should be repealed, except Article 4(1) to (4) of, and Annexes I, III and IV to Directive 2006/32/EC. Those latter provisions should continue to apply until the deadline for the achievement of the 9% target. Article 9(1) and (2) of Directive 2010/30/EU, which provides for an obligation for Member States only to endeavour to procure products having the highest energy efficiency class, should be deleted.

(64) The obligation to transpose this Directive into national law should be limited to those provisions that represent a substantive change as compared with Directives 2004/8/EC and 2006/32/EC. The obligation to transpose the provisions which are unchanged arises under those Directives.

(65) This Directive should be without prejudice to the obligations of the Member States relating to the time limits for transposition into national law and application of Directives 2004/8/EC and 2006/32/EC.

(66) In accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents of 28 September 2011, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified,

CHAPTER I

SUBJECT MATTER, SCOPE, DEFINITIONS AND ENERGY EFFICIENCY TARGETS

Article 1

Subject matter and scope

1. This Directive establishes a common framework of measures for the promotion of energy efficiency within the Energy Community, to set a 20% headline target on energy efficiency in the Energy Community in 2020 and to pave the way for further energy efficiency improvements beyond that date.

It lays down rules designed to remove barriers in the energy market and overcome market failures that impede efficiency in the supply and use of energy, and provides for the establishment of indicative national energy efficiency targets for 2020.

2. The requirements laid down in this Directive are minimum requirements and shall not prevent any **Contracting Party** from maintaining or introducing more stringent measures. Such measures shall be compatible with **Energy Community** law. Where national legislation provides for more stringent measures, the **Contracting Party** shall notify such legislation to **the Energy Community Secretariat**¹.

¹ The text displayed here corresponds to Article 1(2) of Ministerial Council Decision 2015/08/MC-EnC.

Article 2

Definitions

For the purposes of this Directive, the following definitions shall apply:

- (1) 'energy' means all forms of energy products, combustible fuels, heat, renewable energy, electricity, or any other form of energy, as defined in Article 2(d) of Regulation (EC) No 1099/2008 of the European Parliament and of the Council of 22 October 2008 on energy statistics²;
- (2) 'primary energy consumption' means gross inland consumption, excluding non-energy uses;
- (3) 'final energy consumption' means all energy supplied to industry, transport, households, services and agriculture. It excludes deliveries to the energy transformation sector and the energy industries themselves;
- (4) 'energy efficiency' means the ratio of output of performance, service, goods or energy, to input of energy;
- (5) 'energy savings' means an amount of saved energy determined by measuring and/or estimating consumption before and after implementation of an energy efficiency improvement measure, whilst ensuring normalisation for external conditions that affect energy consumption;
- (6) 'energy efficiency improvement' means an increase in energy efficiency as a result of technological, behavioural and/or economic changes;
- (7) 'energy service' means the physical benefit, utility or good derived from a combination of energy with energy-efficient technology or with action, which may include the operations, maintenance and control necessary to deliver the service, which is delivered on the basis of a contract and in normal circumstances has proven to result in verifiable and measurable or estimable energy efficiency improvement or primary energy savings;
- (8) 'public bodies' means 'contracting authorities' as defined in Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts;
- (9) 'central government' means all administrative departments whose competence extends over the whole territory of a **Contracting Party**;
- (10) 'total useful floor area' means the floor area of a building or part of a building, where energy is used to condition the indoor climate;
- (11) 'energy management system' means a set of interrelated or interacting elements of a plan which sets an energy efficiency objective and a strategy to achieve that objective;
- (12) 'European standard' means a standard adopted by the European Committee for Standardisation, the European Committee for Electrotechnical Standardisation or the European Telecommunications Standards Institute and made available for public use;
- (13) 'international standard' means a standard adopted by the International Standardisation Organisation and made available to the public;
- (14) 'obligated party' means an energy distributor or retail energy sales company that is bound by the national energy efficiency obligation schemes referred to in Article 7;

² Incorporated by Ministerial Council Decision 2012/02/MC-EnC of 18 October 2012 concerning the implementation of the rules of energy statistics in the Energy Community.

(15) 'entrusted party' means a legal entity with delegated power from a government or other public body to develop, manage or operate a financing scheme on behalf of the government or other public body;

(16) 'participating party' means an enterprise or public body that has committed itself to reaching certain objectives under a voluntary agreement, or is covered by a national regulatory policy instrument;

(17) 'implementing public authority' means a body governed by public law which is responsible for the carrying out or monitoring of energy or carbon taxation, financial schemes and instruments, fiscal incentives, standards and norms, energy labelling schemes, training or education;

(18) 'policy measure' means a regulatory, financial, fiscal, voluntary or information provision instrument formally established and implemented in a **Contracting Party** to create a supportive framework, requirement or incentive for market actors to provide and purchase energy services and to undertake other energy efficiency improvement measures;

(19) 'individual action' means an action that leads to verifiable, and measurable or estimable, energy efficiency improvements and is undertaken as a result of a policy measure;

(20) 'energy distributor' means a natural or legal person, including a distribution system operator, responsible for transporting energy with a view to its delivery to final customers or to distribution stations that sell energy to final customers;

(21) **'distribution system operator' means 'distribution system operator' as defined in Directive 2009/72/EC and Directive 2009/73/EC respectively, as incorporated and adapted by Ministerial Council Decision 2011/02/MC-EnC;**

(22) 'retail energy sales company' means a natural or legal person who sells energy to final customers;

(23) 'final customer' means a natural or legal person who purchases energy for own end use;

(24) 'energy service provider' means a natural or legal person who delivers energy services or other energy efficiency improvement measures in a final customer's facility or premises;

(25) 'energy audit' means a systematic procedure with the purpose of obtaining adequate knowledge of the existing energy consumption profile of a building or group of buildings, an industrial or commercial operation or installation or a private or public service, identifying and quantifying cost-effective energy savings opportunities, and reporting the findings;

(26) 'small and medium-sized enterprises' or 'SMEs' means enterprises as defined in Title I of the Annex to Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises; the category of micro, small and medium-sized enterprises is made up of enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million;

(27) 'energy performance contracting' means a contractual arrangement between the beneficiary and the provider of an energy efficiency improvement measure, verified and monitored during the whole term of the contract, where investments (work, supply or service) in that measure are paid for in relation to a contractually agreed level of energy efficiency improvement or other agreed energy performance criterion, such as financial savings;

(28) 'smart metering system' or 'intelligent metering system' means an electronic system that can measure energy consumption, providing more information than a conventional meter, and can

transmit and receive data using a form of electronic communication;

(29) **‘transmission system operator’ means ‘transmission system operator’ as defined in Directive 2009/72/EC and Directive 2009/73/EC respectively, as incorporated and adapted by Ministerial Council Decision 2011/02/MC-EnC;**

(30) ‘cogeneration’ means the simultaneous generation in one process of thermal energy and electrical or mechanical energy;

(31) ‘economically justifiable demand’ means demand that does not exceed the needs for heating or cooling and which would otherwise be satisfied at market conditions by energy generation processes other than cogeneration;

(32) ‘useful heat’ means heat produced in a cogeneration process to satisfy economically justifiable demand for heating or cooling;

(33) ‘electricity from cogeneration’ means electricity generated in a process linked to the production of useful heat and calculated in accordance with the methodology laid down in Annex I;

(34) ‘high-efficiency cogeneration’ means cogeneration meeting the criteria laid down in Annex II;

(35) ‘overall efficiency’ means the annual sum of electricity and mechanical energy production and useful heat output divided by the fuel input used for heat produced in a cogeneration process and gross electricity and mechanical energy production;

(36) ‘power-to-heat ratio’ means the ratio of electricity from cogeneration to useful heat when operating in full cogeneration mode using operational data of the specific unit;

(37) ‘cogeneration unit’ means a unit that is able to operate in cogeneration mode;

(38) ‘small-scale cogeneration unit’ means a cogeneration unit with installed capacity below 1 MW_e;

(39) ‘micro-cogeneration unit’ means a cogeneration unit with a maximum capacity below 50 kW_e;

(40) ‘plot ratio’ means the ratio of the building floor area to the land area in a given territory;

(41) ‘efficient district heating and cooling’ means a district heating or cooling system using at least 50% renewable energy, 50% waste heat, 75% cogenerated heat or 50% of a combination of such energy and heat;

(42) ‘efficient heating and cooling’ means a heating and cooling option that, compared to a baseline scenario reflecting a business-as-usual situation, measurably reduces the input of primary energy needed to supply one unit of delivered energy within a relevant system boundary in a cost-effective way, as assessed in the cost-benefit analysis referred to in this Directive, taking into account the energy required for extraction, conversion, transport and distribution;

(43) ‘efficient individual heating and cooling’ means an individual heating and cooling supply option that, compared to efficient district heating and cooling, measurably reduces the input of non-renewable primary energy needed to supply one unit of delivered energy within a relevant system boundary or requires the same input of non-renewable primary energy but at a lower cost, taking into account the energy required for extraction, conversion, transport and distribution;

(44) ‘substantial refurbishment’ means a refurbishment whose cost exceeds 50% of the investment cost for a new comparable unit;

(45) ‘aggregator’ means a demand service provider that combines multiple short-duration consumer loads for sale or auction in organised energy markets.

Article 3

Energy efficiency targets

1. Each **Contracting Party** shall set an indicative national energy efficiency target, based on either primary or final energy consumption, primary or final energy savings, or energy intensity. **Contracting Parties** shall notify those targets to the **Energy Community Secretariat** in accordance with Article 24(1) and Annex XIV Part 1. When doing so, they shall also express those targets in terms of an absolute level of primary energy consumption and final energy consumption in 2020 and shall explain how, and on the basis of which data, this has been calculated.

When setting those targets, **Contracting Parties** shall take into account:

- (a) **that the Energy Community's 2020 energy consumption has to be no more than 187 Mtoe of primary energy or no more than 133 Mtoe of final energy;**
- (b) the measures provided for in this Directive;
- (c) the measures adopted to reach the national energy saving targets adopted pursuant to Article 4(1) of Directive 2006/32/EC, **as incorporated and adapted by the Ministerial Council Decision 2009/05/MC-EnC;** and
- (d) other measures to promote energy efficiency within **Contracting Parties**, and at **the Energy Community** level.

When setting those targets, **Contracting Parties** may also take into account national circumstances affecting primary energy consumption, such as:

- (a) remaining cost-effective energy-saving potential;
- (b) GDP evolution and forecast;
- (c) changes of energy imports and exports;
- (d) development of all sources of renewable energies, nuclear energy, carbon capture and storage; and
- (e) early action.

2. **By 30 June 2018, the Energy Community Secretariat shall assess progress achieved and whether the Energy Community is likely to achieve energy consumption of no more than 187 Mtoe of primary energy and/or no more than 133 Mtoe of final energy in 2020³.**

3. In carrying out the review referred to in paragraph 2, the **Energy Community Secretariat** shall:

- (a) sum the national indicative energy efficiency targets reported by **Contracting Parties**;
- (b) assess whether the sum of those targets can be considered a reliable guide to whether the **Energy Community** as a whole is on track, taking into account the evaluation of the first annual report in accordance with Article 24(1), and the evaluation of the National Energy Efficiency Action Plans in accordance with Article 24(2);
- (c) take into account complementary analysis arising from:
 - (i) an assessment of progress in energy consumption, and in energy consumption in relation to economic activity, at **Energy Community** level, including progress in the efficiency of energy supply in **Contracting Parties** that have based their national indicative targets on final energy

³ The text displayed here corresponds to Article 3(4) of Ministerial Council Decision 2015/08/MC-EnC.

consumption or final energy savings, including progress due to these **Contracting Parties'** compliance with Chapter III of this Directive;

(ii) results from modelling exercises in relation to future trends in energy consumption at **Energy Community** level;

(d) **compare the results under points (a) to (c) with the energy consumption of no more than 187 Mtoe of primary energy and/or no more than 133 Mtoe of final energy in 2020.**

CHAPTER II EFFICIENCY IN ENERGY USE

Article 4

Building renovation

Contracting Parties shall establish a long-term strategy for mobilising investment in the renovation of the national stock of residential and commercial buildings, both public and private. This strategy shall encompass:

- (a) an overview of the national building stock based, as appropriate, on statistical sampling;
- (b) identification of cost-effective approaches to renovations relevant to the building type and climatic zone;
- (c) policies and measures to stimulate cost-effective deep renovations of buildings, including staged deep renovations;
- (d) a forward-looking perspective to guide investment decisions of individuals, the construction industry and financial institutions;
- (e) an evidence-based estimate of expected energy savings and wider benefits.

A first version of the strategy shall be published by 30 March 2017 and updated every three years thereafter and submitted to the Energy Community Secretariat as part of the National Energy Efficiency Action Plans⁴.

Article 5

Exemplary role of public bodies' buildings

1. Without prejudice to Article 7 of Directive 2010/31/EU, **as incorporated and adapted by the Ministerial Council Decision 2010/02/MC-EnC**, each **Contracting Party** shall ensure that, as from **1 December 2017**, **1%** of the total floor area of heated and/or cooled buildings owned and occupied by its central government is renovated each year to meet at least the minimum energy performance requirements that it has set in application of Article 4 of Directive 2010/31/EU, **as incorporated and adapted by the Ministerial Council Decision 2010/02/MC-EnC**.

The **1%** rate shall be calculated on the total floor area of buildings with a total useful floor area over 500 m² owned and occupied by the central government of the **Contracting Party** concerned that,

⁴ The text displayed here corresponds to Article 3(6) of Ministerial Council Decision 2015/08/MC-EnC.

on 1 January of each year, do not meet the national minimum energy performance requirements set in application of Article 4 of Directive 2010/31/EU, **as incorporated and adapted by the Ministerial Council Decision 2010/02/MC-EnC**. That threshold shall be lowered to 250 m² as of **1 January 2019**.

Where a **Contracting Party** requires that the obligation to renovate each year **1%** of the total floor area extends to floor area owned and occupied by administrative departments at a level below central government, the **1%** rate shall be calculated on the total floor area of buildings with a total useful floor area over 500 m² and, as of **1 January 2019**, over 250 m² owned and occupied by central government and by these administrative departments of the **Contracting Party** concerned that, on 1 January of each year, do not meet the national minimum energy performance requirements set in application of Article 4 of Directive 2010/31/EU, **as incorporated and adapted by the Ministerial Council Decision 2010/02/MC-EnC**.

When implementing measures for the comprehensive renovation of central government buildings in accordance with the first subparagraph, **Contracting Parties** may choose to consider the building as a whole, including the building envelope, equipment, operation and maintenance.

Contracting Parties shall require that central government buildings with the poorest energy performance be a priority for energy efficiency measures, where cost-effective and technically feasible.

2. **Contracting Parties** may decide not to set or apply the requirements referred to in paragraph 1 to the following categories of buildings:

- (a) buildings officially protected as part of a designated environment, or because of their special architectural or historical merit, in so far as compliance with certain minimum energy performance requirements would unacceptably alter their character or appearance;
- (b) buildings owned by the armed forces or central government and serving national defence purposes, apart from single living quarters or office buildings for the armed forces and other staff employed by national defence authorities;
- (c) buildings used as places of worship and for religious activities.

3. If a **Contracting Party** renovates more than **1%** of the total floor area of central government buildings in a given year, it may count the excess towards the annual renovation rate of any of the three previous or following years.

4. **Contracting Parties** may count towards the annual renovation rate of central government buildings new buildings occupied and owned as replacements for specific central government buildings demolished in any of the two previous years, or buildings that have been sold, demolished or taken out of use in any of the two previous years due to more intensive use of other buildings.

5. For the purposes of paragraph 1, by **1 January 2017**, **Contracting Parties** shall establish and make publicly available an inventory of heated and/or cooled central government buildings with a total useful floor area over 500 m² and, as of **1 January 2019**, over 250 m², excluding buildings exempted on the basis of paragraph 2. The inventory shall contain the following data:

- (a) the floor area in m²; and
- (b) the energy performance of each building or relevant energy data.

6. Without prejudice to Article 7 of Directive 2010/31/EU, **as incorporated and adapted by the Ministerial Council Decision 2010/02/MC-EnC**, **Contracting Parties** may opt for an alternative approach to paragraphs 1 to 5 of this Article, whereby they take other cost-effective measures, in-

cluding deep renovations and measures for behavioural change of occupants, to achieve, by 2020, an amount of energy savings in eligible buildings owned and occupied by their central government that is at least equivalent to that required in paragraph 1, reported on an annual basis.

For the purpose of the alternative approach, **Contracting Parties** may estimate the energy savings that paragraphs 1 to 4 would generate by using appropriate standard values for the energy consumption of reference central government buildings before and after renovation and according to estimates of the surface of their stock. The categories of reference central government buildings shall be representative of the stock of such buildings.

Contracting Parties opting for the alternative approach shall notify to **Energy Community Secretariat**, by **1 January 2017**, the alternative measures that they plan to adopt, showing how they would achieve an equivalent improvement in the energy performance of the buildings within the central government estate.

7. **Contracting Parties** shall encourage public bodies, including at regional and local level, and social housing bodies governed by public law, with due regard for their respective competences and administrative set-up, to:

(a) adopt an energy efficiency plan, freestanding or as part of a broader climate or environmental plan, containing specific energy saving and efficiency objectives and actions, with a view to following the exemplary role of central government buildings laid down in paragraphs 1, 5 and 6;

(b) put in place an energy management system, including energy audits, as part of the implementation of their plan;

(c) use, where appropriate, energy service companies, and energy performance contracting to finance renovations and implement plans to maintain or improve energy efficiency in the long term.

Article 6

Purchasing by public bodies

1. **Contracting Parties** shall ensure that central governments purchase only products, services and buildings with high energy-efficiency performance, insofar as that is consistent with cost-effectiveness, economical feasibility, wider sustainability, technical suitability, as well as sufficient competition, as referred to in Annex III.

The obligation set out in the first subparagraph shall apply to contracts for the purchase of products, services and buildings by public bodies in so far as such contracts have a value equal to or greater than the thresholds laid in each Contracting Party's national legislation. Each Contracting Party shall submit its national thresholds to the Energy Community Secretariat, by 15 October 2017⁵.

2. The obligation referred to in paragraph 1 shall apply to the contracts of the armed forces only to the extent that its application does not cause any conflict with the nature and primary aim of the activities of the armed forces.

<...>⁶

⁵ The text displayed here corresponds to Article 3(10) of Ministerial Council Decision 2015/08/MC-EnC.

⁶ The second sentence in Article 6(2) is not applicable, in accordance with Article 3(11) of Decision 2015/08/MC-EnC.

3. **Contracting Parties** shall encourage public bodies, including at regional and local levels, with due regard to their respective competences and administrative set-up, to follow the exemplary role of their central governments to purchase only products, services and buildings with high energy-efficiency performance. **Contracting Parties** shall encourage public bodies, when tendering service contracts with significant energy content, to assess the possibility of concluding long-term energy performance contracts that provide long-term energy savings.

4. Without prejudice to paragraph 1, when purchasing a product package covered as a whole by a delegated act adopted under Directive 2010/30/EU, **as incorporated and adapted by the Ministerial Council Decision 2010/02/MC-EnC**, **Contracting Parties** may require that the aggregate energy efficiency shall take priority over the energy efficiency of individual products within that package, by purchasing the product package that complies with the criterion of belonging to the highest energy efficiency class.

Article 7

Energy efficiency obligation schemes

1. Each **Contracting Party** shall set up an energy efficiency obligation scheme. That scheme shall ensure that energy distributors and/or retail energy sales companies that are designated as obligated parties under paragraph 4 operating in each **Contracting Party's** territory achieve a cumulative end-use energy savings target by 31 December 2020, without prejudice to paragraph 2.

That target shall be at least equivalent to achieving new savings each year from 1 January 2017 to 31 December 2020 of 0,7% of the annual energy sales to final customers of all energy distributors or all retail energy sales companies by volume, averaged over the most recent three-year period prior to 1 January 2016. The sales of energy, by volume, used in transport may be partially or fully excluded from this calculation⁷.

Contracting Parties shall decide how the calculated quantity of new savings referred to in the second subparagraph is to be phased over the period.

2. Subject to paragraph 3, each **Contracting Party** may:

(a) **carry out the calculation required by the second subparagraph of paragraph 1 using values of 0,5% in 2017 and 2018; 0,7% in 2019 and 2020;**

(b) exclude from the calculation all or part of the sales, by volume, of energy used in industrial activities listed in Annex I to Directive 2003/87/EC;

(c) allow energy savings achieved in the energy transformation, distribution and transmission sectors, including efficient district heating and cooling infrastructure, as a result of the implementation of the requirements set out in Article 14(4), point (b) of Article 14(5) and Article 15(1) to (6) and (9) to be counted towards the amount of energy savings required under paragraph 1; and

(d) count energy savings resulting from individual actions newly implemented since 31 December 2008 that continue to have an impact in 2020 and that can be measured and verified, towards the amount of energy savings referred to in paragraph 1.

3. The application of paragraph 2 shall not lead to a reduction of more than 25% of the amount of

⁷ The text displayed here corresponds to Article 3(11) of Ministerial Council Decision 2015/08/MC-EnC.

energy savings referred to in paragraph 1. **Contracting Parties** making use of paragraph 2 shall notify that fact to the **Energy Community Secretariat by 15 October 2017**, including the elements listed under paragraph 2 to be applied and a calculation showing their impact on the amount of energy savings referred to in paragraph 1.

4. Without prejudice to the calculation of energy savings for the target in accordance with the second subparagraph of paragraph 1, each **Contracting Party** shall, for the purposes of the first subparagraph of paragraph 1, designate, on the basis of objective and non-discriminatory criteria, obligated parties amongst energy distributors and/or retail energy sales companies operating in its territory and may include transport fuel distributors or transport fuel retailers operating in its territory. The amount of energy savings to fulfil the obligation shall be achieved by the obligated parties among final customers, designated, as appropriate, by the **Contracting Party**, independently of the calculation made pursuant to paragraph 1, or, if **Contracting Parties** so decide, through certified savings stemming from other parties as described in point (b) of paragraph 7.

5. **Contracting Parties** shall express the amount of energy savings required of each obligated party in terms of either final or primary energy consumption. The method chosen for expressing the required amount of energy savings shall also be used for calculating the savings claimed by obligated parties. The conversion factors set out in Annex IV shall apply.

6. **Contracting Parties** shall ensure that the savings stemming from paragraphs 1, 2 and 9 of this Article and Article 20(6) are calculated in accordance with points (1) and (2) of Annex V. They shall put in place measurement, control and verification systems under which at least a statistically significant proportion and representative sample of the energy efficiency improvement measures put in place by the obligated parties is verified. That measurement, control and verification shall be conducted independently of the obligated parties.

7. Within the energy efficiency obligation scheme, **Contracting Parties** may:

(a) include requirements with a social aim in the saving obligations they impose, including by requiring a share of energy efficiency measures to be implemented as a priority in households affected by energy poverty or in social housing;

(b) permit obligated parties to count towards their obligation certified energy savings achieved by energy service providers or other third parties, including when obligated parties promote measures through other State-approved bodies or through public authorities that may or may not involve formal partnerships and may be in combination with other sources of finance. Where **Contracting Parties** so permit, they shall ensure that an approval process is in place which is clear, transparent and open to all market actors, and which aims at minimising the costs of certification;

(c) allow obligated parties to count savings obtained in a given year as if they had instead been obtained in any of the four previous or three following years.

8. Once a year, **Contracting Parties** shall publish the energy savings achieved by each obligated party, or each sub-category of obligated party, and in total under the scheme.

Contracting Parties shall ensure that obligated parties provide on request:

(a) aggregated statistical information on their final customers (identifying significant changes to previously submitted information); and

(b) current information on final customers' consumption, including, where applicable, load profiles, customer segmentation and geographical location of customers, while preserving the integrity and

confidentiality of private or commercially sensitive information in compliance with applicable **Energy Community** law.

Such a request shall be made not more than once a year.

9. As an alternative to setting up an energy efficiency obligation scheme under paragraph 1, **Contracting Parties** may opt to take other policy measures to achieve energy savings among final customers, provided those policy measures meet the criteria set out in paragraphs 10 and 11. The annual amount of new energy savings achieved through this approach shall be equivalent to the amount of new energy savings required by paragraphs 1, 2 and 3. Provided that equivalence is maintained, **Contracting Parties** may combine obligation schemes with alternative policy measures, including national energy efficiency programmes.

The policy measures referred to in the first subparagraph may include, but are not restricted to, the following policy measures or combinations thereof:

- (a) energy or CO₂ taxes that have the effect of reducing end-use energy consumption;
- (b) financing schemes and instruments or fiscal incentives that lead to the application of energy-efficient technology or techniques and have the effect of reducing end-use energy consumption;
- (c) regulations or voluntary agreements that lead to the application of energy-efficient technology or techniques and have the effect of reducing end-use energy consumption;
- (d) standards and norms that aim at improving the energy efficiency of products and services, including buildings and vehicles, except where these are mandatory and applicable in **Contracting Parties** under **Energy Community** law;
- (e) energy labelling schemes, with the exception of those that are mandatory and applicable in the **Contracting Parties** under **Energy Community** law;
- (f) training and education, including energy advisory programmes, that lead to the application of energy-efficient technology or techniques and have the effect of reducing end-use energy consumption.

Contracting Parties shall notify to the **Energy Community Secretariat**, by **15 March 2017**, the policy measures that they plan to adopt for the purposes of the first subparagraph and Article 20(6), following the framework provided in point 4 of Annex V, and showing how they would achieve the required amount of savings. In the case of the policy measures referred to in the second subparagraph and in Article 20(6), this notification shall demonstrate how the criteria in paragraph 10 are met. In the case of policy measures other than those referred to in the second subparagraph or in Article 20(6), **Contracting Parties** shall explain how an equivalent level of savings, monitoring and verification is achieved. The Commission may make suggestions for modifications in the three months following notification.

10. Without prejudice to paragraph 11, the criteria for the policy measures taken pursuant to the second subparagraph of paragraph 9 and Article 20(6) shall be as follows:

- (a) <...>
- (b) the responsibility of each entrusted party, participating party or implementing public authority, whichever is relevant, is defined;
- (c) the energy savings that are to be achieved are determined in a transparent manner;
- (d) the amount of energy savings required or to be achieved by the policy measure are expressed in

- either final or primary energy consumption, using the conversion factors set out in Annex IV;
- (e) energy savings are calculated using the methods and principles provided in points (1) and (2) of Annex V;
- (f) energy savings are calculated using the methods and principles provided in point 3 of Annex V;
- (g) an annual report of the energy savings achieved is provided by participating parties unless not feasible and made publicly available;
- (h) monitoring of the results is ensured and appropriate measures are envisaged if the progress is not satisfactory;
- (i) a control system is put in place that also includes independent verification of a statistically significant proportion of the energy efficiency improvement measures; and
- (j) data on the annual trend of energy savings are published annually.

11. **Contracting Parties** shall ensure that the taxes referred to in point (a) of the second subparagraph of paragraph 9 comply with the criteria listed in points (a), (b), (c), (d), (f), (h) and (j) of paragraph 10.

Contracting Parties shall ensure that the regulations and voluntary agreements referred to in point (c) of the second subparagraph of paragraph 9 comply with the criteria listed in points (a), (b), (c), (d), (e), (g), (h), (i) and (j) of paragraph 10.

Contracting Parties shall ensure that the other policy measures referred to in the second subparagraph of paragraph 9 and the Energy Efficiency National Funds referred to in Article 20(6) comply with the criteria listed in points (a), (b), (c), (d), (e), (h), (i) and (j) of paragraph 10.

12. **Contracting Parties** shall ensure that when the impact of policy measures or individual actions overlaps, no double counting of energy savings is made.

Article 8

Energy audits and energy management systems

1. **Contracting Parties** shall promote the availability to all final customers of high quality energy audits which are cost-effective and:

- (a) carried out in an independent manner by qualified and/or accredited experts according to qualification criteria; or
- (b) implemented and supervised by independent authorities under national legislation.

The energy audits referred to in the first subparagraph may be carried out by in-house experts or energy auditors provided that the **Contracting Party** concerned has put in place a scheme to assure and check their quality, including, if appropriate, an annual random selection of at least a statistically significant percentage of all the energy audits they carry out.

For the purpose of guaranteeing the high quality of the energy audits and energy management systems, **Contracting Parties** shall establish transparent and non-discriminatory minimum criteria for energy audits based on Annex VI.

Energy audits shall not include clauses preventing the findings of the audit from being transferred to any qualified/accredited energy service provider, on condition that the customer does not object.

2. **Contracting Parties** shall develop programmes to encourage SMEs to undergo energy audits and the subsequent implementation of the recommendations from these audits.

On the basis of transparent and non-discriminatory criteria and without prejudice to Union State aid law, **Contracting Parties** may set up support schemes for SMEs, including if they have concluded voluntary agreements, to cover costs of an energy audit and of the implementation of highly cost-effective recommendations from the energy audits, if the proposed measures are implemented.

Contracting Parties shall bring to the attention of SMEs, including through their respective representative intermediary organisations, concrete examples of how energy management systems could help their businesses. The Commission and **the Energy Community Secretariat** shall assist **Contracting Parties** by supporting the exchange of best practices in this domain.

3. **Contracting Parties** shall also develop programmes to raise awareness among households about the benefits of such audits through appropriate advice services.

Contracting Parties shall encourage training programmes for the qualification of energy auditors in order to facilitate sufficient availability of experts.

4. **Contracting Parties** shall ensure that enterprises that are not SMEs are subject to an energy audit carried out in an independent and cost-effective manner by qualified and/or accredited experts or implemented and supervised by independent authorities under national legislation by **5 November 2018** and at least every four years from the date of the previous energy audit.

5. Energy audits shall be considered as fulfilling the requirements of paragraph 4 when they are carried out in an independent manner, on the basis of minimum criteria based on Annex VI, and implemented under voluntary agreements concluded between organisations of stakeholders and an appointed body and supervised by the **Contracting Party** concerned, or other bodies to which the competent authorities have delegated the responsibility concerned, or by the Commission.

Access of market participants offering energy services shall be based on transparent and non-discriminatory criteria.

6. Enterprises that are not SMEs and that are implementing an energy or environmental management system - certified by an independent body according to the relevant European or International Standards - shall be exempted from the requirements of paragraph 4, provided that **Contracting Parties** ensure that the management system concerned includes an energy audit on the basis of the minimum criteria based on Annex VI.

7. Energy audits may stand alone or be part of a broader environmental audit. **Contracting Parties** may require that an assessment of the technical and economic feasibility of connection to an existing or planned district heating or cooling network shall be part of the energy audit.

Without prejudice to Union State aid law, **Contracting Parties** may implement incentive and support schemes for the implementation of recommendations from energy audits and similar measures.

Article 9

Metering

1. **Contracting Parties** shall ensure that, in so far as it is technically possible, financially reasonable and proportionate in relation to the potential energy savings, final customers for electricity, natural

gas, district heating, district cooling and domestic hot water are provided with competitively priced individual meters that accurately reflect the final customer's actual energy consumption and that provide information on actual time of use.

Such a competitively priced individual meter shall always be provided when:

(a) an existing meter is replaced, unless this is technically impossible or not cost-effective in relation to the estimated potential savings in the long term;

(b) a new connection is made in a new building or a building undergoes major renovations, as set out in Directive 2010/31/EU, **as incorporated and adapted by the Ministerial Council Decision 2010/02/MC-EnC**.

2. Where, and to the extent that, **Contracting Parties** implement intelligent metering systems and roll out smart meters for natural gas and/or electricity in accordance with Directives 2009/72/EC and 2009/73/EC **as incorporated and adapted by Ministerial Council Decision 2011/02/MC-EnC**:

(a) they shall ensure that the metering systems provide to final customers information on actual time of use and that the objectives of energy efficiency and benefits for final customers are fully taken into account when establishing the minimum functionalities of the meters and the obligations imposed on market participants;

(b) they shall ensure the security of the smart meters and data communication, and the privacy of final customers, in compliance with relevant Union data protection and privacy legislation;

(c) in the case of electricity and at the request of the final customer, they shall require meter operators to ensure that the meter or meters can account for electricity put into the grid from the final customer's premises;

(d) they shall ensure that if final customers request it, metering data on their electricity input and off-take is made available to them or to a third party acting on behalf of the final customer in an easily understandable format that they can use to compare deals on a like-for-like basis;

(e) they shall require that appropriate advice and information be given to customers at the time of installation of smart meters, in particular about their full potential with regard to meter reading management and the monitoring of energy consumption.

3. Where heating and cooling or hot water are supplied to a building from a district heating network or from a central source servicing multiple buildings, a heat or hot water meter shall be installed at the heating exchanger or point of delivery.

In multi-apartment and multi-purpose buildings with a central heating/cooling source or supplied from a district heating network or from a central source serving multiple buildings, individual consumption meters shall also be installed by **30 November 2019** to measure the consumption of heat or cooling or hot water for each unit where technically feasible and cost-efficient. Where the use of individual meters is not technically feasible or not cost-efficient, to measure heating, individual heat cost allocators shall be used for measuring heat consumption at each radiator, unless it is shown by the **Contracting Party** in question that the installation of such heat cost allocators would not be cost-efficient. In those cases, alternative cost-efficient methods of heat consumption measurement may be considered.

Where multi-apartment buildings are supplied from district heating or cooling, or where own common heating or cooling systems for such buildings are prevalent, **Contracting Parties** may introduce transparent rules on the allocation of the cost of thermal or hot water consumption in such

buildings to ensure transparency and accuracy of accounting for individual consumption. Where appropriate, such rules shall include guidelines on the way to allocate costs for heat and/or hot water that is used as follows:

- (a) hot water for domestic needs;
- (b) heat radiated from the building installation and for the purpose of heating the common areas (where staircases and corridors are equipped with radiators);
- (c) for the purpose of heating apartments.

Article 10

Billing information

1. Where final customers do not have smart meters as referred to in Directives 2009/72/EC and 2009/73/EC **as incorporated and adapted by Ministerial Council Decision 2011/02/MC-EnC, Contracting Parties** shall ensure, by **30 November 2017**, that billing information is accurate and based on actual consumption, in accordance with point 1.1 of Annex VII, for all the sectors covered by this Directive, including energy distributors, distribution system operators and retail energy sales companies, where this is technically possible and economically justified.

This obligation may be fulfilled by a system of regular self-reading by the final customers whereby they communicate readings from their meter to the energy supplier. Only when the final customer has not provided a meter reading for a given billing interval shall billing be based on estimated consumption or a flat rate.

2. Meters installed in accordance with Directives 2009/72/EC and 2009/73/EC **as incorporated and adapted by Ministerial Council Decision 2011/02/MC-EnC**, shall enable accurate billing information based on actual consumption. **Contracting Parties** shall ensure that final customers have the possibility of easy access to complementary information on historical consumption allowing detailed self-checks.

Complementary information on historical consumption shall include:

- (a) cumulative data for at least the three previous years or the period since the start of the supply contract if this is shorter. The data shall correspond to the intervals for which frequent billing information has been produced; and
- (b) detailed data according to the time of use for any day, week, month and year. These data shall be made available to the final customer via the internet or the meter interface for the period of at least the previous 24 months or the period since the start of the supply contract if this is shorter.

3. Independently of whether smart meters have been installed or not, **Contracting Parties**:

- (a) shall require that, to the extent that information on the energy billing and historical consumption of final customers is available, it be made available, at the request of the final customer, to an energy service provider designated by the final customer;
- (b) shall ensure that final customers are offered the option of electronic billing information and bills and that they receive, on request, a clear and understandable explanation of how their bill was derived, especially where bills are not based on actual consumption;
- (c) shall ensure that appropriate information is made available with the bill to provide final customers

with a comprehensive account of current energy costs, in accordance with Annex VII;

(d) may lay down that, at the request of the final customer, the information contained in these bills shall not be considered to constitute a request for payment. In such cases, **Contracting Parties** shall ensure that suppliers of energy sources offer flexible arrangements for actual payments;

(e) shall require that information and estimates for energy costs are provided to consumers on demand in a timely manner and in an easily understandable format enabling consumers to compare deals on a like-for-like basis.

Article 11

Cost of access to metering and billing information

1. **Contracting Parties** shall ensure that final customers receive all their bills and billing information for energy consumption free of charge and that final customers also have access to their consumption data in an appropriate way and free of charge.

2. Notwithstanding paragraph 1, the distribution of costs of billing information for the individual consumption of heating and cooling in multi-apartment and multi-purpose buildings pursuant to Article 9(3) shall be carried out on a non-profit basis. Costs resulting from the assignment of this task to a third party, such as a service provider or the local energy supplier, covering the measuring, allocation and accounting for actual individual consumption in such buildings, may be passed onto the final customers to the extent that such costs are reasonable.

Article 12

Consumer information and empowering programme

1. **Contracting Parties** shall take appropriate measures to promote and facilitate an efficient use of energy by small energy customers, including domestic customers. These measures may be part of a national strategy.

2. For the purposes of paragraph 1, these measures shall include one or more of the elements listed under point (a) or (b):

(a) a range of instruments and policies to promote behavioural change which may include:

- (i) fiscal incentives;
- (ii) access to finance, grants or subsidies;
- (iii) information provision;
- (iv) exemplary projects;
- (v) workplace activities;

(b) ways and means to engage consumers and consumer organisations during the possible roll-out of smart meters through communication of:

- (i) cost-effective and easy-to-achieve changes in energy use;
- (ii) information on energy efficiency measures.

Article 13**Penalties**

Contracting Parties shall lay down the rules on penalties applicable in case of non-compliance with the national provisions adopted pursuant to Articles 7 to 11 and Article 18(3) and shall take the necessary measures to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive. **Contracting Parties** shall notify those provisions to the **Energy Community Secretariat** by **15 October 2017** and shall notify it without delay of any subsequent amendment affecting them.

CHAPTER III**EFFICIENCY IN ENERGY SUPPLY****Article 14****Promotion of efficiency in heating and cooling**

1. By **30 November 2018**, **Contracting Parties** shall carry out and notify to the **Energy Community Secretariat** a comprehensive assessment of the potential for the application of high-efficiency cogeneration and efficient district heating and cooling, containing the information set out in Annex VIII. If they have already carried out an equivalent assessment, they shall notify it to the **Energy Community Secretariat**.

<...>⁸

At the request of the Commission, the assessment shall be updated and notified to the Commission every five years. The Commission shall make any such request at least one year before the due date.

2. **Contracting Parties** shall adopt policies which encourage the due taking into account at local and regional levels of the potential of using efficient heating and cooling systems, in particular those using high-efficiency cogeneration. Account shall be taken of the potential for developing local and regional heat markets.

3. For the purpose of the assessment referred to in paragraph 1, **Contracting Parties** shall carry out a cost-benefit analysis covering their territory based on climate conditions, economic feasibility and technical suitability in accordance with Part 1 of Annex IX. The cost-benefit analysis shall be capable of facilitating the identification of the most resource- and cost-efficient solutions to meeting heating and cooling needs. That cost-benefit analysis may be part of an environmental assessment under Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment.

4. Where the assessment referred to in paragraph 1 and the analysis referred to in paragraph 3 identify a potential for the application of high-efficiency cogeneration and/or efficient district heating and cooling whose benefits exceed the costs, **Contracting Parties** shall take adequate measures for efficient district heating and cooling infrastructure to be developed and/or to accommodate the

⁸ Not applicable in accordance with Article 3(11) of Decision 2015/08/MC-EnC.

development of high-efficiency cogeneration and the use of heating and cooling from waste heat and renewable energy sources in accordance with paragraphs 1, 5, and 7.

Where the assessment referred to in paragraph 1 and the analysis referred to in paragraph 3 do not identify a potential whose benefits exceed the costs, including the administrative costs of carrying out the cost-benefit analysis referred to in paragraph 5, the **Contracting Party** concerned may exempt installations from the requirements laid down in that paragraph.

5. **Contracting Parties** shall ensure that a cost-benefit analysis in accordance with Part 2 of Annex IX is carried out when, after **15 October 2017**:

- (a) a new thermal electricity generation installation with a total thermal input exceeding 20 MW is planned, in order to assess the cost and benefits of providing for the operation of the installation as a high-efficiency cogeneration installation;
- (b) an existing thermal electricity generation installation with a total thermal input exceeding 20 MW is substantially refurbished, in order to assess the cost and benefits of converting it to high-efficiency cogeneration;
- (c) an industrial installation with a total thermal input exceeding 20 MW generating waste heat at a useful temperature level is planned or substantially refurbished, in order to assess the cost and benefits of utilising the waste heat to satisfy economically justified demand, including through cogeneration, and of the connection of that installation to a district heating and cooling network;
- (d) a new district heating and cooling network is planned or in an existing district heating or cooling network a new energy production installation with a total thermal input exceeding 20 MW is planned or an existing such installation is to be substantially refurbished, in order to assess the cost and benefits of utilising the waste heat from nearby industrial installations.

The fitting of equipment to capture carbon dioxide produced by a combustion installation with a view to its being geologically stored as provided for in Directive 2009/31/EC shall not be considered as refurbishment for the purpose of points (b), (c) and (d) of this paragraph.

Contracting Parties may require the cost-benefit analysis referred to in points (c) and (d) to be carried out in cooperation with the companies responsible for the operation of the district heating and cooling networks.

6. **Contracting Parties** may exempt from paragraph 5:

- (a) those peak load and back-up electricity generating installations which are planned to operate under 1 500 operating hours per year as a rolling average over a period of five years, based on a verification procedure established by the **Contracting Parties** ensuring that this exemption criterion is met;
- (b) nuclear power installations;
- (c) installations that need to be located close to a geological storage site approved under Directive 2009/31/EC.

Contracting Parties may also lay down thresholds, expressed in terms of the amount of available useful waste heat, the demand for heat or the distances between industrial installations and district heating networks, for exempting individual installations from the provisions of points (c) and (d) of paragraph 5.

Contracting Parties shall notify exemptions adopted under this paragraph to the **Energy Community Secretariat** by **15 October 2017** and any subsequent changes to them thereafter.

7. **Contracting Parties** shall adopt authorisation criteria as referred to in Article 7 of Directive 2009/72/EC **as incorporated and adapted by Ministerial Council Decision 2011/02/MC-EnC** or equivalent permit criteria, to:

- (a) take into account the outcome of the comprehensive assessment referred to in paragraph 1;
- (b) ensure that the requirements of paragraph 5 are fulfilled; and
- (c) take into account the outcome of cost-benefit analysis referred to in paragraph 5.

8. **Contracting Parties** may exempt individual installations from being required, by the authorisation and permit criteria referred to in paragraph 7, to implement options whose benefits exceed their costs, if there are imperative reasons of law, ownership or finance for so doing. In these cases the **Contracting Party** concerned shall submit a reasoned notification of its decision to the **Energy Community Secretariat** within three months of the date of taking it.

9. Paragraphs 5, 6, 7 and 8 of this Article shall apply to installations covered by Directive 2010/75/EU, **as incorporated and adapted by the Ministerial Council decision 2013/06/MC-EnC** without prejudice to the requirements of that Directive.

10. On the basis of the harmonised efficiency reference values referred to in point (f) of Annex II, **Contracting Parties** shall ensure that the origin of electricity produced from high-efficiency cogeneration can be guaranteed according to objective, transparent and non-discriminatory criteria laid down by each **Contracting Party**. They shall ensure that this guarantee of origin complies with the requirements and contains at least the information specified in Annex X. **Contracting Parties** shall mutually recognise their guarantees of origin, exclusively as proof of the information referred to in this paragraph. Any refusal to recognise a guarantee of origin as such proof, in particular for reasons relating to the prevention of fraud, must be based on objective, transparent and non-discriminatory criteria. **Contracting Parties** shall notify the **Energy Community Secretariat** of such refusal and its justification. In the event of refusal to recognise a guarantee of origin, the Commission may adopt a decision to compel the refusing party to recognise it, in particular with regard to objective, transparent and non-discriminatory criteria on which such recognition is based.

The Commission shall be empowered to review, by means of delegated acts in accordance with Article 23 of this Directive, the harmonised efficiency reference values laid down in Commission Implementing Decision 2011/877/EU on the basis of Directive 2004/8/EC by 31 December 2014.

11. **Contracting Parties** shall ensure that any available support for cogeneration is subject to the electricity produced originating from high-efficiency cogeneration and the waste heat being effectively used to achieve primary energy savings. Public support to cogeneration and district heating generation and networks shall be subject to State aid rules, where applicable.

Article 15

Energy transformation, transmission and distribution

1. **Contracting Parties** shall ensure that national energy regulatory authorities pay due regard to energy efficiency in carrying out the regulatory tasks specified in Directives 2009/72/EC and 2009/73/EC **as incorporated and adapted by Ministerial Council Decision 2011/02/MC-EnC** regarding their decisions on the operation of the gas and electricity infrastructure.

Contracting Parties shall in particular ensure that national energy regulatory authorities, through

the development of network tariffs and regulations, within the framework of Directive 2009/72/EC **as incorporated and adapted by Ministerial Council Decision 2011/02/MC-EnC** and taking into account the costs and benefits of each measure, provide incentives for grid operators to make available system services to network users permitting them to implement energy efficiency improvement measures in the context of the continuing deployment of smart grids.

Such systems services may be determined by the system operator and shall not adversely impact the security of the system.

For electricity, **Contracting Parties** shall ensure that network regulation and network tariffs fulfil the criteria in Annex XI, taking into account guidelines and codes developed pursuant to Regulation (EC) No 714/2009, **as incorporated and adapted by Ministerial Council Decision 2011/02/MC-EnC**.

2. **Contracting Parties** shall ensure, by **15 October 2018**, that:

(a) an assessment is undertaken of the energy efficiency potentials of their gas and electricity infrastructure, in particular regarding transmission, distribution, load management and interoperability, and connection to energy generating installations, including access possibilities for micro energy generators;

(b) concrete measures and investments are identified for the introduction of cost-effective energy efficiency improvements in the network infrastructure, with a timetable for their introduction.

3. **Contracting Parties** may permit components of schemes and tariff structures with a social aim for net-bound energy transmission and distribution, provided that any disruptive effects on the transmission and distribution system are kept to the minimum necessary and are not disproportionate to the social aim.

4. **Contracting Parties** shall ensure the removal of those incentives in transmission and distribution tariffs that are detrimental to the overall efficiency (including energy efficiency) of the generation, transmission, distribution and supply of electricity or those that might hamper participation of demand response, in balancing markets and ancillary services procurement. **Contracting Parties** shall ensure that network operators are incentivised to improve efficiency in infrastructure design and operation, and, within the framework of Directive 2009/72/EC **as incorporated and adapted by Ministerial Council Decision 2011/02/MC-EnC**, that tariffs allow suppliers to improve consumer participation in system efficiency, including demand response, depending on national circumstances.

5. Without prejudice to Article 16(2) of Directive 2009/28/EC and taking into account Article 15 of Directive 2009/72/EC **as incorporated and adapted by Ministerial Council Decision 2011/02/MC-EnC** and the need to ensure continuity in heat supply, **Contracting Parties** shall ensure that, subject to requirements relating to the maintenance of the reliability and safety of the grid, based on transparent and non-discriminatory criteria set by the competent national authorities, transmission system operators and distribution system operators when they are in charge of dispatching the generating installations in their territory:

(a) guarantee the transmission and distribution of electricity from high-efficiency cogeneration;

(b) provide priority or guaranteed access to the grid of electricity from high-efficiency cogeneration;

(c) when dispatching electricity generating installations, provide priority dispatch of electricity from high-efficiency cogeneration in so far as the secure operation of the national electricity system permits.

Contracting Parties shall ensure that rules relating to the ranking of the different access and dispatch priorities granted in their electricity systems are clearly explained in detail and published. When providing priority access or dispatch for high-efficiency cogeneration, **Contracting Parties** may set rankings as between, and within different types of, renewable energy and high-efficiency cogeneration and shall in any case ensure that priority access or dispatch for energy from variable renewable energy sources is not hampered.

In addition to the obligations laid down by the first subparagraph, transmission system operators and distribution system operators shall comply with the requirements set out in Annex XII.

Contracting Parties may particularly facilitate the connection to the grid system of electricity produced from high-efficiency cogeneration from small-scale and micro-cogeneration units. **Contracting Parties** shall, where appropriate, take steps to encourage network operators to adopt a simple notification 'install and inform' process for the installation of micro-cogeneration units to simplify and shorten authorisation procedures for individual citizens and installers.

6. Subject to the requirements relating to the maintenance of the reliability and safety of the grid, **Contracting Parties** shall take the appropriate steps to ensure that, where this is technically and economically feasible with the mode of operation of the high-efficiency cogeneration installation, high-efficiency cogeneration operators can offer balancing services and other operational services at the level of transmission system operators or distribution system operators. Transmission system operators and distribution system operators shall ensure that such services are part of a services bidding process which is transparent, non-discriminatory and open to scrutiny.

Where appropriate, **Contracting Parties** may require transmission system operators and distribution system operators to encourage high-efficiency cogeneration to be sited close to areas of demand by reducing the connection and use-of-system charges.

7. **Contracting Parties** may allow producers of electricity from high-efficiency cogeneration wishing to be connected to the grid to issue a call for tender for the connection work.

8. **Contracting Parties** shall ensure that national energy regulatory authorities encourage demand side resources, such as demand response, to participate alongside supply in wholesale and retail markets.

Subject to technical constraints inherent in managing networks, **Contracting Parties** shall ensure that transmission system operators and distribution system operators, in meeting requirements for balancing and ancillary services, treat demand response providers, including aggregators, in a non-discriminatory manner, on the basis of their technical capabilities.

Subject to technical constraints inherent in managing networks, **Contracting Parties** shall promote access to and participation of demand response in balancing, reserve and other system services markets, *inter alia* by requiring national energy regulatory authorities or, where their national regulatory systems so require, transmission system operators and distribution system operators in close cooperation with demand service providers and consumers, to define technical modalities for participation in these markets on the basis of the technical requirements of these markets and the capabilities of demand response. Such specifications shall include the participation of aggregators.

9. When reporting under Directive 2010/75/EU, **as incorporated and adapted by the Ministerial Council decision 2013/06/MC-EnC**, and without prejudice to Article 9(2) of that Directive, **Contracting Parties** shall consider including information on energy efficiency levels of installations undertaking the combustion of fuels with total rated thermal input of 50 MW or more in the light

of the relevant best available techniques developed in accordance with Directive 2010/75/EU, **as incorporated and adapted by the Ministerial Council decision 2013/06/MC-EnC**, and Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control.

Contracting Parties may encourage operators of installations referred to in the first subparagraph to improve their annual average net operational rates.

CHAPTER IV

HORIZONTAL PROVISIONS

Article 16

Availability of qualification, accreditation and certification schemes

1. Where a **Contracting Party** considers that the national level of technical competence, objectivity and reliability is insufficient, it shall ensure that, by **31 December 2017**, certification and/or accreditation schemes and/or equivalent qualification schemes, including, where necessary, suitable training programmes, become or are available for providers of energy services, energy audits, energy managers and installers of energy-related building elements as defined in Article 2(9) of Directive 2010/31/EU, **as incorporated and adapted by the Ministerial Council Decision 2010/02/MC-EnC**.

2. **Contracting Parties** shall ensure that the schemes referred to in paragraph 1 provide transparency to consumers, are reliable and contribute to national energy efficiency objectives.

3. **Contracting Parties** shall make publicly available the certification and/or accreditation schemes or equivalent qualification schemes referred to in paragraph 1 and shall cooperate among themselves and with the Commission **and the Energy Community Secretariat** on comparisons between, and recognition of, the schemes.

Contracting Parties shall take appropriate measures to make consumers aware of the availability of qualification and/or certification schemes in accordance with Article 18(1).

Article 17

Information and training

1. **Contracting Parties** shall ensure that information on available energy efficiency mechanisms and financial and legal frameworks is transparent and widely disseminated to all relevant market actors, such as consumers, builders, architects, engineers, environmental and energy auditors, and installers of building elements as defined in Directive 2010/31/EU, **as incorporated and adapted by the Ministerial Council Decision 2010/02/MC-EnC**.

Contracting Parties shall encourage the provision of information to banks and other financial institutions on possibilities of participating, including through the creation of public/private partnerships, in the financing of energy efficiency improvement measures.

2. **Contracting Parties** shall establish appropriate conditions for market operators to provide ade-

quate and targeted information and advice to energy consumers on energy efficiency.

3. The Commission shall review the impact of its measures to support the development of platforms, involving, *inter alia*, the European social dialogue bodies in fostering training programmes for energy efficiency, and shall bring forward further measures if appropriate. The Commission shall encourage European social partners in their discussions on energy efficiency.

4. **Contracting Parties** shall, with the participation of stakeholders, including local and regional authorities, promote suitable information, awareness-raising and training initiatives to inform citizens of the benefits and practicalities of taking energy efficiency improvement measures.

5. The Commission shall encourage the exchange and wide dissemination of information on best energy efficiency practices in **Contracting Parties**.

Article 18

Energy services

1. **Contracting Parties** shall promote the energy services market and access for SMEs to this market by:

(a) disseminating clear and easily accessible information on:

(i) available energy service contracts and clauses that should be included in such contracts to guarantee energy savings and final customers' rights;

(ii) financial instruments, incentives, grants and loans to support energy efficiency service projects;

(b) encouraging the development of quality labels, *inter alia*, by trade associations;

(c) making publicly available and regularly updating a list of available energy service providers who are qualified and/or certified and their qualifications and/or certifications in accordance with Article 16, or providing an interface where energy service providers can provide information;

(d) supporting the public sector in taking up energy service offers, in particular for building refurbishment, by:

(i) providing model contracts for energy performance contracting which include at least the items listed in Annex XIII;

(ii) providing information on best practices for energy performance contracting, including, if available, cost-benefit analysis using a life-cycle approach;

(e) providing a qualitative review in the framework of the National Energy Efficiency Action Plan regarding the current and future development of the energy services market.

2. **Contracting Parties** shall support the proper functioning of the energy services market, where appropriate, by:

(a) identifying and publicising point(s) of contact where final customers can obtain the information referred to in paragraph 1;

(b) taking, if necessary, measures to remove the regulatory and non-regulatory barriers that impede the uptake of energy performance contracting and other energy efficiency service models for the identification and/or implementation of energy saving measures;

(c) considering putting in place or assigning the role of an independent mechanism, such as an

ombudsman, to ensure the efficient handling of complaints and out-of-court settlement of disputes arising from energy service contracts;

(d) enabling independent market intermediaries to play a role in stimulating market development on the demand and supply sides.

3. **Contracting Parties** shall ensure that energy distributors, distribution system operators and retail energy sales companies refrain from any activities that may impede the demand for and delivery of energy services or other energy efficiency improvement measures, or hinder the development of markets for such services or measures, including foreclosing the market for competitors or abusing dominant positions.

Article 19

Other measures to promote energy efficiency

1. **Contracting Parties** shall evaluate and if necessary take appropriate measures to remove regulatory and non-regulatory barriers to energy efficiency, without prejudice to the basic principles of the property and tenancy law of the **Contracting Parties**, in particular as regards:

(a) the split of incentives between the owner and the tenant of a building or among owners, with a view to ensuring that these parties are not deterred from making efficiency-improving investments that they would otherwise have made by the fact that they will not individually obtain the full benefits or by the absence of rules for dividing the costs and benefits between them, including national rules and measures regulating decision-making processes in multi-owner properties;

(b) legal and regulatory provisions, and administrative practices, regarding public purchasing and annual budgeting and accounting, with a view to ensuring that individual public bodies are not deterred from making investments in improving energy efficiency and minimising expected life-cycle costs and from using energy performance contracting and other third-party financing mechanisms on a long-term contractual basis.

Such measures to remove barriers may include providing incentives, repealing or amending legal or regulatory provisions, or adopting guidelines and interpretative communications, or simplifying administrative procedures. The measures may be combined with the provision of education, training and specific information and technical assistance on energy efficiency.

2. The evaluation of barriers and measures referred to in paragraph 1 shall be notified to the Commission **and the Energy Community Secretariat** in the first National Energy Efficiency Action Plan referred to in Article 24(2). The Commission **and the Energy Community Secretariat** shall encourage the sharing of national best practices in this regard.

Article 20

Energy Efficiency National Fund, Financing and Technical Support

1. Without prejudice to Articles 107 and 108 of the Treaty on the Functioning of the European Union, **Contracting Parties** shall facilitate the establishment of financing facilities, or use of existing ones, for energy efficiency improvement measures to maximise the benefits of multiple streams of

financing.

2. The Commission shall, where appropriate, directly or via the European financial institutions, assist **Contracting Parties** in setting up financing facilities and technical support schemes with the aim of increasing energy efficiency in different sectors.

3. The Commission **and the Energy Community Secretariat** shall facilitate the exchange of best practice between the competent national or regional authorities or bodies, e.g. through annual meetings of the regulatory bodies, public databases with information on the implementation of measures by **Contracting Parties**, and country comparison.

4. **Contracting Parties** may set up an Energy Efficiency National Fund. The purpose of this fund shall be to support national energy efficiency initiatives.

5. **Contracting Parties** may allow for the obligations set out in Article 5(1) to be fulfilled by annual contributions to the Energy Efficiency National Fund of an amount equal to the investments required to achieve those obligations.

6. **Contracting Parties** may provide that obligated parties can fulfil their obligations set out in Article 7(1) by contributing annually to the Energy Efficiency National Fund an amount equal to the investments required to achieve those obligations.

7. **Contracting Parties** may use their revenues from annual emission allocations under Decision No 406/2009/EC for the development of innovative financing mechanisms to give practical effect to the objective in Article 5 of improving the energy performance of buildings.

Article 21

Conversion factors

For the purpose of comparison of energy savings and conversion to a comparable unit, the conversion factors set out in Annex IV shall apply unless the use of other conversion factors can be justified.

CHAPTER V

FINAL PROVISIONS

Article 22

Delegated acts

<...>

Article 23

Exercise of the delegation

<...>

Article 24

Review and monitoring of implementation

1. **By 30 June each year as from 2017, Contracting Parties shall report on the progress achieved towards national energy efficiency targets, in accordance with Part 1 of Annex XIV.**

2. By **30 April 2019**, and every three years thereafter, **Contracting Parties** shall submit National Energy Efficiency Action Plans. The National Energy Efficiency Action Plans shall cover significant energy efficiency improvement measures and expected and/ or achieved energy savings, including those in the supply, transmission and distribution of energy as well as energy end-use, in view of achieving the national energy efficiency targets referred to in Article 3(1). The National Energy Efficiency Action Plans shall be complemented with updated estimates of expected overall primary energy consumption in 2020, as well as estimated levels of primary energy consumption in the sectors indicated in Part 1 of Annex XIV.

The National Energy Efficiency Action Plans shall in any case include the information specified in Annex XIV.

3. The Commission shall evaluate the annual reports and the National Energy Efficiency Action Plans and assess the extent to which **Contracting Parties** have made progress towards the achievement of the national energy efficiency targets required by Article 3(1) and towards the implementation of this Directive. The Commission shall send its assessment to the European Parliament and the Council. Based on its assessment of the reports and the National Energy Efficiency Action Plans, the Commission may issue recommendations to **Contracting Parties**.

4. <...>

5. The Commission shall review the continued need for the possibility of exemptions set out in Article 14(6) for the first time in the assessment of the first National Energy Efficiency Action Plan and every three years thereafter. Where the review shows that any of the criteria for these exemptions can no longer be justified taking into account the availability of heat load and the real operating conditions of the exempted installations, the Commission shall propose appropriate measures.

6. **Contracting Parties** shall submit to the **Energy Community Secretariat** before 30 April each year statistics on national electricity and heat production from high and low efficiency cogeneration, in accordance with the methodology shown in Annex I, in relation to total heat and electricity production. They shall also submit annual statistics on cogeneration heat and electricity capacities and fuels for cogeneration, and on district heating and cooling production and capacities, in relation to total heat and electricity production and capacities. **Contracting Parties** shall submit statistics on primary energy savings achieved by application of cogeneration in accordance with the methodology shown in Annex II.

7. **By 30 June 2018 the Energy Community Secretariat shall submit the assessment referred to in Article 3(2) to the Ministerial Council of the Energy Community, accompanied, if necessary, by proposals for further measures.**

8. **The Energy Community Secretariat shall review the effectiveness of the implementation of Article 6 by 5 November 2018 and shall submit a report to the Ministerial Council of the Energy Community. That report shall be accompanied, if appropriate, by proposals for**

further measures.

9. By 30 May 2019, the Energy Community Secretariat shall submit a report to the Ministerial Council of the Energy Community on the implementation of Article 7. That report shall be accompanied, if appropriate, by a legislative proposal for one or more of the following purposes:

- (a) to change the final date laid down in Article 7(1);
- (b) to review the requirements laid down in Article 7(1), (2) and (3);
- (c) to establish additional common requirements, in particular as regards the matters referred to in Article 7(7).

10. By 30 September 2020, the Commission shall assess the progress made by Contracting Parties in removing the regulatory and non-regulatory barriers referred to in Article 19(1). This assessment shall be followed, if appropriate, by proposals for further measures.

11. The Commission shall make the reports referred to in paragraphs 1 and 2 publicly available.

Article 25

Online platform

The Commission shall establish an online platform in order to foster the practical implementation of this Directive at national, regional and local levels. That platform shall support the exchange of experiences on practices, benchmarking, networking activities, as well as innovative practices.

Article 26

Committee procedure

<...>

Article 27

Amendments and repeals⁹

1. Article 1 of the Ministerial Council Decision 2009/05/MC-EnC is repealed from 15 October 2017. By way of exception, Article 4(1) to (4) of Directive 2006/32/EC¹⁰ as incorporated and

⁹ The text displayed here corresponds to Article 3(36) of Ministerial Council Decision 2015/08/MC-EnC.

¹⁰ Article 4 of Directive 2006/32/EC reads: "1. Contracting Parties shall adopt and aim to achieve an overall national indicative energy savings target of 9% for the ninth year of application of this Directive, to be reached by way of energy services and other energy efficiency improvement measures. Contracting Parties shall take cost-effective, practicable and reasonable measures designed to contribute towards achieving this target.

This national indicative energy savings target shall be set and calculated in accordance with the provisions and methodology set out in Annex I. For purposes of comparison of energy savings and for conversion to a comparable unit, the conversion factors set out in Annex II shall apply unless the use of other conversion factors can be justified. Examples of eligible energy efficiency improvement measures are given in Annex III. A general framework for the measurement and verification of energy savings is given in Annex IV. The national energy savings in relation to the national indicative energy savings target shall be measured as from 1 January 2008.

2. For the purpose of the first Energy Efficiency Action Plan (EEAP) to be submitted in accordance with Article 14, each Contracting Party shall establish an intermediate national indicative energy savings target for the third year of application of this Directive, and provide an overview of its strategy for the achievement of the intermediate and overall targets. This

adapted by Ministerial Council Decision 2009/05/MC-EnC thereof and Annexes I, III and IV thereto, shall continue to apply, without prejudice to the obligations of the Contracting Parties relating to the time-limit for its transposition into national law. Article 4(1) to (4) of, and Annexes I, III and IV of Directive 2006/32/EC as incorporated and adapted by Ministerial Council Decision 2009/05/MC-EnC, shall cease to apply with effect from 1 January 2020. References to Directive 2006/32/EC shall be construed as references to this Directive and shall be read in accordance with the correlation table set out in Annex XV.

2. Article 9(1) and (2) of Directive 2010/30/EU, as incorporated and adapted by Ministerial Council Decision 2010/01/MC-EnC shall cease to apply from 15 October 2017.

Article 28

Transposition

1. **Contracting Parties shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 15 October 2017.**¹¹

Notwithstanding the first subparagraph, **Contracting Parties** shall bring into force the laws, regulations and administrative provisions necessary to comply with Article 4, the first subparagraph of Article 5(1), Article 5(5), Article 5(6), the last subparagraph of Article 7(9), Article 14(6), Article 19(2), Article 24(1) and Article 24(2) and point (4) of Annex V by the dates specified therein.

They shall forthwith communicate to the **Energy Community Secretariat the text of those provisions.**

When **Contracting Parties** adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. **Contracting Parties** shall determine how such reference is to be made.

2. **Contracting Parties** shall communicate to the **Energy Community Secretariat** the text of the main provisions of national law which they adopt in the field covered by this Directive.

Each Contracting Party shall transpose and implement Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC by 15 October 2017.

They shall forthwith inform the Energy Community Secretariat thereof.

Transposition shall be made without changes to the structure and text of Directive 2012/27/EU other than translation.¹²

intermediate target shall be realistic and consistent with the overall national indicative energy savings target referred to in paragraph 1.

The Secretariat shall give an opinion on whether the intermediate national indicative target appears realistic and consistent with the overall target.

3. *Each Contracting Party shall draw up programmes and measures to improve energy efficiency.*

4. *Contracting Parties shall assign to one or more new or existing authorities or agencies the overall control and responsibility for overseeing the framework set up in relation to the target mentioned in paragraph 1. These bodies shall thereafter verify the energy savings as a result of energy services and other energy efficiency improvement measures, including existing national energy efficiency improvement measures, and report the results."*

¹¹ In accordance with the Accession Protocol, the corresponding date for Georgia is 31 December 2018.

¹² The text displayed here corresponds to Article 1 of Ministerial Council Decision 2015/08/MC-EnC.

Article 29

Entry into force

This Directive shall enter into force on the date of its adoption by the Ministerial Council.

Article 30

Addressees

This Decision enters into force upon its adoption and is addressed to the Contracting Parties.¹³

¹³ The text displayed here corresponds to Article 4 of Ministerial Council Decision 2015/08/MC-EnC.

ANNEX I

General principles for the calculation of electricity from cogeneration

PART I

General principles

Values used for calculation of electricity from cogeneration shall be determined on the basis of the expected or actual operation of the unit under normal conditions of use. For micro- cogeneration units the calculation may be based on certified values.

(a) Electricity production from cogeneration shall be considered equal to total annual electricity production of the unit measured at the outlet of the main generators;

(i) in cogeneration units of types (b), (d), (e), (f), (g) and (h) referred to in Part II with an annual overall efficiency set by **Contracting Parties** at a level of at least 75%, and

(ii) in cogeneration units of types (a) and (c) referred to in Part II with an annual overall efficiency set by **Contracting Parties** at a level of at least 80%.

(b) In cogeneration units with an annual overall efficiency below the value referred to in point (i) of point (a) (cogeneration units of types (b), (d), (e), (f), (g), and (h) referred to in Part II) or with an annual overall efficiency below the value referred to in point (ii) of point (a) (cogeneration units of types (a) and (c) referred to in Part II) cogeneration is calculated according to the following formula:

$$E_{\text{CHP}} = H_{\text{CHP}} * C$$

where:

E_{CHP} is the amount of electricity from cogeneration;

C is the power-to-heat ratio;

H_{CHP} is the amount of useful heat from cogeneration (calculated for this purpose as total heat production minus any heat produced in separate boilers or by live steam extraction from the steam generator before the turbine).

The calculation of electricity from cogeneration must be based on the actual power-to-heat ratio. If the actual power-to-heat ratio of a cogeneration unit is not known, the following default values may be used, in particular for statistical purposes, for units of types (a), (b), (c), (d) and (e) referred to in Part II provided that the calculated cogeneration electricity is less or equal to total electricity production of the unit:

Type of the unit	Default power to heat ratio, C
Combined cycle gas turbine with heat recovery	0,95
Steam back pressure turbine	0,45
Steam condensing extraction turbine	0,45
Gas turbine with heat recovery	0,55
Internal combustion engine	0,75

If **Contracting Parties** introduce default values for power-to-heat ratios for units of types (f), (g), (h), (i), (j) and (k) referred to in Part II, such default values shall be published and shall be notified to

the **Energy Community Secretariat**.

(c) If a share of the energy content of the fuel input to the cogeneration process is recovered in chemicals and recycled this share can be subtracted from the fuel input before calculating the overall efficiency used in points (a) and (b).

(d) **Contracting Parties** may determine the power-to-heat ratio as the ratio of electricity to useful heat when operating in cogeneration mode at a lower capacity using operational data of the specific unit.

(e) **Contracting Parties** may use other reporting periods than one year for the purpose of the calculations according to points (a) and (b).

PART II

Cogeneration technologies covered by this Directive

- (a) Combined cycle gas turbine with heat recovery
- (b) Steam back pressure turbine
- (c) Steam condensing extraction turbine
- (d) Gas turbine with heat recovery
- (e) Internal combustion engine
- (f) Microturbines
- (g) Stirling engines
- (h) Fuel cells
- (i) Steam engines
- (j) Organic Rankine cycles
- (k) Any other type of technology or combination thereof falling under the definition laid down in Article 2(30).

When implementing and applying the general principles for the calculation of electricity from cogeneration, **Contracting Parties** shall use the detailed Guidelines established by Commission Decision 2008/952/EC of 19 November 2008 establishing detailed guidelines for the implementation and application of Annex II to Directive 2004/8/EC of the European Parliament and of the Council.

ANNEX II

Methodology for determining the efficiency of the cogeneration process

Values used for calculation of efficiency of cogeneration and primary energy savings shall be determined on the basis of the expected or actual operation of the unit under normal conditions of use.

(a) High-efficiency cogeneration

For the purpose of this Directive high-efficiency cogeneration shall fulfil the following criteria:

- cogeneration production from cogeneration units shall provide primary energy savings calculated according to point (b) of at least 10% compared with the references for separate production of heat and electricity,
- production from small-scale and micro-cogeneration units providing primary energy savings may qualify as high-efficiency cogeneration.

(b) Calculation of primary energy savings

The amount of primary energy savings provided by cogeneration production defined in accordance with Annex I shall be calculated on the basis of the following formula:

$$PES = \left(1 - \frac{1}{\frac{CHP H_{\eta}}{Ref H_{\eta}} + \frac{CHP E_{\eta}}{Ref E_{\eta}}} \right) \times 100 \%$$

Where:

PES is primary energy savings.

CHP H_{η} is the heat efficiency of the cogeneration production defined as annual useful heat output divided by the fuel input used to produce the sum of useful heat output and electricity from cogeneration.

Ref H_{η} is the efficiency reference value for separate heat production.

CHP E_{η} is the electrical efficiency of the cogeneration production defined as annual electricity from cogeneration divided by the fuel input used to produce the sum of useful heat output and electricity from cogeneration. Where a cogeneration unit generates mechanical energy, the annual electricity from cogeneration may be increased by an additional element representing the amount of electricity which is equivalent to that of mechanical energy. This additional element does not create a right to issue guarantees of origin in accordance with Article 14(10).

Ref E_{η} is the efficiency reference value for separate electricity production.

(c) Calculations of energy savings using alternative calculation

Contracting Parties may calculate primary energy savings from a production of heat and electricity and mechanical energy as indicated below without applying Annex I to exclude the non-cogenerated heat and electricity parts of the same process. Such a production can be regarded as high-efficiency

cogeneration provided it fulfils the efficiency criteria in point (a) of this Annex and, for cogeneration units with an electrical capacity larger than 25 MW, the overall efficiency is above 70%. However, specification of the quantity of electricity from cogeneration produced in such a production, for issuing a guarantee of origin and for statistical purposes, shall be determined in accordance with Annex I.

If primary energy savings for a process are calculated using alternative calculation as indicated above the primary energy savings shall be calculated using the formula in point (b) of this Annex replacing: 'CHP H_{η} ' with ' H_{η} ' and 'CHP E_{η} ' with ' E_{η} ', where:

H_{η} shall mean the heat efficiency of the process, defined as the annual heat output divided by the fuel input used to produce the sum of heat output and electricity output.

E_{η} shall mean the electricity efficiency of the process, defined as the annual electricity output divided by the fuel input used to produce the sum of heat output and electricity output. Where a cogeneration unit generates mechanical energy, the annual electricity from cogeneration may be increased by an additional element representing the amount of electricity which is equivalent to that of mechanical energy. This additional element will not create a right to issue guarantees of origin in accordance with Article 14(10).

(d) **Contracting Parties** may use other reporting periods than one year for the purpose of the calculations according to points (b) and (c) of this Annex.

(e) For micro-cogeneration units the calculation of primary energy savings may be based on certified data.

(f) Efficiency reference values for separate production of heat and electricity

The harmonised efficiency reference values shall consist of a matrix of values differentiated by relevant factors, including year of construction and types of fuel, and must be based on a well-documented analysis taking, *inter alia*, into account data from operational use under realistic conditions, fuel mix and climate conditions as well as applied cogeneration technologies.

The efficiency reference values for separate production of heat and electricity in accordance with the formula set out in point (b) shall establish the operating efficiency of the separate heat and electricity production that cogeneration is intended to substitute.

The efficiency reference values shall be calculated according to the following principles:

1. For cogeneration units the comparison with separate electricity production shall be based on the principle that the same fuel categories are compared.
2. Each cogeneration unit shall be compared with the best available and economically justifiable technology for separate production of heat and electricity on the market in the year of construction of the cogeneration unit.
3. The efficiency reference values for cogeneration units older than 10 years of age shall be fixed on the reference values of units of 10 years of age.
4. The efficiency reference values for separate electricity production and heat production shall reflect the climatic differences between **Contracting Parties**.

ANNEX III

Energy efficiency requirements for purchasing products, services and buildings by central government

Central governments that purchase products, services or buildings, insofar as this is consistent with cost-effectiveness, economical feasibility, wider sustainability, technical suitability, as well as sufficient competition, shall:

(a) where a product is covered by a delegated act adopted under Directive 2010/30/EU **as incorporated and adapted by the Ministerial Council Decision 2010/02/MC-EnC** or by a related Commission implementing directive, purchase only the products that comply with the criterion of belonging to the highest energy efficiency class possible in the light of the need to ensure sufficient competition;

(b) <...>

(c) <...>

(d) <...>

(e) require in their tenders for service contracts that service providers use, for the purposes of providing the services in question, only products that comply with the requirements referred to in points (a) to (d), when providing the services in question. This requirement shall apply only to new products purchased by service providers partially or wholly for the purpose of providing the service in question;

(f) purchase, or make new rental agreements for, only buildings that comply at least with the minimum energy performance requirements referred to in Article 5(1) unless the purpose of the purchase is:

(i) to undertake deep renovation or demolition;

(ii) in the case of public bodies, to re-sell the building without using it for public body's own purposes; or

(iii) to preserve it as a building officially protected as part of a designated environment, or because of its special architectural or historical merit.

Compliance with these requirements shall be verified by means of the energy performance certificates referred to in Article 11 of Directive 2010/31/EU, **as incorporated and adapted by the Ministerial Council Decision 2010/02/MC-EnC**.

ANNEX IV

Energy content of selected fuels for end use – conversion table¹⁴

Energy commodity	kJ (NCV)	kgoe (NCV)	kWh (NCV)
1 kg coke	28 500	0,676	7,917
1 kg hard coal	17 200 — 30 700	0,411 — 0,733	4,778 — 8,528
1 kg brown coal briquettes	20 000	0,478	5,556
1 kg black lignite	10 500 — 21 000	0,251 — 0,502	2,917 — 5,833
1 kg brown coal	5 600 — 10 500	0,134 — 0,251	1,556 — 2,917
1 kg oil shale	8 000 — 9 000	0,191 — 0,215	2,222 — 2,500
1 kg peat	7 800 — 13 800	0,186 — 0,330	2,167 — 3,833
1 kg peat briquettes	16 000 — 16 800	0,382 — 0,401	4,444 — 4,667
1 kg residual fuel oil (heavy oil)	40 000	0,955	11,111
1 kg light fuel oil	42 300	1,010	11,750
1 kg motor spirit (petrol)	44 000	1,051	12,222
1 kg paraffin	40 000	0,955	11,111
1 kg liquefied petroleum gas	46 000	1,099	12,778
1 kg natural gas ⁽¹⁾	47 200	1,126	13,10
1 kg liquefied natural gas	45 190	1,079	12,553
1 kg wood (25% humidity) ⁽²⁾	13 800	0,330	3,833
1 kg pellets/wood bricks	16 800	0,401	4,667
1 kg waste	7 400 — 10 700	0,177 — 0,256	2,056 — 2,972
1 MJ derived heat	1 000	0,024	0,278
1 kWh electrical energy	3 600	0,086	1 ⁽³⁾
Source: Eurostat			

⁽¹⁾ 93% methane.⁽²⁾ **Contracting Parties** may apply other values depending on the type of wood most used in the respective **Contracting Party**.⁽³⁾ Applicable when energy savings are calculated in primary energy terms using a bottom-up approach based on final energy consumption. For savings in kWh electricity **Contracting Parties** may apply a default coefficient of 2,5. **Contracting Parties** may apply a different coefficient provided they can justify it.¹⁴ **Contracting Parties** may apply different conversion factors if these can be justified.

ANNEX V

Common methods and principles for calculating the impact of energy efficiency obligations schemes or other policy measures under Article 7(1), (2) and (9) and Article 20(6)

1. Methods for calculating energy savings for the purposes of Article 7(1) and (2), and points (b), (c), (d), (e) and (f) of the second subparagraph of Article 7(9), and Article 20(6).

Obligated, participating or entrusted parties, or implementing public authorities may use one or more of the following methods for calculating energy savings:

(a) deemed savings, by reference to the results of previous independently monitored energy improvements in similar installations. The generic approach is termed ‘*ex-ante*’;

(b) metered savings, whereby the savings from the installation of a measure, or package of measures, is determined by recording the actual reduction in energy use, taking due account of factors such as additionality, occupancy, production levels and the weather which may affect consumption. The generic approach is termed ‘*ex-post*’;

(c) scaled savings, whereby engineering estimates of savings are used. This approach may only be used where establishing robust measured data for a specific installation is difficult or disproportionately expensive, e.g. replacing a compressor or electric motor with a different kWh rating than that for which independent information on savings has been measured, or where they are carried out on the basis of nationally established methodologies and benchmarks by qualified or accredited experts that are independent of the obligated, participating or entrusted parties involved;

(d) surveyed savings, where consumers’ response to advice, information campaigns, labelling or certification schemes, or smart metering is determined. This approach may only be used for savings resulting from changes in consumer behaviour. It may not be used for savings resulting from the installation of physical measures.

2. In determining the energy saving for an energy efficiency measure for the purposes of Article 7(1) and (2), and points (b), (c), (d), (e) and (f) of the second subparagraph of Article 7(9), and Article 20(6) the following principles shall apply:

(a) <...>

(b) to account for climatic variations between regions, **Contracting Parties** may choose to adjust the savings to a standard value or to accord different energy savings in accordance with the temperature variations between regions;

(c) the activities of the obligated, participating or entrusted party must be demonstrably material to the achievement of the claimed savings;

(d) savings from an individual action may not be claimed by more than one party;

(e) calculation of energy savings shall take into account the lifetime of savings. This may be done by counting the savings each individual action will achieve between its implementation date and 31 December 2020. Alternatively, **Contracting Parties** may adopt another method that is estimated to achieve at least the same total quantity of savings. When using other methods, **Contracting Parties** shall ensure that the total amount of energy savings calculated with these other methods does not exceed the amount of energy savings that would have been the result of their calculation when

counting the savings each individual action will achieve between its implementation date and 31 December 2020. **Contracting Parties** shall describe in detail in their first National Energy Efficiency Action Plan according to Annex XIV to this Directive, which other methods they have used and which provisions have been made to ensure this binding calculation requirement; and

(f) actions by obligated, participating or entrusted parties, either individually or together, which aim to result in lasting transformation of products, equipment, or markets to a higher level of energy efficiency are permitted; and

(g) in promoting the uptake of energy efficiency measures, **Contracting Parties** shall ensure that quality standards for products, services and installation of measures are maintained. Where such standards do not exist, **Contracting Parties** shall work with obligated, participating or entrusted parties to introduce them.

3. In determining the energy saving from policy measures applied under point (a) of the second subparagraph of Article 7(9), the following principles shall apply:

(a) <...>

(b) recent and representative official data on price elasticities shall be used for calculation of the impact; and

(c) the energy savings from accompanying taxation policy instruments, including fiscal incentives or payment to a fund, shall be accounted separately.

4. Notification of methodology

Contracting Parties shall by **15 November 2017** notify the **Energy Community Secretariat** of their proposed detailed methodology for operation of the energy efficiency obligation schemes and for the purposes of Article 7(9) and Article 20(6). Except in the case of taxes, such notification shall include details of:

(a) obligated, participating or entrusted parties, or implementing public authorities;

(b) target sectors;

(c) the level of the energy saving target or expected savings to be achieved over the whole and intermediate periods;

(d) the duration of the obligation period and intermediate periods;

(e) eligible measure categories;

(f) calculation methodology, including how additionality and materiality are to be determined and which methodologies and benchmarks are used for engineering estimates;

(g) lifetimes of measures;

(h) approach taken to address climatic variations within the **Contracting Party**;

(i) quality standards;

(j) monitoring and verification protocols and how the independence of these from the obligated, participating or entrusted parties is ensured;

(k) audit protocols; and

(l) how the need to fulfil the requirement in the second subparagraph of Article 7(1) is taken into account.

In the case of taxes, the notification shall include details of:

- (a) target sectors and segment of taxpayers;
- (b) implementing public authority;
- (c) expected savings to be achieved;
- (d) duration of the taxation measure and intermediate periods; and
- (e) calculation methodology, including which price elasticities are used.

ANNEX VI

Minimum criteria for energy audits including those carried out as part of energy management systems

The energy audits referred to in Article 8 shall be based on the following guidelines:

- (a) be based on up-to-date, measured, traceable operational data on energy consumption and (for electricity) load profiles;
- (b) comprise a detailed review of the energy consumption profile of buildings or groups of buildings, industrial operations or installations, including transportation;
- (c) build, whenever possible, on life-cycle cost analysis (LCCA) instead of Simple Payback Periods (SPP) in order to take account of long-term savings, residual values of long-term investments and discount rates;
- (d) be proportionate, and sufficiently representative to permit the drawing of a reliable picture of overall energy performance and the reliable identification of the most significant opportunities for improvement.

Energy audits shall allow detailed and validated calculations for the proposed measures so as to provide clear information on potential savings.

The data used in energy audits shall be storable for historical analysis and tracking performance.

ANNEX VII

Minimum requirements for billing and billing information based on actual consumption

1. Minimum requirements for billing

1.1. Billing based on actual consumption

In order to enable final customers to regulate their own energy consumption, billing should take place on the basis of actual consumption at least once a year, and billing information should be made available at least quarterly, on request or where the consumers have opted to receive electronic billing or else twice yearly. Gas used only for cooking purposes may be exempted from this requirement.

1.2. Minimum information contained in the bill

Contracting Parties shall ensure that, where appropriate, the following information is made available to final customers in clear and understandable terms in or with their bills, contracts, transactions, and receipts at distribution stations:

- (a) current actual prices and actual consumption of energy;
- (b) comparisons of the final customer's current energy consumption with consumption for the same period in the previous year, preferably in graphic form;
- (c) contact information for final customers' organisations, energy agencies or similar bodies, including website addresses, from which information may be obtained on available energy efficiency improvement measures, comparative end-user profiles and objective technical specifications for energy-using equipment. In addition, wherever possible and useful, **Contracting Parties** shall ensure that comparisons with an average normalised or benchmarked final customer in the same user category are made available to final customers in clear and understandable terms, in, with or signposted to within, their bills, contracts, transactions, and receipts at distribution stations.

1.3. Advice on energy efficiency accompanying bills and other feedback to final customers

When sending contracts and contract changes, and in the bills customers receive or through websites addressing individual customers, energy distributors, distribution system operators and retail energy sales companies shall inform their customers in a clear and understandable manner of contact information for independent consumer advice centres, energy agencies or similar institutions, including their internet addresses, where they can obtain advice on available energy efficiency measures, benchmark profiles for their energy consumption and technical specifications of energy using appliances that can serve to reduce the consumption of these appliances.

ANNEX VIII

Potential for efficiency in heating and cooling

1. The comprehensive assessment of national heating and cooling potentials referred to in Article 14(1) shall include:

- (a) a description of heating and cooling demand;
- (b) a forecast of how this demand will change in the next 10 years, taking into account in particular the evolution of demand in buildings and the different sectors of industry;
- (c) a map of the national territory, identifying, while preserving commercially sensitive information:
 - (i) heating and cooling demand points, including:
 - municipalities and conurbations with a plot ratio of at least 0,3, and
 - industrial zones with a total annual heating and cooling consumption of more than 20 GWh;
 - (ii) existing and planned district heating and cooling infrastructure;
 - (iii) potential heating and cooling supply points, including:
 - electricity generation installations with a total annual electricity production of more than 20 GWh, and
 - waste incineration plants,
 - existing and planned cogeneration installations using technologies referred to in Part II of Annex I, and district heating installations;
- (d) identification of the heating and cooling demand that could be satisfied by high-efficiency cogeneration, including residential micro-cogeneration, and by district heating and cooling;
- (e) identification of the potential for additional high-efficiency cogeneration, including from the refurbishment of existing and the construction of new generation and industrial installations or other facilities generating waste heat;
- (f) identification of energy efficiency potentials of district heating and cooling infrastructure;
- (g) strategies, policies and measures that may be adopted up to 2020 and up to 2030 to realise the potential in point (e) in order to meet the demand in point (d), including, where appropriate, proposals to:
 - (i) increase the share of cogeneration in heating and cooling production and in electricity production;
 - (ii) develop efficient district heating and cooling infrastructure to accommodate the development of high-efficiency cogeneration and the use of heating and cooling from waste heat and renewable energy sources;
 - (iii) encourage new thermal electricity generation installations and industrial plants producing waste heat to be located in sites where a maximum amount of the available waste heat will be recovered to meet existing or forecasted heat and cooling demand;
 - (iv) encourage new residential zones or new industrial plants which consume heat in their production processes to be located where available waste heat, as identified in the comprehensive

assessment, can contribute to meeting their heat and cooling demands. This could include proposals that support the clustering of a number of individual installations in the same location with a view to ensuring an optimal matching between demand and supply for heat and cooling;

(v) encourage thermal electricity generating installations, industrial plants producing waste heat, waste incineration plants and other waste-to-energy plants to be connected to the local district heating or cooling network;

(vi) encourage residential zones and industrial plants which consume heat in their production processes to be connected to the local district heating or cooling network;

(h) the share of high-efficiency cogeneration and the potential established and progress achieved under Directive 2004/8/EC;

(i) an estimate of the primary energy to be saved;

(j) an estimate of public support measures to heating and cooling, if any, with the annual budget and identification of the potential aid element. This does not prejudice a separate notification of the public support schemes for a State aid assessment.

2. To the extent appropriate, the comprehensive assessment may be made up of an assembly of regional or local plans and strategies.

ANNEX IX

Cost-benefit analysis

Part 1

General principles of the cost-benefit analysis

The purpose of preparing cost-benefit analyses in relation to measures for promoting efficiency in heating and cooling as referred to in Article 14(3) is to provide a decision base for qualified prioritisation of limited resources at society level.

The cost-benefit analysis may either cover a project assessment or a group of projects for a broader local, regional or national assessment in order to establish the most cost-effective and beneficial heating or cooling option for a given geographical area for the purpose of heat planning.

Cost-benefit analyses for the purposes of Article 14(3) shall include an economic analysis covering socio-economic and environmental factors.

The cost-benefit analyses shall include the following steps and considerations:

(a) Establishing a system boundary and geographical boundary

The scope of the cost-benefit analyses in question determines the relevant energy system. The geographical boundary shall cover a suitable well-defined geographical area, e.g. a given region or metropolitan area, to avoid selecting sub-optimised solutions on a project by project basis.

(b) Integrated approach to demand and supply options

The cost-benefit analysis shall take into account all relevant supply resources available within the system and geographical boundary, using the data available, including waste heat from electricity generation and industrial installations and renewable energy, and the characteristics of, and trends in heat and cooling demand.

(c) Constructing a baseline

The purpose of the baseline is to serve as a reference point, to which the alternative scenarios are evaluated.

(d) Identifying alternative scenarios

All relevant alternatives to the baseline shall be considered. Scenarios that are not feasible due to technical reasons, financial reasons, national regulation or time constraints may be excluded at an early stage of the cost-benefit analysis if justified based on careful, explicit and well-documented considerations.

Only high-efficiency cogeneration, efficient district heating and cooling or efficient individual heating and cooling supply options should be taken into account in the cost-benefit analysis as alternative scenarios compared to the baseline.

(e) Method for the calculation of cost-benefit surplus

(i) The total long-term costs and benefits of heat or cooling supply options shall be assessed and compared.

(ii) The criterion for evaluation shall be the net present value (NPV) criterion.

(iii) The time horizon shall be chosen such that all relevant costs and benefits of the scenarios

are included. For example, for a gas-fired power plant an appropriate time horizon could be 25 years, for a district heating system, 30 years, or for heating equipment such as boilers 20 years.

(f) Calculation and forecast of prices and other assumptions for the economic analysis

(i) **Contracting Parties** shall provide assumptions, for the purpose of the cost-benefit analyses, on the prices of major input and output factors and the discount rate.

(ii) The discount rate used in the economic analysis for the calculation of net present value shall be chosen according to European or national guidelines.¹⁵

(iii) **Contracting Parties** shall use national, European or international energy price development forecasts if appropriate in their national and/or regional/local context.

(iv) The prices used in the economic analysis shall reflect the true socio economic costs and benefits and should include external costs, such as environmental and health effects, to the extent possible, i.e. when a market price exists or when it is already included in European or national regulation.

(g) Economic analysis: Inventory of effects

The economic analyses shall take into account all relevant economic effects.

Contracting Parties may assess and take into account in decision making costs and energy savings from the increased flexibility in energy supply and from a more optimal operation of the electricity networks, including avoided costs and savings from reduced infrastructure investment, in the analysed scenarios.

The costs and benefits taken into account shall include at least the following:

(i) Benefits

- Value of output to the consumer (heat and electricity)
- External benefits such as environmental and health benefits, to the extent possible

(ii) Costs

- Capital costs of plants and equipments
- Capital costs of the associated energy networks
- Variable and fixed operating costs
- Energy costs
- Environmental and health cost, to the extent possible

(h) Sensitivity analysis:

A sensitivity analysis shall be included to assess the costs and benefits of a project or group of projects based on different energy prices, discount rates and other variable factors having a significant impact on the outcome of the calculations. The **Contracting Parties** shall designate the competent authorities responsible for carrying out the cost-benefit analyses under Article 14. **Contracting Parties** may require competent local, regional and national authorities or operators of individual installations to carry out the economic and financial analysis. They shall provide the detailed methodologies and assumptions in accordance with this Annex and establish and make public the procedures for the economic analysis.

¹⁵ The national discount rate chosen for the purpose of economic analysis should take into account data provided by the European Central Bank.

Part 2

Principles for the purpose of Article 14(5) and (7)

The cost-benefit analyses shall provide information for the purpose of the measures in Article 14(5) and (7):

If an electricity-only installation or an installation without heat recovery is planned, a comparison shall be made between the planned installations or the planned refurbishment and an equivalent installation producing the same amount of electricity or process heat, but recovering the waste heat and supplying heat through high-efficiency cogeneration and/or district heating and cooling networks.

Within a given geographical boundary the assessment shall take into account the planned installation and any appropriate existing or potential heat demand points that could be supplied from it, taking into account rational possibilities (for example, technical feasibility and distance).

The system boundary shall be set to include the planned installation and the heat loads, such as building(s) and industrial process. Within this system boundary the total cost of providing heat and power shall be determined for both cases and compared.

Heat loads shall include existing heat loads, such as an industrial installation or an existing district heating system, and also, in urban areas, the heat load and costs that would exist if a group of buildings or part of a city were provided with and/or connected into a new district heating network.

The cost-benefit analysis shall be based on a description of the planned installation and the comparison installation(s), covering electrical and thermal capacity, as applicable, fuel type, planned usage and the number of planned operating hours annually, location and electricity and thermal demand.

For the purpose of the comparison, the thermal energy demand and the types of heating and cooling used by the nearby heat demand points shall be taken into account. The comparison shall cover infrastructure related costs for the planned and comparison installation.

Cost-benefit analyses for the purposes of Article 14(5) shall include an economic analysis covering a financial analysis reflecting actual cash flow transactions from investing in and operating individual installations.

Projects with positive cost-benefit outcome are those where the sum of discounted benefits in the economic and financial analysis exceeds the sum of discounted costs (cost-benefit surplus).

Contracting Parties shall set guiding principles for the methodology, assumptions and time horizon for the economic analysis.

Contracting Parties may require that the companies responsible for the operation of thermal electric generation installations, industrial companies, district heating and cooling networks, or other parties influenced by the defined system boundary and geographical boundary, contribute data for use in assessing the costs and benefits of an individual installation.

ANNEX X

Guarantee of origin for electricity produced from high-efficiency cogeneration

(a) **Contracting Parties** shall take measures to ensure that:

(i) the guarantee of origin of the electricity produced from high-efficiency cogeneration:

- enable producers to demonstrate that the electricity they sell is produced from high-efficiency cogeneration and is issued to this effect in response to a request from the producer,
- is accurate, reliable and fraud-resistant,
- is issued, transferred and cancelled electronically;

(ii) the same unit of energy from high-efficiency cogeneration is taken into account only once.

(b) The guarantee of origin referred to in Article 14(10) shall contain at least the following information:

- (i) the identity, location, type and capacity (thermal and electrical) of the installation where the energy was produced;
- (ii) the dates and places of production;
- (iii) the lower calorific value of the fuel source from which the electricity was produced;
- (iv) the quantity and the use of the heat generated together with the electricity;
- (v) the quantity of electricity from high-efficiency cogeneration in accordance with Annex II that the guarantee represents;
- (vi) the primary energy savings calculated in accordance with Annex II based on the harmonised efficiency reference values indicated in point (f) of Annex II;
- (vii) the nominal electric and thermal efficiency of the plant;
- (viii) whether and to what extent the installation has benefited from investment support;
- (ix) whether and to what extent the unit of energy has benefited in any other way from a national support scheme, and the type of support scheme;
- (x) the date on which the installation became operational; and
- (xi) the date and country of issue and a unique identification number.

The guarantee of origin shall be of the standard size of 1 MWh. It shall relate to the net electricity output measured at the station boundary and exported to the grid.

ANNEX XI

Energy efficiency criteria for energy network regulation and for electricity network tariffs

1. Network tariffs shall be cost-reflective of cost-savings in networks achieved from demand-side and demand- response measures and distributed generation, including savings from lowering the cost of delivery or of network investment and a more optimal operation of the network.

2. Network regulation and tariffs shall not prevent network operators or energy retailers making available system services for demand response measures, demand management and distributed generation on organised electricity markets, in particular:

(a) the shifting of the load from peak to off-peak times by final customers taking into account the availability of renewable energy, energy from cogeneration and distributed generation;

(b) energy savings from demand response of distributed consumers by energy aggregators;

(c) demand reduction from energy efficiency measures undertaken by energy service providers, including energy service companies;

(d) the connection and dispatch of generation sources at lower voltage levels;

(e) the connection of generation sources from closer location to the consumption; and

(f) the storage of energy. For the purposes of this provision the term 'organised electricity markets' shall include over-the-counter markets and electricity exchanges for trading energy, capacity, balancing and ancillary services in all timeframes, including forward, day-ahead and intra-day markets.

3. Network or retail tariffs may support dynamic pricing for demand response measures by final customers, such as:

(a) time-of-use tariffs;

(b) critical peak pricing;

(c) real time pricing; and

(d) peak time rebates.

ANNEX XII

Energy efficiency requirements for transmission system operators and distribution system operators

Transmission system operators and distribution system operators shall:

- (a) set up and make public their standard rules relating to the bearing and sharing of costs of technical adaptations, such as grid connections and grid reinforcements, improved operation of the grid and rules on the non-discriminatory implementation of the grid codes, which are necessary in order to integrate new producers feeding electricity produced from high-efficiency cogeneration into the interconnected grid;
- (b) provide any new producer of electricity produced from high-efficiency cogeneration wishing to be connected to the system with the comprehensive and necessary information required, including:
 - (i) a comprehensive and detailed estimate of the costs associated with the connection;
 - (ii) a reasonable and precise timetable for receiving and processing the request for grid connection;
 - (iii) a reasonable indicative timetable for any proposed grid connection. The overall process to become connected to the grid should be no longer than 24 months, bearing in mind what is reasonably practicable and non-discriminatory;
- (c) provide standardised and simplified procedures for the connection of distributed high-efficiency cogeneration producers to facilitate their connection to the grid.

The standard rules referred to in point (a) shall be based on objective, transparent and non-discriminatory criteria taking particular account of all the costs and benefits associated with the connection of those producers to the grid. They may provide for different types of connection.

ANNEX XIII

Minimum items to be included in energy performance contracts with the public sector or in the associated tender specifications

- Clear and transparent list of the efficiency measures to be implemented or the efficiency results to be obtained.
- Guaranteed savings to be achieved by implementing the measures of the contract.
- Duration and milestones of the contract, terms and period of notice.
- Clear and transparent list of the obligations of each contracting party.
- Reference date(s) to establish achieved savings.
- Clear and transparent list of steps to be performed to implement a measure or package of measures and, where relevant, associated costs.
- Obligation to fully implement the measures in the contract and documentation of all changes made during the project.
- Regulations specifying the inclusion of equivalent requirements in any subcontracting with third parties.
- Clear and transparent display of financial implications of the project and distribution of the share of both parties in the monetary savings achieved (i.e. remuneration of the service provider).
- Clear and transparent provisions on measurement and verification of the guaranteed savings achieved, quality checks and guarantees.
- Provisions clarifying the procedure to deal with changing framework conditions that affect the content and the outcome of the contract (i.e. changing energy prices, use intensity of an installation).
- Detailed information on the obligations of each of the contracting party and of the penalties for their breach.

ANNEX XIV

General framework for reporting

PART 1

General framework for annual reports

The annual reports referred to in Article 24(1) provide a basis for the monitoring of the progress towards national 2020 targets. **Contracting Parties** shall ensure that the reports include the following minimum information:

- (a) an estimate of following indicators in the year before last (year X¹⁶ (1) - 2):
 - (i) primary energy consumption;
 - (ii) total final energy consumption;
 - (iii) final energy consumption by sector
 - industry
 - transport (split between passenger and freight transport, if available)
 - households
 - services;
 - (iv) gross value added by sector
 - industry
 - services;
 - (v) disposable income of households;
 - (vi) gross domestic product (GDP);
 - (vii) electricity generation from thermal power generation;
 - (viii) electricity generation from combined heat and power;
 - (ix) heat generation from thermal power generation;
 - (x) heat generation from combined heat and power plants, including industrial waste heat;
 - (xi) fuel input for thermal power generation;
 - (xii) passenger kilometres (pkm), if available;
 - (xiii) tonne kilometres (tkm), if available;
 - (xiv) combined transport kilometres (pkm + tkm), in case (xii) and (xiii) are not available;
 - (xv) population.

In sectors where energy consumption remains stable or is growing, Contracting Parties shall analyse the reasons for it and attach their appraisal to the estimates.

The second and subsequent reports shall also include points (b) to (e):

- (b) updates on major legislative and non-legislative measures implemented in the previous year which contribute towards the overall national energy efficiency targets for 2020;

¹⁶ X = current year

(c) the total building floor area of the buildings with a total useful floor area over 500 m² and as of **1 January 2019** over 250 m² owned and occupied by the **Contracting Parties** central government that, on 1 January of the year in which the report is due, did not meet the energy performance requirements referred to in Article 5(1);

(d) the total building floor area of heated and/or cooled buildings owned and occupied by the **Contracting Parties** central government that was renovated in the previous year referred to in Article 5(1) or the amount of energy savings in eligible buildings owned and occupied by their central government as referred to in Article 5(6);

(e) energy savings achieved through the national energy efficiency obligation schemes referred to in Article 7(1) or the alternative measures adopted in application of Article 7(9).

The first report shall also include the national target referred to in Article 3(1).

In the annual reports referred to in Article 24(1) **Contracting Parties** may also include additional national targets. These may be related in particular to the statistical indicators enumerated in point (a) of this Part or combinations thereof, such as primary or final energy intensity or sectoral energy intensities.

PART 2

General framework for National Energy Efficiency Action Plans

National Energy Efficiency Action Plans referred to in Article 24(2) shall provide a framework for the development of national energy efficiency strategies.

The National Energy Efficiency Action Plans shall cover significant energy efficiency improvement measures and expected/achieved energy savings, including those in the supply, transmission and distribution of energy as well as energy end-use. Contracting Parties shall ensure that the National Energy Efficiency Action Plans include the following minimum information:

1. *Targets and strategies*

- the indicative national energy efficiency target for 2020 as required by Article 3(1),
- the national indicative energy savings target set in Article 4(1) of Directive 2006/32/EC, **as incorporated and adapted by the Ministerial Council Decision 2009/05/MC-EnC**,
- other existing energy efficiency targets addressing the whole economy or specific sectors.

2. *Measures and energy savings*

The National Energy Efficiency Action Plans shall provide information on measures adopted or planned to be adopted in view of implementing the main elements of this Directive and on their related savings.

(a) Primary energy savings

The National Energy Efficiency Action Plans shall list significant measures and actions taken towards primary energy saving in all sectors of the economy. For every measure or package of measures/actions estimations of expected savings for 2020 and savings achieved by the time of the reporting shall be provided.

Where available, information on other impacts/benefits of the measures (greenhouse gas emissions reduction, improved air quality, job creation, etc.) and the budget for the implementation should be provided.

(b) Final energy savings

The first and second National Energy Efficiency Action Plans shall include the results with regard to the fulfilment of the final energy savings target set out in Article 4(1) and (2) of the Directive 2006/32/EC, **as incorporated and adapted by the Ministerial Council Decision 2009/05/MC-EnC**. If calculation/estimation of savings per measure is not available, sector level energy reduction shall be shown due to (the combination) of measures.

The first and second National Energy Efficiency Action Plans shall also include the measurement and/or calculation methodology used for calculating the energy savings. If the 'recommended methodology'¹⁷ is applied, the National Energy Efficiency Action Plan should provide references to this.

3. Specific information related to this Directive

3.1. Public bodies (Article 5)

National Energy Efficiency Action Plans shall include the list of public bodies having developed an energy efficiency plan in accordance with Article 5(7).

3.2. Energy efficiency obligations (Article 7)

National Energy Efficiency Action Plans shall include the national coefficients chosen in accordance with Annex IV.

The first National Energy Efficiency Action Plan shall include a short description of the national scheme referred to in Article 7(1) or the alternative measures adopted in application of Article 7(9).

3.3. Energy audits and management systems (Article 8)

National Energy Efficiency Action Plans shall include:

- (a) the number of energy audits carried out in the previous period;
- (b) the number of energy audits carried out in large enterprises in the previous period;
- (c) the number of large companies in their territory, with an indication of the number of those to which Article 8(5) is applicable.

3.4. Promotion of efficient heating and cooling (Article 14)

National Energy Efficiency Action Plans shall include an assessment of the progress achieved in implementing the comprehensive assessment referred to in Article 14(1).

3.5. Energy transmission and distribution (Article 15)

The first National Energy Efficiency Action Plan and the subsequent reports due every 10 years thereafter shall include the assessment made, the measures and investments identified to utilise the energy efficiency potentials of gas and electricity infrastructure referred to in Article 15(2).

3.6. Contracting Parties shall report, as part of their National Energy Efficiency Action Plans, on the measures undertaken to enable and develop demand response as referred to in Article 15.

3.7. Availability of qualification, accreditation and certification schemes (Article 16)

National Energy Efficiency Action Plans shall include information on the available qualification, accreditation and certification schemes or equivalent qualification schemes for the providers of energy services, energy audits and energy efficiency improvement measures.

¹⁷ Recommendations on Measurement and Verification Methods in the framework of the Directive 2006/32/EC on Energy End-Use Efficiency and Energy Services.

3.8. Energy Services (Article 18)

National Energy Efficiency Action Plans shall include an internet link to the website where the list or the interface of energy services providers referred to in point (c) of Article 18(1) can be accessible.

3.9. Other measures to promote energy efficiency (Article 19)

The first National Energy Efficiency Action Plan shall include a list of the measures referred to in Article 19(1).

DIRECTIVE 2010/31/EU of 19 May 2010 on the energy performance of buildings

Incorporated and adapted by Ministerial Council Decision 2010/02/MC-EnC of 24 September 2010 amending Decision 2009/05/MC-EnC of 18 December 2009 on the implementation of certain Directives on Energy Efficiency.

*The adaptations made by Ministerial Council Decision 2010/02/MC-EnC are highlighted in **bold and blue**.*

Whereas:

(1) Directive 2002/91/EC of the European Parliament and of the Council of 16 December 2002 on the energy performance of buildings has been amended. Since further substantive amendments are to be made, it should be recast in the interests of clarity.

(2) An efficient, prudent, rational and sustainable utilisation of energy applies, *inter alia*, to oil products, natural gas and solid fuels, which are essential sources of energy, but also the leading sources of carbon dioxide emissions.

(3) Buildings account for 40% of total energy consumption in the Union. The sector is expanding, which is bound to increase its energy consumption. Therefore, reduction of energy consumption and the use of energy from renewable sources in the buildings sector constitute important measures needed to reduce the Union's energy dependency and greenhouse gas emissions. Together with an increased use of energy from renewable sources, measures taken to reduce energy consumption in the Union would allow the Union to comply with the Kyoto Protocol to the United Nations Framework Convention on Climate Change (UNFCCC), and to honour both its long term commitment to maintain the global temperature rise below 2 °C, and its commitment to reduce, by 2020, overall greenhouse gas emissions by at least 20% below 1990 levels, and by 30% in the event of an international agreement being reached. Reduced energy consumption and an increased use of energy from renewable sources also have an important part to play in promoting security of energy supply, technological developments and in creating opportunities for employment and regional development, in particular in rural areas.

(4) Management of energy demand is an important tool enabling the Union to influence the global energy market and hence the security of energy supply in the medium and long term.

(5) The European Council of March 2007 emphasised the need to increase energy efficiency in the Union so as to achieve the objective of reducing by 20% the Union's energy consumption by 2020 and called for a thorough and rapid implementation of the priorities established in the Commission Communication entitled "Action plan for energy efficiency: realising the potential". That action plan identified the significant potential for cost-effective energy savings in the buildings sector. The European Parliament, in its resolution of 31 January 2008, called for the strengthening of the provisions of Directive 2002/91/EC, and has called at various times, on the latest occasion in its resolution of 3 February 2009 on the Second Strategic Energy Review, for the 20% energy efficiency target in 2020 to be made binding. Moreover, Decision No 406/2009/EC of the European Parliament and of the Council of 23 April 2009 on the effort of Member States to reduce their greenhouse gas emissions to meet the Community's greenhouse gas emission reduction commitments up to 2020, sets national binding targets for CO₂ reduction for which energy efficiency in the building sector will be crucial,

and Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources provides for the promotion of energy efficiency in the context of a binding target for energy from renewable sources accounting for 20% of total Union energy consumption by 2020.

(6) The European Council of March 2007 reaffirmed the Union's commitment to the Union-wide development of energy from renewable sources by endorsing a mandatory target of a 20% share of energy from renewable sources by 2020. Directive 2009/28/EC establishes a common framework for the promotion of energy from renewable sources.

(7) It is necessary to lay down more concrete actions with a view to achieving the great unrealised potential for energy savings in buildings and reducing the large differences between Member States' results in this sector.

(8) Measures to improve further the energy performance of buildings should take into account climatic and local conditions as well as indoor climate environment and cost-effectiveness. These measures should not affect other requirements concerning buildings such as accessibility, safety and the intended use of the building.

(9) The energy performance of buildings should be calculated on the basis of a methodology, which may be differentiated at national and regional level. That includes, in addition to thermal characteristics, other factors that play an increasingly important role such as heating and air-conditioning installations, application of energy from renewable sources, passive heating and cooling elements, shading, indoor air-quality, adequate natural light and design of the building. The methodology for calculating energy performance should be based not only on the season in which heating is required, but should cover the annual energy performance of a building. That methodology should take into account existing European standards.

(10) It is the sole responsibility of Member States to set minimum requirements for the energy performance of buildings and building elements. Those requirements should be set with a view to achieving the cost-optimal balance between the investments involved and the energy costs saved throughout the lifecycle of the building, without prejudice to the right of Member States to set minimum requirements which are more energy efficient than cost-optimal energy efficiency levels. Provision should be made for the possibility for Member States to review regularly their minimum energy performance requirements for buildings in the light of technical progress.

(11) The objective of cost-effective or cost-optimal energy efficiency levels may, in certain circumstances, for example in the light of climatic differences, justify the setting by Member States of cost-effective or cost-optimal requirements for building elements that would in practice limit the installation of building products that comply with standards set by Union legislation, provided that such requirements do not constitute an unjustifiable market barrier.

(12) When setting energy performance requirements for technical building systems, Member States should use, where available and appropriate, harmonised instruments, in particular testing and calculation methods and energy efficiency classes developed under measures implementing Directive 2009/125/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for the setting of ecodesign requirements for energy-related products and Directive 2010/30/EU of the European Parliament and of the Council of 19 May 2010 on the indication by labelling and standard product information of the consumption of energy and other resources by energy-related products, with a view to ensuring coherence with related initiatives and minimise, to

the extent possible, potential fragmentation of the market.

(13) This Directive is without prejudice to Articles 107 and 108 of the Treaty on the Functioning of the European Union (TFEU). The term “incentive” used in this Directive should not therefore be interpreted as constituting State aid.

(14) The Commission should lay down a comparative methodology framework for calculating cost-optimal levels of minimum energy performance requirements. Member States should use this framework to compare the results with the minimum energy performance requirements which they have adopted. Should significant discrepancies, i.e. exceeding 15%, exist between the calculated cost-optimal levels of minimum energy performance requirements and the minimum energy performance requirements in force, Member States should justify the difference or plan appropriate steps to reduce the discrepancy. The estimated economic lifecycle of a building or building element should be determined by Member States, taking into account current practices and experience in defining typical economic lifecycles. The results of this comparison and the data used to reach these results should be regularly reported to the Commission. These reports should enable the Commission to assess and report on the progress of Member States in reaching cost-optimal levels of minimum energy performance requirements.

(15) Buildings have an impact on long-term energy consumption. Given the long renovation cycle for existing buildings, new, and existing buildings that are subject to major renovation, should therefore meet minimum energy performance requirements adapted to the local climate. As the application of alternative energy supply systems is not generally explored to its full potential, alternative energy supply systems should be considered for new buildings, regardless of their size, pursuant to the principle of first ensuring that energy needs for heating and cooling are reduced to cost-optimal levels.

(16) Major renovations of existing buildings, regardless of their size, provide an opportunity to take cost-effective measures to enhance energy performance. For reasons of cost-effectiveness, it should be possible to limit the minimum energy performance requirements to the renovated parts that are most relevant for the energy performance of the building. Member States should be able to choose to define a “major renovation” either in terms of a percentage of the surface of the building envelope or in terms of the value of the building. If a Member State decides to define a major renovation in terms of the value of the building, values such as the actuarial value, or the current value based on the cost of reconstruction, excluding the value of the land upon which the building is situated, could be used.

(17) Measures are needed to increase the number of buildings which not only fulfil current minimum energy performance requirements, but are also more energy efficient, thereby reducing both energy consumption and carbon dioxide emissions. For this purpose Member States should draw up national plans for increasing the number of nearly zero-energy buildings and regularly report such plans to the Commission.

(18) Union financial instruments and other measures are being put into place or adapted with the aim of stimulating energy efficiency-related measures. Such financial instruments at Union level include, *inter alia*, Regulation (EC) No 1080/2006 of the European Parliament and of the Council of 5 July 2006 on the European Regional Development Fund, amended to allow increased investments in energy efficiency in housing; the public-private partnership on a “European energy-efficient buildings” initiative to promote green technologies and the development of energy-efficient systems and materials in new and renovated buildings; the EC-European Investment Bank (EIB) initiative

“EU sustainable energy financing initiative” which aims to enable, *inter alia*, investments for energy efficiency and the EIB-led “Marguerite Fund”: the 2020 European Fund for Energy, Climate Change and Infrastructure; Council Directive 2009/47/EC of 5 May 2009 amending Directive 2006/112/EC as regards reduced rates of value added tax, structural and cohesion funds instrument Jeremie (Joint European Resources for micro to medium enterprises); the Energy Efficiency Finance Facility; the Competitiveness and Innovation Framework Programme including the Intelligent Energy Europe II Programme focused specifically on removing market barriers related to energy efficiency and energy from renewable sources through for example the technical assistance facility ELENA (European Local Energy Assistance); the Covenant of Mayors; the Entrepreneurship and Innovation programme; the ICT Policy Support Programme 2010, and the Seventh Research Framework Programme. The European Bank for Reconstruction and Development also provides funding with the aim of stimulating energy-efficiency-related measures.

(19) Union financial instruments should be used to give practical effect to the objectives of this Directive, without however substituting national measures. In particular, they should be used for providing appropriate and innovative means of financing to catalyse investment in energy efficiency measures. They could play an important role in the development of national, regional and local energy efficiency funds, instruments, or mechanisms, which deliver such financing possibilities to private property owners, to small and medium-sized enterprises and to energy efficiency service companies.

(20) In order to provide the Commission with adequate information, Member States should draw up lists of existing and proposed measures, including those of a financial nature, other than those required by this Directive, which promote the objectives of this Directive. The existing and proposed measures listed by Member States may include, in particular, measures that aim to reduce existing legal and market barriers and encourage investments and/or other activities to increase the energy efficiency of new and existing buildings, thus potentially contributing to reducing energy poverty. Such measures could include, but should not be limited to, free or subsidised technical assistance and advice, direct subsidies, subsidised loan schemes or low interest loans, grant schemes and loan guarantee schemes. The public authorities and other institutions which provide those measures of a financial nature could link the application of such measures to the indicated energy performance and the recommendations from energy performance certificates.

(21) In order to limit the reporting burden on Member States it should be possible to integrate the reports required by this Directive into the Energy Efficiency Action Plans referred to in Article 14(2) of Directive 2006/32/EC of the European Parliament and of the Council of 5 April 2006 on energy end-use efficiency and energy services. The public sector in each Member State should lead the way in the field of energy performance of buildings, and therefore the national plans should set more ambitious targets for the buildings occupied by public authorities.

(22) The prospective buyer and tenant of a building or building unit should, in the energy performance certificate, be given correct information about the energy performance of the building and practical advice on improving such performance. Information campaigns may serve to further encourage owners and tenants to improve the energy performance of their building or building unit. Owners and tenants of commercial buildings should also be encouraged to exchange information regarding actual energy consumption, in order to ensure that all the data are available to make informed decisions about necessary improvements. The energy performance certificate should also provide information about the actual impact of heating and cooling on the energy needs of the building, on its primary energy consumption and on its carbon dioxide emissions.

(23) Public authorities should lead by example and should endeavour to implement the recommendations included in the energy performance certificate. Member States should include within their national plans measures to support public authorities to become early adopters of energy efficiency improvements and to implement the recommendations included in the energy performance certificate as soon as feasible.

(24) Buildings occupied by public authorities and buildings frequently visited by the public should set an example by showing that environmental and energy considerations are being taken into account and therefore those buildings should be subject to energy certification on a regular basis. The dissemination to the public of information on energy performance should be enhanced by clearly displaying these energy performance certificates, in particular in buildings of a certain size which are occupied by public authorities or which are frequently visited by the public, such as shops and shopping centres, supermarkets, restaurants, theatres, banks and hotels.

(25) Recent years have seen a rise in the number of air-conditioning systems in European countries. This creates considerable problems at peak load times, increasing the cost of electricity and disrupting the energy balance. Priority should be given to strategies which enhance the thermal performance of buildings during the summer period. To that end, there should be focus on measures which avoid overheating, such as shading and sufficient thermal capacity in the building construction, and further development and application of passive cooling techniques, primarily those that improve indoor climatic conditions and the micro-climate around buildings.

(26) Regular maintenance and inspection of heating and air-conditioning systems by qualified personnel contributes to maintaining their correct adjustment in accordance with the product specification and in that way ensures optimal performance from an environmental, safety and energy point of view. An independent assessment of the entire heating and air-conditioning system should occur at regular intervals during its lifecycle in particular before its replacement or upgrading. In order to minimise the administrative burden on building owners and tenants, Member States should endeavour to combine inspections and certifications as far as possible.

(27) A common approach to the energy performance certification of buildings and to the inspection of heating and air-conditioning systems, carried out by qualified and/or accredited experts, whose independence is to be guaranteed on the basis of objective criteria, will contribute to a level playing field as regards efforts made in Member States to energy saving in the buildings sector and will introduce transparency for prospective owners or users with regard to energy performance in the Union property market. In order to ensure the quality of energy performance certificates and of the inspection of heating and air-conditioning systems throughout the Union, an independent control mechanism should be established in each Member State.

(28) Since local and regional authorities are critical for the successful implementation of this Directive, they should be consulted and involved, as and when appropriate in accordance with applicable national legislation, on planning issues, the development of programmes to provide information, training and awareness-raising, and on the implementation of this Directive at national or regional level. Such consultations may also serve to promote the provision of adequate guidance to local planners and building inspectors to carry out the necessary tasks. Furthermore, Member States should enable and encourage architects and planners to properly consider the optimal combination of improvements in energy efficiency, use of energy from renewable sources and use of district heating and cooling when planning, designing, building and renovating industrial or residential areas.

(29) Installers and builders are critical for the successful implementation of this Directive. Therefore, an adequate number of installers and builders should, through training and other measures, have the appropriate level of competence for the installation and integration of the energy efficient and renewable energy technology required.

(30) Member States should take account of Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications with regard to the mutual recognition of professional experts which are addressed by this Directive, and the Commission should continue its activities under the Intelligent Energy Europe Programme on guidelines and recommendations for standards for the training of such professional experts.

(31) In order to enhance the transparency of energy performance in the Union's non-residential property market, uniform conditions for a voluntary common certification scheme for the energy performance of non-residential buildings should be established. In accordance with Article 291 TFEU, rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers shall be laid down in advance by a regulation adopted in accordance with the ordinary legislative procedure. Pending the adoption of that new regulation, Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission continues to apply, with the exception of the regulatory procedure with scrutiny, which is not applicable.

(32) The Commission should be empowered to adopt delegated acts in accordance with Article 290 TFEU in respect of the adaptation to technical progress of certain parts of the general framework set out in Annex I, and in respect of the establishment of a methodology framework for calculating cost-optimal levels of minimum energy performance requirements. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level.

(33) Since the objective of this Directive, namely of enhancing the energy performance of buildings, cannot be sufficiently achieved by the Member States, due to the complexity of the buildings sector and the inability of the national housing markets to adequately address the challenges of energy efficiency, and can by the reason of the scale and the effects of the action be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principles of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

(34) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive change as compared with Directive 2002/91/EC. The obligation to transpose the provisions which are unchanged arises under that Directive.

(35) This Directive should be without prejudice to the obligations of the Member States relating to the time limits for transposition into national law and application of the Directive 2002/91/EC.

(36) In accordance with point 34 of the Interinstitutional Agreement on better law-making, Member States are encouraged to draw up, for themselves and in the interest of the Union, their own tables, illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public.

Article 1

Subject matter

1. This Directive promotes the improvement of the energy performance of buildings within the **Energy Community**, taking into account outdoor climatic and local conditions, as well as indoor climate requirements and cost-effectiveness.
2. This Directive lays down requirements as regards:
 - (a) the common general framework for a methodology for calculating the integrated energy performance of buildings and building units;
 - (b) the application of minimum requirements to the energy performance of new buildings and new building units;
 - (c) the application of minimum requirements to the energy performance of:
 - (i) existing buildings, building units and building elements that are subject to major renovation;
 - (ii) building elements that form part of the building envelope and that have a significant impact on the energy performance of the building envelope when they are retrofitted or replaced; and
 - (iii) technical building systems whenever they are installed, replaced or upgraded;
 - (d) national plans for increasing the number of nearly zero-energy buildings;
 - (e) energy certification of buildings or building units;
 - (f) regular inspection of heating and air-conditioning systems in buildings; and
 - (g) independent control systems for energy performance certificates and inspection reports.
3. The requirements laid down in this Directive are minimum requirements and shall not prevent any **Contracting Party** from maintaining or introducing more stringent measures. Such measures shall be compatible with the Treaty on the Functioning of the European Union. They shall be notified to the **Secretariat**.

Article 2

Definitions

For the purpose of this Directive, the following definitions shall apply:

1. “building” means a roofed construction having walls, for which energy is used to condition the indoor climate;
2. “nearly zero-energy building” means a building that has a very high energy performance, as determined in accordance with Annex I. The nearly zero or very low amount of energy required should be covered to a very significant extent by energy from renewable sources, including energy from renewable sources produced on-site or nearby;
3. “technical building system” means technical equipment for the heating, cooling, ventilation, hot water, lighting or for a combination thereof, of a building or building unit;
4. “energy performance of a building” means the calculated or measured amount of energy needed to meet the energy demand associated with a typical use of the building, which includes, *inter alia*,

energy used for heating, cooling, ventilation, hot water and lighting;

5. “primary energy” means energy from renewable and non-renewable sources which has not undergone any conversion or transformation process;

6. “energy from renewable sources” means energy from renewable non-fossil sources, namely wind, solar, aerothermal, geothermal, hydrothermal and ocean energy, hydropower, biomass, landfill gas, sewage treatment plant gas and biogases;

7. “building envelope” means the integrated elements of a building which separate its interior from the outdoor environment;

8. “building unit” means a section, floor or apartment within a building which is designed or altered to be used separately;

9. “building element” means a technical building system or an element of the building envelope;

10. “major renovation” means the renovation of a building where:

(a) the total cost of the renovation relating to the building envelope or the technical building systems is higher than 25% of the value of the building, excluding the value of the land upon which the building is situated; or

(b) more than 25% of the surface of the building envelope undergoes renovation; **Contracting Parties** may choose to apply option (a) or (b).

11. “European standard” means a standard adopted by the European Committee for Standardisation, the European Committee for Electrotechnical Standardisation or the European Telecommunications Standards Institute and made available for public use;

12. “energy performance certificate” means a certificate recognised by a **Contracting Party** or by a legal person designated by it, which indicates the energy performance of a building or building unit, calculated according to a methodology adopted in accordance with Article 3;

13. “cogeneration” means simultaneous generation in one process of thermal energy and electrical and/or mechanical energy;

14. “cost-optimal level” means the energy performance level which leads to the lowest cost during the estimated economic lifecycle, where:

(a) the lowest cost is determined taking into account energy-related investment costs, maintenance and operating costs (including energy costs and savings, the category of building concerned, earnings from energy produced), where applicable, and disposal costs, where applicable; and

(b) the estimated economic lifecycle is determined by each **Contracting Party**. It refers to the remaining estimated economic lifecycle of a building where energy performance requirements are set for the building as a whole, or to the estimated economic lifecycle of a building element where energy performance requirements are set for building elements.

The cost-optimal level shall lie within the range of performance levels where the cost benefit analysis calculated over the estimated economic lifecycle is positive;

15. “air-conditioning system” means a combination of the components required to provide a form of indoor air treatment, by which temperature is controlled or can be lowered;

16. “boiler” means the combined boiler body-burner unit, designed to transmit to fluids the heat released from burning;

17. “effective rated output” means the maximum calorific output, expressed in kW, specified and

guaranteed by the manufacturer as being deliverable during continuous operation while complying with the useful efficiency indicated by the manufacturer;

18. “heat pump” means a machine, a device or installation that transfers heat from natural surroundings such as air, water or ground to buildings or industrial applications by reversing the natural flow of heat such that it flows from a lower to a higher temperature. For reversible heat pumps, it may also move heat from the building to the natural surroundings;

19. “district heating” or “district cooling” means the distribution of thermal energy in the form of steam, hot water or chilled liquids, from a central source of production through a network to multiple buildings or sites, for the use of space or process heating or cooling.

Article 3

Adoption of a methodology for calculating the energy performance of buildings

Contracting Parties shall apply a methodology for calculating the energy performance of buildings in accordance with the common general framework set out in Annex I.

This methodology shall be adopted at national or regional level.

Article 4

Setting of minimum energy performance requirements

1. **Contracting Parties** shall take the necessary measures to ensure that minimum energy performance requirements for buildings or building units are set with a view to achieving cost-optimal levels. The energy performance shall be calculated in accordance with the methodology referred to in Article 3. Cost-optimal levels shall be calculated in accordance with the comparative methodology framework referred to in Article 5 once the framework is in place.

Contracting Parties shall take the necessary measures to ensure that minimum energy performance requirements are set for building elements that form part of the building envelope and that have a significant impact on the energy performance of the building envelope when they are replaced or retrofitted, with a view to achieving cost-optimal levels.

When setting requirements, **Contracting Parties** may differentiate between new and existing buildings and between different categories of buildings.

These requirements shall take account of general indoor climate conditions, in order to avoid possible negative effects such as inadequate ventilation, as well as local conditions and the designated function and the age of the building.

A **Contracting Party** shall not be required to set minimum energy performance requirements which are not cost-effective over the estimated economic lifecycle.

Minimum energy performance requirements shall be reviewed at regular intervals which shall not be longer than five years and, if necessary, shall be updated in order to reflect technical progress in the building sector.

2. **Contracting Parties** may decide not to set or apply the requirements referred to in paragraph 1 to the following categories of buildings:

- (a) buildings officially protected as part of a designated environment or because of their special architectural or historical merit, in so far as compliance with certain minimum energy performance requirements would unacceptably alter their character or appearance;
- (b) buildings used as places of worship and for religious activities;
- (c) temporary buildings with a time of use of two years or less, industrial sites, workshops and non-residential agricultural buildings with low energy demand and non-residential agricultural buildings which are in use by a sector covered by a national sectoral agreement on energy performance;
- (d) residential buildings which are used or intended to be used for either less than four months of the year or, alternatively, for a limited annual time of use and with an expected energy consumption of less than 25% of what would be the result of all-year use;
- (e) stand-alone buildings with a total useful floor area of less than 50 m².

Article 5

Calculation of cost-optimal levels of minimum energy performance requirements

1. The Commission shall establish by means of delegated acts in accordance with Articles 23, 24 and 25 by 30 June 2011 a comparative methodology framework for calculating cost-optimal levels of minimum energy performance requirements for buildings and building elements.

The comparative methodology framework shall be established in accordance with Annex III and shall differentiate between new and existing buildings and between different categories of buildings.

2. **Contracting Parties** shall calculate cost-optimal levels of minimum energy performance requirements using the comparative methodology framework established in accordance with paragraph 1 and relevant parameters, such as climatic conditions and the practical accessibility of energy infrastructure, and compare the results of this calculation with the minimum energy performance requirements in force.

Contracting Parties shall report to the **Secretariat** all input data and assumptions used for those calculations and the results of those calculations. The report may be included in the Energy Efficiency Action Plans referred to in Article 14(2) of Directive 2006/32/EC. **Contracting Parties** shall submit those reports to the **Secretariat** at regular intervals, which shall not be longer than five years. The first report shall be submitted by **30 June 2013**.

3. If the result of the comparison performed in accordance with paragraph 2 shows that the minimum energy performance requirements in force are significantly less energy efficient than cost-optimal levels of minimum energy performance requirements, the **Contracting Party** concerned shall justify this difference in writing to the **Secretariat** in the report referred to in paragraph 2, accompanied, to the extent that the gap cannot be justified, by a plan outlining appropriate steps to significantly reduce the gap by the next review of the energy performance requirements as referred to in Article 4(1).

4. The **Secretariat** shall publish a report on the progress of the **Contracting Parties** in reaching cost-optimal levels of minimum energy performance requirements.

Article 6

New buildings

1. **Contracting Parties** shall take the necessary measures to ensure that new buildings meet the minimum energy performance requirements set in accordance with Article 4.

For new buildings, **Contracting Parties** shall ensure that, before construction starts, the technical, environmental and economic feasibility of high-efficiency alternative systems such as those listed below, if available, is considered and taken into account:

- (a) decentralised energy supply systems based on energy from renewable sources;
- (b) cogeneration;
- (c) district or block heating or cooling, particularly where it is based entirely or partially on energy from renewable sources;
- (d) heat pumps.

2. **Contracting Parties** shall ensure that the analysis of alternative systems referred to in paragraph 1 is documented and available for verification purposes.

3. That analysis of alternative systems may be carried out for individual buildings or for groups of similar buildings or for common typologies of buildings in the same area. As far as collective heating and cooling systems are concerned, the analysis may be carried out for all buildings connected to the system in the same area.

Article 7

Existing buildings

Contracting Parties shall take the necessary measures to ensure that when buildings undergo major renovation, the energy performance of the building or the renovated part thereof is upgraded in order to meet minimum energy performance requirements set in accordance with Article 4 in so far as this is technically, functionally and economically feasible.

Those requirements shall be applied to the renovated building or building unit as a whole. Additionally or alternatively, requirements may be applied to the renovated building elements.

Contracting Parties shall in addition take the necessary measures to ensure that when a building element that forms part of the building envelope and has a significant impact on the energy performance of the building envelope, is retrofitted or replaced, the energy performance of the building element meets minimum energy performance requirements in so far as this is technically, functionally and economically feasible.

Contracting Parties shall determine these minimum energy performance requirements in accordance with Article 4.

Contracting Parties shall encourage, in relation to buildings undergoing major renovation, the consideration and taking into account of high-efficiency alternative systems, as referred to in Article 6(1), in so far as this is technically, functionally and economically feasible.

Article 8

Technical building systems

1. **Contracting Parties** shall, for the purpose of optimising the energy use of technical building systems, set system requirements in respect of the overall energy performance, the proper installation, and the appropriate dimensioning, adjustment and control of the technical building systems which are installed in existing buildings. **Contracting Parties** may also apply these system requirements to new buildings.

System requirements shall be set for new, replacement and upgrading of technical building systems and shall be applied in so far as they are technically, economically and functionally feasible.

The system requirements shall cover at least the following:

- (a) heating systems;
 - (b) hot water systems;
 - (c) air-conditioning systems;
 - (d) large ventilation systems;
- or a combination of such systems.

2. **Contracting Parties** shall encourage the introduction of intelligent metering systems whenever a building is constructed or undergoes major renovation, whilst ensuring that this encouragement is in line with point 2 of Annex I to Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity. **Contracting Parties** may furthermore encourage, where appropriate, the installation of active control systems such as automation, control and monitoring systems that aim to save energy.

Article 9

Nearly zero-energy buildings

1. **Contracting Parties** shall ensure that:

- (a) by **30 June 2021**, all new buildings are nearly zero-energy buildings; and
- (b) after **30 June 2019**, new buildings occupied and owned by public authorities are nearly zero-energy buildings.

Contracting Parties shall draw up national plans for increasing the number of nearly zero-energy buildings. These national plans may include targets differentiated according to the category of building.

2. **Contracting Parties** shall furthermore, following the leading example of the public sector, develop policies and take measures such as the setting of targets in order to stimulate the transformation of buildings that are refurbished into nearly zero-energy buildings, and inform the Secretariat thereof in their national plans referred to in paragraph 1.

3. The national plans shall include, *inter alia*, the following elements:

- (a) the **Contracting Party's** detailed application in practice of the definition of nearly zero-energy buildings, reflecting their national, regional or local conditions, and including a numerical indicator

of primary energy use expressed in kWh/m² per year. Primary energy factors used for the determination of the primary energy use may be based on national or regional yearly average values and may take into account relevant European standards;

(b) intermediate targets for improving the energy performance of new buildings, by 2015, with a view to preparing the implementation of paragraph 1;

(c) information on the policies and financial or other measures adopted in the context of paragraphs 1 and 2 for the promotion of nearly zero-energy buildings, including details of national requirements and measures concerning the use of energy from renewable sources in new buildings and existing buildings undergoing major renovation in the context of Article 13(4) of Directive 2009/28/EC and Articles 6 and 7 of this Directive.

4. The **Secretariat** shall evaluate the national plans referred to in paragraph 1, notably the adequacy of the measures envisaged by the **Contracting Party** in relation to the objectives of this Directive. The **Secretariat**, taking due account of the principle of subsidiarity, may request further specific information regarding the requirements set out in paragraphs 1, 2 and 3. In that case, the **Contracting Party** concerned shall submit the requested information or propose amendments within nine months following the request from the Secretariat. **Following its evaluation, the Secretariat may propose a recommendation to the Ministerial Council.**

5. The **Secretariat** shall by **31 December 2013** and every three years thereafter publish a report on the progress of **Contracting Parties** in increasing the number of nearly zero-energy buildings. On the basis of that report the **Secretariat** shall develop an action plan and, if necessary, propose measures to increase the number of those buildings and encourage best practices as regards the cost-effective transformation of existing buildings into nearly zero-energy buildings.

6. **Contracting Parties** may decide not to apply the requirements set out in points (a) and (b) of paragraph 1 in specific and justifiable cases where the cost-benefit analysis over the economic lifecycle of the building in question is negative. **Contracting Parties** shall inform the **Secretariat** of the principles of the relevant legislative regimes.

Article 10

Financial incentives and market barriers

1. In view of the importance of providing appropriate financing and other instruments to catalyse the energy performance of buildings and the transition to nearly zero-energy buildings, **Contracting Parties** shall take appropriate steps to consider the most relevant such instruments in the light of national circumstances.

2. **Contracting Parties** shall draw up, by **30 June 2013**, a list of existing and, if appropriate, proposed measures and instruments including those of a financial nature, other than those required by this Directive, which promote the objectives of this Directive.

Contracting Parties shall update this list every three years. **Contracting Parties** shall communicate these lists to the **Secretariat**, which they may do by including them in the Energy Efficiency Action Plans referred to in Article 14(2) of Directive 2006/32/EC.

3. The **Secretariat** shall examine the effectiveness of the listed existing and proposed measures referred to in paragraph 2 as well as of relevant Union instruments, in supporting the implementation

of this Directive. On the basis of that examination, and taking due account of the principle of subsidiarity, the **Secretariat** may provide advice <...> as regards specific national schemes and coordination with Union and international financial institutions. The **Secretariat** may include its examination and possible advice or recommendations in its report on the National Energy Efficiency Plans referred to in Article 14(5) of Directive 2006/32/EC.

4. The **Secretariat** shall, where appropriate, assist upon request **Contracting Parties** in setting up national or regional financial support programmes with the aim of increasing energy efficiency in buildings, especially of existing buildings, by supporting the exchange of best practice between the responsible national or regional authorities or bodies.

5. In order to improve financing in support of the implementation of this Directive and taking due account of the principle of subsidiarity, the Commission shall, preferably by 2011, present an analysis on, in particular:

- (a) the effectiveness, the appropriateness of the level, and the actual amount used, of structural funds and framework programmes that were used for increasing energy efficiency in buildings, especially in housing;
- (b) the effectiveness of the use of funds from the EIB and other public finance institutions;
- (c) the coordination of Union and national funding and other forms of support that can act as a leverage for stimulating investments in energy efficiency and the adequacy of such funds for achieving Union objectives.

On the basis of that analysis, and in accordance with the multiannual financial framework, the Commission may subsequently submit, if it considers this appropriate, proposals with respect to Union instruments to the European Parliament and the Council.

6. **Contracting Parties** shall take account of the cost-optimal levels of energy performance when providing incentives for the construction or major renovation of buildings.

7. The provisions of this Directive shall not prevent **Contracting Parties** from providing incentives for new buildings, renovations or building elements which go beyond the cost-optimal levels.

Article 11

Energy performance certificates

1. **Contracting Parties** shall lay down the necessary measures to establish a system of certification of the energy performance of buildings. The energy performance certificate shall include the energy performance of a building and reference values such as minimum energy performance requirements in order to make it possible for owners or tenants of the building or building unit to compare and assess its energy performance.

The energy performance certificate may include additional information such as the annual energy consumption for non-residential buildings and the percentage of energy from renewable sources in the total energy consumption.

2. The energy performance certificate shall include recommendations for the cost-optimal or cost-effective improvement of the energy performance of a building or building unit, unless there is no reasonable potential for such improvement compared to the energy performance requirements in force.

The recommendations included in the energy performance certificate shall cover:

(a) measures carried out in connection with a major renovation of the building envelope or technical building system(s); and

(b) measures for individual building elements independent of a major renovation of the building envelope or technical building system(s).

3. The recommendations included in the energy performance certificate shall be technically feasible for the specific building and may provide an estimate for the range of payback periods or cost-benefits over its economic lifecycle.

4. The energy performance certificate shall provide an indication as to where the owner or tenant can receive more detailed information, including as regards the cost-effectiveness of the recommendations made in the energy performance certificate. The evaluation of cost effectiveness shall be based on a set of standard conditions, such as the assessment of energy savings and underlying energy prices and a preliminary cost forecast. In addition, it shall contain information on the steps to be taken to implement the recommendations. Other information on related topics, such as energy audits or incentives of a financial or other nature and financing possibilities may also be provided to the owner or tenant.

5. Subject to national rules, **Contracting Parties** shall encourage public authorities to take into account the leading role which they should play in the field of energy performance of buildings, *inter alia*, by implementing the recommendations included in the energy performance certificate issued for buildings owned by them within its validity period.

6. Certification for building units may be based:

(a) on a common certification of the whole building; or

(b) on the assessment of another representative building unit with the same energy-relevant characteristics in the same building.

7. Certification for single-family houses may be based on the assessment of another representative building of similar design and size with a similar actual energy performance quality if such correspondence can be guaranteed by the expert issuing the energy performance certificate.

8. The validity of the energy performance certificate shall not exceed 10 years.

9. The Commission shall, by 2011, in consultation with the relevant sectors, adopt a voluntary common European Union certification scheme for the energy performance of non-residential buildings. That measure shall be adopted in accordance with the advisory procedure referred to in Article 26(2). **Contracting Parties** are encouraged to recognise or use the scheme, or use part thereof by adapting it to national circumstances.

Article 12

Issue of energy performance certificates

1. **Contracting Parties** shall ensure that an energy performance certificate is issued for:

(a) buildings or building units which are constructed, sold or rented out to a new tenant; and

(b) buildings where a total useful floor area over 500 m² is occupied by a public authority and frequently visited by the public. On **30 September 2015**, this threshold of 500 m² shall be lowered to

250 m².

The requirement to issue an energy performance certificate does not apply where a certificate, issued in accordance with either Directive 2002/91/EC or this Directive, for the building or building unit concerned is available and valid.

2. **Contracting Parties** shall require that, when buildings or building units are constructed, sold or rented out, the energy performance certificate or a copy thereof is shown to the prospective new tenant or buyer and handed over to the buyer or new tenant.

3. Where a building is sold or rented out in advance of construction, **Contracting Parties** may require the seller to provide an assessment of its future energy performance, as a derogation from paragraphs 1 and 2; in this case, the energy performance certificate shall be issued at the latest once the building has been constructed.

4. **Contracting Parties** shall require that when:

- buildings having an energy performance certificate,
- building units in a building having an energy performance certificate, and
- building units having an energy performance certificate,

are offered for sale or for rent, the energy performance indicator of the energy performance certificate of the building or the building unit, as applicable, is stated in the advertisements in commercial media.

5. The provisions of this Article shall be implemented in accordance with applicable national rules on joint ownership or common property.

6. **Contracting Parties** may exclude the categories of buildings referred to in Article 4(2) from the application of paragraphs 1, 2, 4 and 5 of this Article.

7. The possible effects of energy performance certificates in terms of legal proceedings, if any, shall be decided in accordance with national rules.

Article 13

Display of energy performance certificates

1. **Contracting Parties** shall take measures to ensure that where a total useful floor area over 500 m² of a building for which an energy performance certificate has been issued in accordance with Article 12(1) is occupied by public authorities and frequently visited by the public, the energy performance certificate is displayed in a prominent place clearly visible to the public.

On 30 September 2015, this threshold of 500 m² shall be lowered to 250 m².

2. **Contracting Parties** shall require that where a total useful floor area over 500 m² of a building for which an energy performance certificate has been issued in accordance with Article 12(1) is frequently visited by the public, the energy performance certificate is displayed in a prominent place clearly visible to the public.

3. The provisions of this Article do not include an obligation to display the recommendations included in the energy performance certificate.

Article 14

Inspection of heating systems

1. **Contracting Parties** shall lay down the necessary measures to establish a regular inspection of the accessible parts of systems used for heating buildings, such as the heat generator, control system and circulation pump(s), with boilers of an effective rated output for space heating purposes of more than 20 kW. That inspection shall include an assessment of the boiler efficiency and the boiler sizing compared with the heating requirements of the building. The assessment of the boiler sizing does not have to be repeated as long as no changes were made to the heating system or as regards the heating requirements of the building in the meantime.

Contracting Parties may reduce the frequency of such inspections or lighten them as appropriate, where an electronic monitoring and control system is in place.

2. **Contracting Parties** may set different inspection frequencies depending on the type and effective rated output of the heating system whilst taking into account the costs of the inspection of the heating system and the estimated energy cost savings that may result from the inspection.

3. Heating systems with boilers of an effective rated output of more than 100 kW shall be inspected at least every two years.

For gas boilers, this period may be extended to four years.

4. As an alternative to paragraphs 1, 2 and 3 **Contracting Parties** may opt to take measures to ensure the provision of advice to users concerning the replacement of boilers, other modifications to the heating system and alternative solutions to assess the efficiency and appropriate size of the boiler. The overall impact of this approach shall be equivalent to that arising from the provisions set out in paragraphs 1, 2 and 3.

Where **Contracting Parties** choose to apply the measures referred to in the first subparagraph, they shall submit to the **Secretariat** a report on the equivalence of those measures to measures referred to in paragraphs 1, 2 and 3 of this Article by **30 June 2013** at the latest. **Contracting Parties** shall submit these reports to the **Secretariat** every three years. The reports may be included in the Energy Efficiency Action Plans referred to in Article 14(2) of Directive 2006/32/EC.

5. After receiving the national report from a **Contracting Party** about the application of the option as described in paragraph 4, the **Secretariat** may request further specific information regarding the requirements and equivalence of the measures set out in that paragraph. In that case, the Contracting Party concerned shall present the requested information or propose amendments within nine months.

Article 15

Inspection of air-conditioning systems

1. **Contracting Parties** shall lay down the necessary measures to establish a regular inspection of the accessible parts of air-conditioning systems of an effective rated output of more than 12 kW. The inspection shall include an assessment of the air-conditioning efficiency and the sizing compared to the cooling requirements of the building. The assessment of the sizing does not have to be repeated

as long as no changes were made to this air-conditioning system or as regards the cooling requirements of the building in the meantime.

Contracting Parties may reduce the frequency of such inspections or lighten them, as appropriate, where an electronic monitoring and control system is in place.

2. The **Contracting Parties** may set different inspection frequencies depending on the type and effective rated output of the air-conditioning system, whilst taking into account the costs of the inspection of the air-conditioning system and the estimated energy cost savings that may result from the inspection.

3. In laying down the measures referred to in paragraphs 1 and 2 of this Article, **Contracting Parties** shall, as far as is economically and technically feasible, ensure that inspections are carried out in accordance with the inspection of heating systems and other technical systems referred to in Article 14 of this Directive and the inspection of leakages referred to in Regulation (EC) No 842/2006 of the European Parliament and of the Council of 17 May 2006 on certain fluorinated greenhouse gases.

4. As an alternative to paragraphs 1, 2 and 3 **Contracting Parties** may opt to take measures to ensure the provision of advice to users on the replacement of air-conditioning systems or on other modifications to the air-conditioning system which may include inspections to assess the efficiency and appropriate size of the air-conditioning system. The overall impact of this approach shall be equivalent to that arising from the provisions set out in paragraphs 1, 2 and 3.

Where **Contracting Parties** apply the measures referred to in the first subparagraph, they shall, by **30 June 2013** at the latest, submit to the Secretariat a report on the equivalence of those measures to the measures referred to in paragraphs 1, 2 and 3 of this Article. Contracting Parties shall submit these reports to the Secretariat every three years. The reports may be included in the Energy Efficiency Action Plans referred to in Article 14(2) of Directive 2006/32/EC.

5. After receiving the national report from a **Contracting Party** about the application of the option as described in paragraph 4, the **Secretariat** may request further specific information regarding the requirements and equivalence of the measures set in that paragraph. In this case, the **Contracting Party** concerned shall present the requested information or propose amendments within nine months.

Article 16

Reports on the inspection of heating and air-conditioning systems

1. An inspection report shall be issued after each inspection of a heating or air-conditioning system. The inspection report shall contain the result of the inspection performed in accordance with Article 14 or 15 and include recommendations for the cost-effective improvement of the energy performance of the inspected system.

The recommendations may be based on a comparison of the energy performance of the system inspected with that of the best available feasible system and a system of similar type for which all relevant components achieve the level of energy performance required by the applicable legislation.

2. The inspection report shall be handed over to the owner or tenant of the building.

Article 17**Independent experts**

Contracting Parties shall ensure that the energy performance certification of buildings and the inspection of heating systems and air-conditioning systems are carried out in an independent manner by qualified and/or accredited experts, whether operating in a self-employed capacity or employed by public bodies or private enterprises.

Experts shall be accredited taking into account their competence.

Contracting Parties shall make available to the public information on training and accreditations. **Contracting Parties** shall ensure that either regularly updated lists of qualified and/or accredited experts or regularly updated lists of accredited companies which offer the services of such experts are made available to the public.

Article 18**Independent control system**

1. **Contracting Parties** shall ensure that independent control systems for energy performance certificates and reports on the inspection of heating and air-conditioning systems are established in accordance with Annex II. **Contracting Parties** may establish separate systems for the control of energy performance certificates and for the control of reports on the inspection of heating and air-conditioning systems.

2. The **Contracting Parties** may delegate the responsibilities for implementing the independent control systems.

Where the **Contracting Parties** decide to do so, they shall ensure that the independent control systems are implemented in compliance with Annex II.

3. **Contracting Parties** shall require the energy performance certificates and the inspection reports referred to in paragraph 1 to be made available to the competent authorities or bodies on request.

Article 19**Review**

The Commission, assisted by the Committee established by Article 26, shall evaluate this Directive by 1 January 2017 at the latest, in the light of the experience gained and progress made during its application, and, if necessary, make proposals.

Article 20**Information**

1. **Contracting Parties** shall take the necessary measures to inform the owners or tenants of build-

ings or building units of the different methods and practices that serve to enhance energy performance.

2. **Contracting Parties** shall in particular provide information to the owners or tenants of buildings on energy performance certificates and inspection reports, their purpose and objectives, on cost-effective ways to improve the energy performance of the building and, where appropriate, on financial instruments available to improve the energy performance of the building.

At the request of the **Contracting Parties, the Secretariat** shall assist **Contracting Parties** in staging information campaigns for the purposes of paragraph 1 and the first subparagraph of this paragraph, which may be dealt with in Union programmes.

3. **Contracting Parties** shall ensure that guidance and training are made available for those responsible for implementing this Directive. Such guidance and training shall address the importance of improving energy performance, and shall enable consideration of the optimal combination of improvements in energy efficiency, use of energy from renewable sources and use of district heating and cooling when planning, designing, building and renovating industrial or residential areas.

4. The Commission is invited to continuously improve its information services, in particular the website that has been set up as a European portal for energy efficiency in buildings directed towards citizens, professionals and authorities, in order to assist **Contracting Parties** in their information and awareness-raising efforts. Information displayed on this website might include links to relevant European Union and national, regional and local legislation, links to Europa websites that display the National Energy Efficiency Action Plans, links to available financial instruments, as well as best practice examples at national, regional and local level. In the context of the European Regional Development Fund, the Commission shall continue and further intensify its information services with the aim of facilitating the use of available funds by providing assistance and information to interested stakeholders, including national, regional and local authorities, on funding possibilities, taking into account the latest changes in the regulatory framework.

Article 21

Consultation

In order to facilitate the effective implementation of the Directive, **Contracting Parties** shall consult the stakeholders involved, including local and regional authorities, in accordance with the national legislation applicable and as relevant. Such consultation is of particular importance for the application of Articles 9 and 20.

Article 22

Adaptation of Annex I to technical progress

The Commission shall adapt points 3 and 4 of Annex I to technical progress by means of delegated acts in accordance with Articles 23, 24 and 25.

Article 23

Exercise of delegation

1. The powers to adopt the delegated acts referred to in Article 22 shall be conferred on the Commission for a period of five years beginning on 8 July 2010. The Commission shall make a report in respect of the delegated powers not later than six months before the end of the five-year period. The delegation of powers shall be automatically extended for periods of an identical duration, unless the European Parliament or the Council revokes it in accordance with Article 24.
2. Without prejudice to the deadline referred to in Article 5(1), the powers to adopt the delegated acts referred to in Article 5 shall be conferred on the Commission until 30 June 2012.
3. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the **Ministerial Council, who shall put it on the agenda of its next meeting.**
4. The powers to adopt delegated acts are conferred on the Commission subject to the conditions laid down in Articles 24 and 25.

Article 24

Revocation of the delegation

The Ministerial Council may object to the application of a delegated act to the Contracting Parties of the Energy Community at the meeting following notification. If, at that meeting, the Ministerial Council has not objected to the delegated act, it shall become binding on the Contracting Parties, subject to possible adaptation. In the Ministerial Council objects to a delegated act, it shall not be applicable in the Energy Community. The Ministerial Council shall state the reasons for objecting to the delegated act.

Article 25

Objections to delegated acts

1. The European Parliament or the Council may object to a delegated act within a period of two months from the date of notification.
At the initiative of the European Parliament or the Council that period shall be extended by two months.
2. If, on expiry of that period, neither the European Parliament nor the Council has objected to the delegated act it shall be published in the Official Journal of the European Union and shall enter into force on the date stated therein.
The delegated act may be published in the Official Journal of the European Union and enter into force before the expiry of that period, if the European Parliament and the Council have both informed the Commission of their intention not to raise objections.
3. If the European Parliament or the Council objects to a delegated act, it shall not enter into force. The institution which objects shall state the reasons for objecting to the delegated act.

Article 26

Committee procedure

1. The Commission shall be assisted by a Committee.
2. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

Article 27

Penalties

Contracting Parties shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. **Contracting Parties** shall communicate those provisions to the **Secretariat** by **31 March 2013** at the latest and shall notify it without delay of any subsequent amendment affecting them.

Article 28

Transposition

1. **Contracting Parties** shall adopt and publish, by **30 September 2012**¹ at the latest, the laws, regulations and administrative provisions necessary to comply with Articles 2 to 18, and with Articles 20 and 27.

They shall apply those provisions as far as Articles 2, 3, 9, 11, 12, 13, 17, 18, 20 and 27 are concerned, from **31 March 2013** at the latest.

They shall apply those provisions as far as Articles 4, 5, 6, 7, 8, 14, 15 and 16 are concerned, to buildings occupied by the public authorities from **31 March 2013** at the latest and to other buildings from **30 September 2013** at the latest.

They may defer the application of Article 12(1) and (2) to single building units that are rented out, until **31 March 2016**. This shall however not result in fewer certificates being issued than would have been the case under the application of the Directive 2002/91/EC in the **Contracting Party** concerned.

When **Contracting Parties** adopt measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. They shall also include a statement that references in existing laws, regulations and administrative provisions to Directive 2002/91/EC shall be construed as references to this Directive. **Contracting Parties** shall determine how such reference is to be made and how that statement is to be formulated.

2. **Contracting Parties** shall communicate to the **Secretariat** the text of the main provisions of national law which they adopt in the field covered by this Directive.

¹ In accordance with the Accession Protocol, the corresponding date for Georgia is 30 June 2019.

Article 29**Repeal**

Directive 2002/91/EC, as amended by the Regulation indicated in Annex IV, Part A, is hereby repealed with effect from 1 February 2012, without prejudice to the obligations of the **Contracting Parties** relating to the time limit for transposition into national law and application of the Directive set out in Annex IV, Part B.

References to Directive 2002/91/EC shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex V.

Articles 30 and 31**Entry into force and Addressees²**

This Decision [2010/02/MC-EnC] enters into force upon its adoption and is addressed to the Contracting Parties.

The Secretariat shall monitor and review the implementation of Directive 2010/31/EU in the Contracting Parties and shall submit a progress report to the Permanent High Level Group by 31 March 2013.³

² The text displayed here corresponds to Article 3 of Decision 2010/02/MC-EnC.

³ The text displayed here corresponds to Article 1(4) of Decision 2010/02/MC-EnC.

ANNEX I

Common general framework for the calculation of energy performance of buildings (referred to in Article 3)

1. The energy performance of a building shall be determined on the basis of the calculated or actual annual energy that is consumed in order to meet the different needs associated with its typical use and shall reflect the heating energy needs and cooling energy needs (energy needed to avoid overheating) to maintain the envisaged temperature conditions of the building, and domestic hot water needs.

2. The energy performance of a building shall be expressed in a transparent manner and shall include an energy performance indicator and a numeric indicator of primary energy use, based on primary energy factors per energy carrier, which may be based on national or regional annual weighted averages or a specific value for on-site production.

The methodology for calculating the energy performance of buildings should take into account European standards and shall be consistent with relevant Union legislation, including Directive 2009/28/EC.

3. The methodology shall be laid down taking into consideration at least the following aspects:

(a) the following actual thermal characteristics of the building including its internal partitions:

- (i) thermal capacity;
- (ii) insulation;
- (iii) passive heating;
- (iv) cooling elements; and
- (v) thermal bridges;

(b) heating installation and hot water supply, including their insulation characteristics;

(c) air-conditioning installations;

(d) natural and mechanical ventilation which may include air-tightness;

(e) built-in lighting installation (mainly in the non-residential sector);

(f) the design, positioning and orientation of the building, including outdoor climate;

(g) passive solar systems and solar protection;

(h) indoor climatic conditions, including the designed indoor climate;

(i) internal loads.

4. The positive influence of the following aspects shall, where relevant in the calculation, be taken into account:

(a) local solar exposure conditions, active solar systems and other heating and electricity systems based on energy from renewable sources;

(b) electricity produced by cogeneration;

(c) district or block heating and cooling systems;

(d) natural lighting.

5. For the purpose of the calculation buildings should be adequately classified into the following categories:

- (a) single-family houses of different types;
- (b) apartment blocks;
- (c) offices;
- (d) educational buildings;
- (e) hospitals;
- (f) hotels and restaurants;
- (g) sports facilities;
- (h) wholesale and retail trade services buildings;
- (i) other types of energy-consuming buildings.

ANNEX II

Independent control systems for energy performance certificates and inspection reports

1. The competent authorities or bodies to which the competent authorities have delegated the responsibility for implementing the independent control system shall make a random selection of at least a statistically significant percentage of all the energy performance certificates issued annually and subject those certificates to verification.

The verification shall be based on the options indicated below or on equivalent measures:

(a) validity check of the input data of the building used to issue the energy performance certificate and the results stated in the certificate;

(b) check of the input data and verification of the results of the energy performance certificate, including the recommendations made;

(c) full check of the input data of the building used to issue the energy performance certificate, full verification of the results stated in the certificate, including the recommendations made, and on-site visit of the building, if possible, to check correspondence between specifications given in the energy performance certificate and the building certified.

2. The competent authorities or bodies to which the competent authorities have delegated the responsibility for implementing the independent control system shall make a random selection of at least a statistically significant percentage of all the inspection reports issued annually and subject those reports to verification.

ANNEX III

Comparative methodology framework to identify cost-optimal levels of energy performance requirements for buildings and building elements

The comparative methodology framework shall enable **Contracting Parties** to determine the energy performance of buildings and building elements and the economic aspects of measures relating to the energy performance, and to link them with a view to identifying the cost-optimal level.

The comparative methodology framework shall be accompanied by guidelines outlining how to apply this framework in the calculation of cost-optimal performance levels.

The comparative methodology framework shall allow for taking into account use patterns, outdoor climate conditions, investment costs, building category, maintenance and operating costs (including energy costs and savings), earnings from energy produced, where applicable, and disposal costs, where applicable. It should be based on relevant European standards relating to this Directive.

The Commission shall also provide:

- guidelines to accompany the comparative methodology framework; these guidelines will serve to enable the **Contracting Parties** to undertake the steps listed below,
- information on estimated long-term energy price developments.

For the application of the comparative methodology framework by **Contracting Parties**, general conditions, expressed by parameters, shall be laid down at **Contracting Party** level.

The comparative methodology framework shall require **Contracting Parties** to:

- define reference buildings that are characterised by and representative of their functionality and geographic location, including indoor and outdoor climate conditions. The reference buildings shall cover residential and non-residential buildings, both new and existing ones,
- define energy efficiency measures to be assessed for the reference buildings. These may be measures for individual buildings as a whole, for individual building elements, or for a combination of building elements,
- assess the final and primary energy need of the reference buildings and the reference buildings with the defined energy efficiency measures applied,
- calculate the costs (i.e. the net present value) of the energy efficiency measures (as referred to in the second indent) during the expected economic lifecycle applied to the reference buildings (as referred to in the first indent) by applying the comparative methodology framework principles.

By calculating the costs of the energy efficiency measures during the expected economic lifecycle, the cost-effectiveness of different levels of minimum energy performance requirements is assessed by the **Contracting Parties**. This will allow the determination of cost-optimal levels of energy performance requirements.

DIRECTIVE 2010/30/EU of 19 May 2010 on the indication by labelling and standard product information of the consumption of energy and other resources by energy-related products

Incorporated and adapted by Ministerial Council Decision 2010/02/MC-EnC of 24 September 2010 amending Decision 2009/05/MC-EnC of 18 December 2009 on the implementation of certain Directives on Energy Efficiency.

*The adaptations made by Ministerial Council Decision 2010/02/MC-EnC are highlighted in **bold and blue**.*

Whereas:

(1) Council Directive 92/75/EEC of 22 September 1992 on the indication by labelling and standard product information of the consumption of energy and other resources by household appliances has been substantially amended. Since further amendments have to be made, it should be recast in the interests of clarity.

(2) The scope of Directive 92/75/EEC is restricted to household appliances. The Commission Communication of 16 July 2008 on the Sustainable Consumption and Production and Sustainable Industrial Policy Action Plan has shown that the extension of the scope of Directive 92/75/EEC to energy-related products which have a significant direct or indirect impact on energy consumption during use could reinforce potential synergies between existing legislative measures, and in particular Directive 2009/125/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for the setting of ecodesign requirements for energy related products. This Directive should not prejudice the application of Directive 2009/125/EC. Together with that Directive and other Union instruments, this Directive forms part of a broader legal framework and, in the context of a holistic approach, brings about additional energy savings and environmental gains.

(3) The Presidency conclusions of the European Council of 8 and 9 March 2007 emphasised the need to increase energy efficiency in the Union so as to achieve the objective of saving 20% of the Union's energy consumption by 2020, set targets for the EU-wide development of renewable energies and the reduction of greenhouse gas emissions and called for a thorough and rapid implementation of the key areas identified in the Commission Communication of 19 October 2006 entitled "Action Plan for Energy Efficiency: Realising the Potential". The action plan highlighted the enormous energy savings opportunities in the products sector.

(4) Improving the efficiency of energy-related products through informed consumer choice benefits the EU economy overall.

(5) The provision of accurate, relevant and comparable information on the specific energy consumption of energy-related products should influence the end-user's choice in favour of those products which consume or indirectly result in consuming less energy and other essential resources during use, thus prompting manufacturers to take steps to reduce the consumption of energy and other essential resources of the products which they manufacture. It should also, indirectly, encourage the efficient use of these products in order to contribute to the EU's 20% energy efficiency target. In the absence of this information, the operation of market forces alone will fail to promote the rational use of energy and other essential resources for these products.

(6) It should be recalled that Union and national legislation exists which gives certain rights to con-

sumers with respect to purchased products, including compensation or exchange of the product.

(7) The Commission should provide a priority list of energy-related products that could be covered by a delegated act under this Directive. Such a list could be included in the Working Plan referred to in Directive 2009/125/EC.

(8) Information plays a key role in the operation of market forces and it is therefore necessary to introduce a uniform label for all products of the same type, to provide potential purchasers with supplementary standardised information on those products' costs in terms of energy and the consumption of other essential resources and to take measures to ensure that potential end-users who do not see the product displayed, and thus have no opportunity to see the label, are also supplied with this information. In order to be efficient and successful, the label should be easily recognisable to end-users, simple and concise. To this end the existing layout of the label should be retained as the basis to inform end-users about the energy efficiency of products. Energy consumption of and other information concerning the products should be measured in accordance with harmonised standards and methods.

(9) As pointed out in the Commission's Impact Assessment accompanying its proposal for this Directive, the energy labelling scheme has been followed as a model in different countries around the world.

(10) Member States should regularly monitor compliance with this Directive, and include the relevant information in the report that they are obliged to submit every four years to the Commission under this Directive, with special regard to the responsibilities of suppliers and dealers.

(11) Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products contains general provisions on market surveillance relating to the marketing of products. In order to achieve its aims, this Directive provides for more detailed provisions in this respect. Those provisions are consistent with Regulation (EC) No 765/2008.

(12) A completely voluntary scheme would lead to only some products being labelled, or supplied with standard product information, with the risk that this might result in confusion or even misinformation for some end-users. The present scheme should therefore ensure that for all the products concerned, the consumption of energy and other essential resources is indicated by labelling and standard product fiches.

(13) Energy-related products have a direct or indirect impact on the consumption of a wide variety of forms of energy during use, electricity and gas being the most important. This Directive should therefore cover energy-related products having a direct or indirect impact on the consumption of any form of energy during use.

(14) Energy-related products which have a significant direct or indirect impact on consumption of energy or, where relevant, of essential resources during use and which afford adequate scope for increased efficiency should be covered by a delegated act, when provision of information through labelling may stimulate end-users to purchase more efficient products.

(15) In order to meet the Union climate change and energy security objectives, and given that the total energy consumed by products is expected to continue to rise in the longer term, the delegated acts under this Directive could, where relevant, also highlight on the label the high total energy consumption of the product.

(16) A number of Member States have public procurement policies in place which require contracting authorities to procure energy efficient products. A number of Member States also have put in place incentives for energy efficient products. The criteria for products to be eligible for public procurement or incentives can substantially differ from one Member State to another. To refer to performance classes as levels for particular products, as set out in delegated acts under this Directive, may reduce fragmentation of public procurement and incentives and facilitate the uptake of efficient products.

(17) Incentives which Member States may provide for the promotion of efficient products might constitute State aid. This Directive does not prejudice the outcome of any future State aid procedure that may be undertaken in accordance with Articles 107 and 108 of the Treaty on the Functioning of the European Union (TFEU) in respect of such incentives and should not cover taxation and fiscal matters. Member States are free to decide on the nature of such incentives.

(18) The promotion of energy efficient products through labelling, public procurement and incentives should not be to the detriment of the overall environmental performance and the functioning of such products.

(19) The Commission should be empowered to adopt delegated acts in accordance with Article 290 TFEU in respect of labelling and standard product information of the consumption of energy and other essential resources by energy-related products during use. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level.

(20) The Commission should regularly submit to the European Parliament and the Council a synthesis, covering the EU and each Member State separately, of the reports on enforcement activities and the level of compliance submitted by Member States under this Directive.

(21) The Commission should be responsible for adapting the label classifications with the aim of ensuring predictability for the industry and comprehension for consumers.

(22) To a varying extent according to the product concerned, technological development and the potential for additional significant energy savings could make further product differentiation necessary and justify a review of the classification. Such review should include in particular the possibility of rescaling. This review should be carried out as expeditiously as possible in the case of products which, due to their very innovative characteristics, can make a significant contribution to energy efficiency.

(23) When the Commission reviews progress and reports on the implementation of the Sustainable Consumption and Production and Sustainable Industrial Policy Action Plan in 2012, it will in particular analyse whether further action to improve the energy and environmental performance of products is needed, including, *inter alia* the possibility to provide consumers with information on the carbon footprint of products or the products' environmental impact during their life cycle.

(24) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive change as compared with Directive 92/75/EEC. The obligation to transpose the provisions which are unchanged arises under the Directive 92/75/EEC.

(25) When Member States implement the provisions of this Directive, they should endeavour to refrain from adopting measures that could impose unnecessarily bureaucratic and unwieldy obligations on the market participants concerned, in particular small and medium-sized enterprises.

(26) This Directive should be without prejudice to the obligations of the Member States relating to

the time-limits for transposition into national law and application of Directive 92/75/EEC.

(27) In accordance with point 34 of the Interinstitutional Agreement on better law-making, Member States are encouraged to draw up, for themselves and in the interest of the Union, their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public.

Article 1

Scope

1. This Directive establishes a framework for the harmonisation of national measures on end-user information, particularly by means of labelling and standard product information, on the consumption of energy and where relevant of other essential resources during use, and supplementary information concerning energy-related products, thereby allowing end-users to choose more efficient products.

2. This Directive shall apply to energy-related products which have a significant direct or indirect impact on the consumption of energy and, where relevant, on other essential resources during use.

3. This Directive shall not apply to:

- (a) second-hand products;
- (b) any means of transport for persons or goods;
- (c) the rating plate or its equivalent affixed for safety purposes to products.

Article 2

Definitions

For the purpose of this Directive:

- (a) “energy-related product” or “product” means any good having an impact on energy consumption during use, which is placed on the market and/or put into service in the **Energy Community**, including parts intended to be incorporated into energy-related products covered by this Directive which are placed on the market and/or put into service as individual parts for end-users and of which the environmental performance can be assessed independently;
- (b) “fiche” means a standard table of information relating to a product;
- (c) “other essential resources” means water, chemicals or any other substance consumed by a product in normal use;
- (d) “supplementary information” means other information concerning the performance and features of a product which relate to, or are helpful in evaluating, its use of energy or other essential resources based on measurable data;
- (e) “direct impact” means the impact of products that actually consume energy during use;
- (f) “indirect impact” means the impact of products that do not consume energy, but contribute to energy conservation during use;
- (g) “dealer” means a retailer or other person who sells, hires, offers for hire-purchase or displays

products to end-users;

(h) “supplier” means the manufacturer or its authorised representative in the **Energy Community** or the importer who places or puts into service the product on the **Energy Community** market. In their absence, any natural or legal person who places on the market or puts into service products covered by this Directive shall be considered a supplier;

(i) “placing on the market” means making a product available for the first time on the **Energy Community** market with a view to its distribution or use within the **Energy Community**, whether for reward or free of charge and irrespective of the selling technique;

(j) “putting into service” means the first use of a product for its intended purpose in the **Energy Community**;

(k) “unauthorised use of the label” means the use of the label, other than by **Contracting Party** authorities or EU institutions, in a manner not provided for in this Directive or a delegated act.

Article 3

Responsibilities of Contracting Parties

1. **Contracting Parties** shall ensure that:

(a) all suppliers and dealers established in their territory fulfil the obligations laid down in Articles 5 and 6;

(b) with respect to products covered by this Directive, the display of other labels, marks, symbols or inscriptions which do not comply with the requirements of this Directive and of the relevant delegated acts is prohibited, if such display is likely to mislead or confuse end-users with respect to the consumption of energy or, where relevant, other essential resources during use;

(c) the introduction of the system of labels and fiches concerning energy consumption or conservation is accompanied by educational and promotional information campaigns aimed at promoting energy efficiency and more responsible use of energy by end-users;

(d) appropriate measures are taken in order to encourage the relevant national or regional authorities responsible for implementing this Directive to cooperate and provide each other and the **Secretariat** with information in order to assist the application of this Directive. The administrative cooperation and exchange of information shall take the utmost advantage of electronic means of communication, shall be cost-effective and may be supported by relevant EU programmes. Such cooperation shall guarantee the security and confidentiality of processing and the protection of sensitive information provided during that procedure, where necessary. The **Secretariat** shall take appropriate measures in order to encourage and contribute to the cooperation between **Contracting Parties** referred to in this point.

2. Where a **Contracting Party** ascertains that a product does not comply with all the relevant requirements set out in this Directive and its delegated acts for the label and the fiche, the supplier shall be obliged to make the product compliant with those requirements under effective and proportionate conditions imposed by the **Contracting Party**.

Where there is sufficient evidence that a product may be non-compliant, the **Contracting Party** concerned shall take the necessary preventive measures and measures aimed at ensuring compliance

within a precise time-frame, taking into account the damage caused.

Where non-compliance continues, the **Contracting Party** concerned shall take a decision restricting or prohibiting the placing on the market and/or putting into service of the product in question or ensuring that it is withdrawn from the market. In cases of withdrawal of the product from the market or prohibition on placing the product on the market, the **Secretariat** and the other **Contracting Parties** shall be immediately informed.

3. Every four years, the **Contracting Parties** shall submit a report to the **Secretariat** including details about their enforcement activities and the level of compliance in their territory.

The **Secretariat** may specify the details of the common content of these reports, through the setting of guidelines.

4. The **Secretariat** shall regularly provide a synthesis of those reports to **the Ministerial Council** for information.

Article 4

Information requirements

Contracting Parties shall ensure that:

(a) information relating to the consumption of electric energy, other forms of energy and where relevant other essential resources during use, and supplementary information is, in accordance with delegated acts under this Directive, brought to the attention of end-users by means of a fiche and a label related to products offered for sale, hire, hire-purchase or displayed to end-users directly or indirectly by any means of distance selling, including the Internet;

(b) the information referred to in point (a) is provided in respect of built-in or installed products only where required by the applicable delegated act;

(c) any advertisement for a specific model of energy-related products covered by a delegated act under this Directive includes, where energy-related or price information is disclosed, a reference to the energy efficiency class of the product;

(d) any technical promotional material concerning energy-related products which describes the specific technical parameters of a product, namely, technical manuals and manufacturers' brochures, whether printed or online, is provided to end-users with the necessary information regarding energy consumption or shall include a reference to the energy efficiency class of the product.

Article 5

Responsibilities of suppliers

Contracting Parties shall ensure that:

(a) suppliers placing on the market or putting into service products covered by a delegated act supply a label and a fiche in accordance with this Directive and the delegated act;

(b) suppliers produce technical documentation which is sufficient to enable the accuracy of the information contained in the label and the fiche to be assessed. That technical documentation shall

include:

- (i) a general description of the product;
- (ii) where relevant, the results of design calculations carried out;
- (iii) test reports, where available, including those carried out by relevant notified organisations as defined under other Union legislation;
- (iv) where values are used for similar models, the references allowing identification of those models.

To this end suppliers may use documentation already established in accordance with requirements laid down in relevant Union legislation;

(c) suppliers make the technical documentation available for inspection purposes for a period ending five years after the last product concerned was manufactured.

Suppliers make available an electronic version of the technical documentation on request to the market surveillance authorities of the **Contracting Parties** and to the **Secretariat** within 10 working days on receipt of a request by the competent authority of a **Contracting Party** or the **Secretariat**;

(d) in respect of labelling and product information, suppliers provide the necessary labels free of charge to dealers.

Without prejudice to the suppliers' choice of system for delivery of labels, suppliers promptly deliver labels on request from dealers;

(e) in addition to the labels, suppliers provide a product fiche;

(f) suppliers include a product fiche in all product brochures. Where product brochures are not provided by the supplier, the supplier provides fiches with other literature provided with the product;

(g) suppliers are responsible for the accuracy of the labels and fiches that they supply;

(h) suppliers are considered to have given consent to the publication of the information provided on the label or in the fiche.

Article 6

Responsibilities of dealers

Contracting Parties shall ensure that:

(a) dealers display labels properly, in a visible and legible manner, and make the fiche available in the product brochure or other literature that accompanies products when sold to end-users;

(b) whenever a product covered by a delegated act is displayed, dealers attach an appropriate label, in the clearly visible position specified in the applicable delegated act, and in the relevant language version.

Article 7

Distance selling and other forms of selling

Where products are offered for sale, hire or hire-purchase by mail order, by catalogue, through the

Internet, telemarketing or by any other means which imply that the potential end-user cannot be expected to see the product displayed, delegated acts shall make provision to ensure that potential end-users are provided with the information specified on the label for the product and in the fiche before buying the product. Delegated acts shall, where appropriate, specify the way in which the label or the fiche or the information specified on the label or in the fiche shall be displayed or provided to the potential end-user.

Article 8

Free movement

1. **Contracting Parties** shall not prohibit, restrict or impede the placing on the market or putting into service, within their territories, of products which are covered by and comply with this Directive and the applicable delegated act.

2. Unless they have evidence to the contrary, **Contracting Parties** shall consider labels and fiches as complying with the provisions of this Directive and the delegated acts. **Contracting Parties** shall require suppliers to provide evidence within the meaning of Article 5 concerning the accuracy of the information supplied on their labels or fiches when they have reason to suspect that such information is incorrect.

Article 9¹

Public procurement and incentives

1. Where a product is covered by a delegated act, contracting authorities which conclude public works, supply or service contracts as referred to in Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, which are not excluded by virtue of Articles 12 to 18 thereof, shall endeavour to procure only such products which comply with the criteria of having the highest performance levels and belonging to the highest energy efficiency class. **Contracting Parties** may also require the contracting authorities to procure only products fulfilling those criteria. **Contracting Parties** may make the application of those criteria subject to cost-effectiveness, economical feasibility and technical suitability and sufficient competition.

2. Paragraph 1 shall apply to contracts having a value equal to or greater than the thresholds laid down in Article 7 of Directive 2004/18/EC.

3. Where **Contracting Parties** provide any incentives for a product covered by a delegated act they shall aim at the highest performance levels including the highest class of energy efficiency laid down in the applicable delegated act. Taxation and fiscal measures do not constitute incentives for the purpose of this Directive.

4. Where **Contracting Parties** provide incentives for products, both for end-users using highly efficient products and for industries which promote and produce such products, they shall express the performance levels in terms of classes as defined in the applicable delegated act, except where they

¹ Article 9(1) and (2) of Directive 2010/30/EU, as incorporated and adapted by Ministerial Council Decision 2010/01/MC-EnC shall cease to apply from 15 October 2017 onwards.

impose higher performance levels than the threshold for the highest energy efficiency class in the delegated act. **Contracting Parties** may impose higher performance levels than the threshold for the highest energy efficiency class in the delegated act.

Article 10

Delegated acts

1. The Commission shall lay down details relating to the label and the fiche by means of delegated acts in accordance with Articles 11 to 13, relating to each type of product in accordance with this Article.

Where a product meets the criteria listed in paragraph 2, it shall be covered by a delegated act in accordance with paragraph 4.

Provisions in delegated acts regarding information provided on the label and in the fiche on the consumption of energy and other essential resources during use shall enable end-users to make better informed purchasing decisions and shall enable market surveillance authorities to verify whether products comply with the information provided.

Where a delegated act lays down provisions with respect to both energy efficiency and consumption of essential resources of a product, the design and content of the label shall emphasise the energy efficiency of the product.

2. The criteria referred to in paragraph 1 are the following:

- (a) according to most recently available figures and considering the quantities placed on the Union market, the products shall have a significant potential for saving energy and, where relevant, other essential resources;
- (b) products with equivalent functionality available on the market shall have a wide disparity in the relevant performance levels;
- (c) the Commission shall take into account relevant Union legislation and self-regulation, such as voluntary agreements, which are expected to achieve the policy objectives more quickly or at lesser expense than mandatory requirements.

3. In preparing a draft delegated act, the Commission shall:

- (a) take into account those environmental parameters set out in Annex I, Part 1, to Directive 2009/125/EC which are identified as significant in the relevant implementing measure adopted under Directive 2009/125/EC and which are relevant for the end-user during use;
- (b) assess the impact of the act on the environment, end-users and manufacturers, including small and medium-sized enterprises (SMEs), in terms of competitiveness including on markets outside the Union, innovation, market access and costs and benefits;
- (c) carry out appropriate consultation with stakeholders;
- (d) set implementing date(s), any staged or transitional measures or periods, taking into account in particular possible impacts on SMEs or on specific product groups manufactured primarily by SMEs.

4. The delegated acts shall specify in particular:

- (a) the exact definition of the type of products to be included;

(b) the measurement standards and methods to be used in obtaining the information referred to in Article 1(1);

(c) the details of the technical documentation required pursuant to Article 5;

(d) the design and content of the label referred to in Article 4, which as far as possible shall have uniform design characteristics across product groups and shall in all cases be clearly visible and legible. The format of the label shall retain as a basis the classification using letters from A to G; the steps of the classification shall correspond to significant energy and cost savings from the end-user perspective.

Three additional classes may be added to the classification if required by technological progress. Those additional classes will be A+, A++, and A+++ for the most efficient class. In principle the total number of classes will be limited to seven, unless more classes are still populated.

The colour scale shall consist of no more than seven different colours from dark green to red. The colour code of only the highest class shall always be dark green. If there are more than seven classes, only the red colour can be duplicated.

The classification shall be reviewed in particular when a significant proportion of products on the internal market achieves the two highest energy efficiency classes and when additional savings may be achieved by further differentiating products.

Detailed criteria for a possible reclassification of products are, where appropriate, to be determined on a case-by-case basis in the relevant delegated act;

(e) the location where the label shall be fixed to the product displayed and the manner in which the label and/or information are to be provided in the case of offers for sale as covered by Article 7. Where appropriate, the delegated acts may provide for the label to be attached to the product or printed on the packaging, or for the details of the labelling requirements for printing in catalogues, for distance selling and Internet sales;

(f) the content and, where appropriate, the format and other details concerning the fiche or further information specified in Article 4 and Article 5(c). The information on the label shall also be included on the fiche;

(g) the specific content of the label for advertising, including, as appropriate, the energy class and other relevant performance level(s) of the given product in a legible and visible form;

(h) the duration of label classification(s), where appropriate, in accordance with point (d);

(i) the level of accuracy in the declarations on the label and fiches;

(j) the date for the evaluation and possible revision of the delegated act, taking into account the speed of technological progress.

Article 11

Exercise of the delegation

1. The powers to adopt the delegated acts referred to in Article 10 shall be conferred on the Commission for a period of five years beginning on 19 June 2010. The Commission shall make a report in respect of the delegated powers not later than six months before the end of the five-year period. The delegation of powers shall be automatically extended for periods of an identical duration, unless the European Parliament or the Council revokes it in accordance with Article 12.
2. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the **Ministerial Council, who shall put it on the agenda of its next meeting.**
3. The powers to adopt delegated acts are conferred on the Commission subject to the conditions laid down in Articles 12 and 13.

Article 12

Revocation of the delegation

1. The delegation of powers referred to in Article 10 may be revoked by the European Parliament or by the Council.
2. The institution which has commenced an internal procedure for deciding whether to revoke the delegation of powers shall endeavour to inform the other institution and the Commission within a reasonable time before the final decision is taken, indicating the delegated powers which could be subject to revocation and possible reasons for a revocation.
3. The decision of revocation shall put an end to the delegation of the powers specified in that decision. It shall take effect immediately or at a later date specified therein. It shall not affect the validity of the delegated acts already in force. It shall be published in the Official Journal of the European Union.

Article 13

Objections to delegated acts²

The Ministerial Council may object to the application of a delegated act to the Contracting Parties of the Energy Community at the meeting following notification. If, at that meeting, the Ministerial Council has not objected to the delegated act, it shall become binding on the Contracting Parties, subject to possible adaptation. If the Ministerial Council objects to a delegated act, it shall not be applicable in the Energy Community. The Ministerial Council shall state the reasons for objecting to the delegated act.

² The text displayed here corresponds to Article 3(2)(f) of Ministerial Council Decision 2009/05/MC-EnC, as amended by Article 2 of Ministerial Council Decision 2010/02/MC-EnC.

Article 14

Evaluation

Not later than 31 December 2014, the Commission shall review the effectiveness of this Directive and of its delegated acts and submit a report to the European Parliament and the Council.

On that occasion, the Commission shall also assess:

- (a) the contribution of Article 4(c) to the aim of this Directive;
- (b) the effectiveness of Article 9(1);
- (c) in the light of technical evolution and the understanding by consumers of the label layout, the need for amending Article 10(4)(d).

Article 15

Penalties

Contracting Parties shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and its delegated acts, including unauthorised use of the label, and shall take the necessary measures to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive. The **Contracting Parties** shall notify these provisions to the **Secretariat** by **31 December 2011** and shall notify the Secretariat without delay of any subsequent amendment affecting those provisions.

Article 16³

Transposition

1. **Contracting Parties** shall bring into force, by **31 December 2011**⁴ at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the **Secretariat** the text of those provisions.

They shall apply those provisions from **31 December 2011**.

When **Contracting Parties** adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. They shall also include a statement to the effect that references in existing laws, regulations and administrative provisions to Directive 92/75/EEC shall be construed as references to this Directive. **Contracting Parties** shall determine how such reference is to be made and how that statement is to be formulated.

2. **Contracting Parties** shall communicate to the **Secretariat** the text of the main provisions of national law which they adopt in the field covered by this Directive.

³ Adapted by Articles 2(2)(b) and 2(3)(a)(ii) of the Decision 2010/02/MC-EnC of 24 September 2010.

⁴ In accordance with the Accession Protocol, the corresponding date for Georgia is 31 December 2018.

Article 17**Repeal**

Directive 92/75/EEC, as amended by the Regulation indicated in Annex I, Part A, is repealed with effect from 21 July 2011, without prejudice to the obligations of the **Contracting Parties** relating to the time-limits for transposition into national law and application of that Directive set out in Annex I, Part B.

References to Directive 92/75/EEC shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex II.

Articles 18 and 19**Entry into force and Addressees**

This Decision [2010/02/MC-EnC] enters into force upon its adoption and is addressed to the Contracting Parties.

Points (d), (g) and (h) of Article 5 shall apply from **31 December 2011**.

The Secretariat shall monitor and review the implementation of [this] Directive <...> in the Contracting Parties and shall submit a progress report to the Permanent High Level Group by 30 June 2012.⁵

⁵ The text displayed here corresponds to Article 2(5) of Decision 2010/02/MC-EnC of 24 September 2010.

IMPLEMENTING DIRECTIVES AND DELEGATED REGULATION ON ENERGY LABELLING⁶

Delegated Regulation (EU) 65/2014 of 1 October 2013 supplementing Directive 2010/30/EU with regard to the energy labelling of domestic ovens and range hoods

Delegated Regulation (EU) 665/2013 of 3 May 2013 supplementing Directive 2010/30/EU with regard to energy labelling of vacuum cleaners

Delegated Regulation (EU) 812/2013 of 18 February 2013 supplementing Directive 2010/30/EU with regard to the energy labelling of water heaters, hot water storage tanks and packages of water heater and solar device

Delegated Regulation (EU) 811/2013 of 18 February 2013 supplementing Directive 2010/30/EU with regard to the energy labelling of space heaters, combination heaters, packages of space heater, temperature control and solar device and packages of combination heater, temperature control and solar device

Delegated Regulation (EU) 874/2012 of 12 July 2012 supplementing Directive 2010/30/EU with regard to energy labelling of electrical lamps and luminaires

Delegated Regulation (EU) 392/2012 of 1 March 2012 supplementing Directive 2010/30/EU with regard to energy labelling of household tumble driers

Delegated Regulation (EU) 626/2011 of 4 May 2011 supplementing Directive 2010/30/EU with regard to energy labelling of air conditioners

Delegated Regulation (EU) 1062/2010 of 28 September 2010 supplementing Directive 2010/30/EU with regard to energy labelling of televisions

Delegated Regulation (EU) 1061/2010 of 28 September 2010 supplementing Directive 2010/30/EU with regard to energy labelling of household washing machines

Delegated Regulation (EU) 1060/2010 of 28 September 2010 supplementing Directive 2010/30/EU with regard to energy labelling of household refrigerating appliances

Delegated Regulation (EU) 1059/2010 of 28 September 2010 supplementing Directive 2010/30/EU with regard to energy labelling of household dishwashers

Directive 96/60/EC of 19 September 1996 implementing Directive 92/75/EEC with regard to energy labelling of household combined washer-driers

⁶ By its Decisions 2010/02 MC-EnC of 24 September 2010, 2011/03 MC-EnC of 6 October 2011 and 2014/02/MC-EnC of 23 September 2014, the Ministerial Council incorporated and adapted the following Delegated Regulations, which are not displayed here due to space restrictions, but are part of the Legal Framework, Special Edition on Energy Efficiency.

PART II

ACQUIS COMMUNAUTAIRE

STATISTICS

REGULATION (EC) 1099/2008 of 22 October 2008 on energy statistics

Incorporated and adapted by Ministerial Council Decision 2012/02/MC-EnC of 18 October 2012 concerning the implementation of the rules of energy statistics in the Energy Community and amended by Decision 2013/02/MC-EnC of 24 October 2013 on implementation of Regulation (EU) 147/2013 on statistics and the Decision 2015/02/MC-EnC of 16 October 2015 on implementation of Regulation 431/2014 and amending Regulation 1099/2008 on Energy Statistics.

*The adaptations made by Ministerial Council Decision 2012/02/MC-EnC are highlighted in **blue and bold**.*

Whereas:

(1) The Community needs to have precise and timely data on energy quantities, their forms, sources, generation, supply, transformation and consumption, for the purpose of monitoring the impact and consequences of its policy work on energy.

(2) Energy statistics have traditionally been focused on energy supply and on fossil energies. In the coming years, greater focus is needed on increased knowledge and monitoring of final energy consumption, renewable energy and nuclear energy.

(3) The availability of accurate, up-to-date information on energy is essential for assessing the impact of energy consumption on the environment, in particular in relation to the emission of greenhouse gasses. This information is required by Decision No 280/2004/EC of the European Parliament and of the Council of 11 February 2004 concerning a mechanism for monitoring Community greenhouse gas emissions and for implementing the Kyoto Protocol.

(4) Directive 2001/77/EC of the European Parliament and of the Council of 27 September 2001 on the promotion of electricity produced from renewable energy sources in the internal electricity market and Directive 2004/8/EC of the European Parliament and of the Council of 11 February 2004 on the promotion of cogeneration based on a useful heat demand in the internal energy market require Member States to report quantitative energy data. In order to monitor progress towards the achievement of the objectives set in those Directives, detailed, up-to-date energy data are required.

(5) Directive 2002/91/EC of the European Parliament and of the Council of 16 December 2002 on the energy performance of buildings, Directive 2006/32/EC of the European Parliament and of the Council of 5 April 2006 on energy end-use efficiency and energy services and Directive 2005/32/EC of the European Parliament and of the Council of 6 July 2005 establishing a framework for the setting of ecodesign requirements for energy-using products require Member States to report quantitative energy consumption data. To monitor progress towards the achievement of the objectives set in those Directives, detailed, up-to-date energy data, as well as a better interface between these energy data and related statistical surveys such as the population and housing censuses and transportation data, are required.

(6) The Green Papers of the Commission of 22 June 2005 on Energy Efficiency and of 8 March 2006 on a European Strategy for Sustainable, Competitive and Secure Energy discuss EU energy policies for which the availability of EU energy statistics are required, including for the purpose of establishing a European Energy Market Observatory.

(7) The establishment of a public domain energy forecast model, as called for by the European Par-

liament in its Resolution of 14 December 2006 on a European Strategy for Sustainable, Competitive and Secure Energy requires detailed, up-to-date energy data.

(8) In the coming years, greater attention should be paid to the security of supply of the most important fuels and more timely and more accurate data at EU level is needed to anticipate and coordinate EU solutions to possible supply crises.

(9) The liberalisation of the energy market and its growing complexity make it increasingly difficult to obtain reliable, timely energy data in the absence, in particular, of a legal basis concerning the provision of such data.

(10) In order for the energy statistics system to assist political decision-making by the European Union and its Member States and promote public debate which includes citizens, it must afford guarantees of comparability, transparency, flexibility and ability to evolve. Thus, in the near future, statistics on nuclear energy should be incorporated and relevant data concerning renewable energy should be developed more. Similarly, with regard to energy efficiency, the availability of detailed statistics on habitat and transport would be extremely useful.

(11) The production of Community statistics is governed by the rules set out in Council Regulation (EC) No 322/97 of 17 February 1997 on Community Statistics.

(12) Since the objective of this Regulation, namely establishing a common framework for the production, transmission, evaluation and dissemination of comparable energy statistics in the Community 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 to achieve that objective.

(13) In the production and dissemination of Community statistics under this Regulation, the national and Community statistical authorities should take account of the principles set out in the European Statistics Code of Practice, which was adopted on 24 February 2005 by the Statistical Programme Committee, established by Council Decision 89/382/EEC, Euratom and attached to the Recommendation of the Commission on the independence, integrity and accountability of the national and Community statistical authorities.

(14) 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.

(15) In particular, power should be conferred on the Commission to modify the list of data sources, the national statistics and the applicable clarifications or definitions as well as the transmission arrangements and to establish and modify the annual nuclear statistics, once incorporated, to modify the renewable energy statistics, once incorporated, and to establish and modify the final energy consumption statistics. 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 5(a) of Decision 1999/468/EC.

(16) It is necessary to provide that the Commission may grant exemptions or derogations to Member States from those aspects of the energy data collection that would lead to an excessive burden on respondents. The exemptions or derogations should be granted only upon receipt of a proper justification which indicates the present situation and the excessive burden transparently. The period for

which they remain in force should be limited to the shortest time necessary.

(17) The measures provided for in this Regulation are in accordance with the opinion of the Statistical Programme Committee.

Article 1

Subject matter and scope

1. This Regulation establishes a common framework for the production, transmission, evaluation and dissemination of comparable energy statistics in the Community.
2. This Regulation shall apply to statistical data concerning energy products and their aggregates in the Community.

Article 2

Definitions

For the purpose of this Regulation, the following definitions shall apply:

- (a) "Community statistics" mean Community statistics as defined in the first indent of Article 2 of Regulation (EC) No 322/97;
- (b) "production of statistics" means production of statistics as defined in the second indent of Article 2 of Regulation (EC) No 322/97;
- (c) "Commission (Eurostat)" means the Community authority as defined in the fourth indent of Article 2 of Regulation (EC) No 322/97;
- (d) "energy products" mean combustible fuels, heat, renewable energy, electricity, or any other form of energy;
- (e) "aggregates" mean data aggregated at national level on the treatment or use of energy products, namely production, trade, stocks, transformation, consumption, and structural characteristics of the energy system such as installed capacities for electricity generation or production capacities for oil products;
- (f) "quality of data" means the following aspects of statistical quality: relevance, accuracy, timeliness and punctuality, accessibility and clarity, comparability, coherence and completeness.

Article 3

Data sources

1. While applying the principles of maintaining a reduced burden on respondents and of administrative simplification, Member States¹ shall compile data concerning energy products and their aggregates in the Community from the following sources:

- (a) specific statistical surveys addressed to the primary and transformed energy producers and trad-

¹ Decision 2012/02/MC-EnC incorporating this Regulation is addressed to Contracting Parties.

ers, distributors and transporters, importers and exporters of energy products;

(b) other statistical surveys addressed to final energy users in the sectors of manufacturing industry, transport, and other sectors, including households;

(c) other statistical estimation procedures or other sources, including administrative sources, such as regulators of the electricity and gas markets.

2. Member States shall lay down the detailed rules concerning the reporting of the data needed for the national statistics as specified in Article 4 by undertakings and other sources.

3. The list of data sources may be modified in accordance with the regulatory procedure with scrutiny referred to in Article 11(2).

Article 4

Aggregates, energy products and the transmission frequency of national statistics

1. The national statistics to be reported shall be as set out in the Annexes. They shall be transmitted with the following frequencies:

(a) annual, for the energy statistics in Annex B;

(b) monthly, for the energy statistics in Annex C;

(c) short-term monthly, for the energy statistics in Annex D.

2. Applicable clarifications or definitions of the technical terms used are provided in the individual Annexes and also in Annex A (Clarifications of terminology).

3. The data to be forwarded and the applicable clarifications or definitions may be modified in accordance with the regulatory procedure with scrutiny referred to in Article 11(2).

Article 5

Transmission and dissemination

1. Member States shall transmit to the Commission (Eurostat) the national statistics referred to in Article 4.

2. The arrangements for their transmission, including the applicable time limits, derogations and exemptions therefrom, shall be as set out in the Annexes.

3. The arrangements for the transmission of the national statistics may be modified in accordance with the regulatory procedure with scrutiny referred to in Article 11(2).

4. At the duly justified request of a Member States, additional exemptions or derogations may be granted by the Commission in accordance with the regulatory procedure referred to in Article 11(3), for those parts of the national statistics for which the collection would lead to an excessive burden on respondents.

5. The Commission (Eurostat) shall disseminate yearly energy statistics by 31 January of the second year following the reported period.

Article 6

Quality assessment and reports

1. Member States shall ensure the quality of the data transmitted.
2. Every reasonable effort shall be undertaken to ensure coherence between energy data declared in accordance with Annex B and data declared in accordance with Commission Decision 2005/166/EC of 10 February 2005 laying down the rules for implementing Decision No 280/2004/EC of the European Parliament and of the Council concerning a mechanism for monitoring Community greenhouse gas emissions and for implementing the Kyoto Protocol.
3. For the purposes of this Regulation, the following quality assessment dimensions shall apply to the data to be transmitted:
 - (a) "relevance" shall refer to the degree to which statistics meet current and potential needs of the users;
 - (b) "accuracy" shall refer to the closeness of estimates to the unknown true values;
 - (c) "timeliness" shall refer to the delay between the availability of the information and the event or phenomenon it describes;
 - (d) "punctuality" shall refer to the delay between the date of the release of the data and the target date when it should have been delivered;
 - (e) "accessibility" and "clarity" shall refer to the conditions and modalities by which users can obtain, use and interpret data;
 - (f) "comparability" shall refer to the measurement of the impact of differences in applied statistical concepts and measurement tools and procedures where statistics are compared between geographical areas, sectoral domains or over time;
 - (g) "coherence" shall refer to the adequacy of the data to be reliably combined in different ways and for various uses.
4. Every five years, Member States shall provide the Commission (Eurostat) with a report on the quality of the data transmitted as well as on any methodological changes that have been made.
5. Within six months of receipt of a request from the Commission (Eurostat), and in order to allow it to assess the quality of the data transmitted, Member States shall send to the Commission (Eurostat) a report containing any relevant information concerning the implementation of this Regulation.

Article 7

Time reference and frequency

Member States shall compile all data specified in this Regulation from the beginning of the calendar year following the adoption of this Regulation, and shall transmit them from then onwards with the frequencies laid down in Article 4(1).

Article 8

Annual nuclear statistics

The Commission (Eurostat) shall, in cooperation with the nuclear energy sector in the EU, define a set of annual nuclear statistics which shall be reported and disseminated from 2009 onwards, that year being the first reported period, without prejudice to confidentiality, where it is necessary, and avoiding any duplication of data collection, while at the same time keeping production costs low and the reporting burden reasonable.

The set of annual nuclear statistics shall be established and may be modified in accordance with the regulatory procedure with scrutiny referred to in Article 11(2).

Article 9

Renewable energy statistics and final energy consumption statistics

1. With a view to improving the quality of renewable energy and final energy consumption statistics, the Commission (Eurostat), in collaboration with the Member States, shall make sure that these statistics are comparable, transparent, detailed and flexible by:

(a) reviewing the methodology used to generate renewable energy statistics in order to make available additional, pertinent, detailed statistics on each renewable energy source, annually and in a cost-effective manner. The Commission (Eurostat) shall present and disseminate the statistics generated from 2010 (reference year) onwards;

(b) reviewing and determining the methodology used at national and Community level to generate final energy consumption statistics (sources, variables, quality, costs) based on the current situation, existing studies and feasibility pilot studies, as well as cost-benefit analyses yet to be conducted, and evaluating the findings of the pilot studies and cost-benefit analyses with a view to establishing breakdown keys for final energies by sector and main energy uses and gradually integrating the resulting elements into the statistics from 2012 (reference year) onwards.

2. The set of renewable energy statistics may be modified in accordance with the regulatory procedure with scrutiny referred to in Article 11(2).

3. The set of final energy consumption statistics shall be established and may be modified in accordance with the regulatory procedure with scrutiny referred to in Article 11(2).

Article 10

Implementing measures

1. The following measures necessary for implementation of this Regulation, 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 11(2):

(a) modifications to the list of data sources (Article 3(3));

(b) modifications to the national statistics and to the applicable clarifications or definitions (Article 4(3));

- (c) modifications to the transmission arrangements (Article 5(3));
 - (d) establishment of and modifications to the annual nuclear statistics (Article 8(2));
 - (e) modifications to the renewable energy statistics (Article 9(2));
 - (f) establishment of and modifications to the final energy consumption statistics (Article 9(3)).
2. Additional exemptions or derogations (Article 5(4)) shall be granted in accordance with the regulatory procedure referred to in Article 11(3).
3. Consideration is to be given to the principle that additional costs and the reporting burden remain within reasonable limits.

Article 11 **Committee**

<...>

Article 12 **Entry into force and Addressees²**

This Decision [2012/02/MC-EnC] enters into force upon its adoption and is addressed to the Contracting Parties.

Article 1 of Decision 2012/02/MC-EnC

Each Contracting Party shall implement Regulation (EC) 1099/2008 of 22 October 2008 on energy statistics <...> not later than 31 December 2013.

Article 1 of Decision 2013/02/MC-EnC

Each Contracting Part shall implement Commission Regulation (EU) No 147/2013 of 13 February 2013 amending Regulation (EC) No 1099/2008 of the European Parliament and of the Council on energy statistics, as regards the implementation of updates for the monthly and annual energy statistics not later than 31 December 2013.

Article 1 of Decision 2015/02/MC-EnC

Each Contracting Party shall implement Commission Regulation (EU) No 431/2014 of 24 April 2014 amending Regulation (EC) No 1099/2008 of the European Parliament and of the Council on energy statistics, as regards the implementation of annual statistics on energy consumption in households, not later than 31 December 2016.

² The text displayed here corresponds to Article 4 of Decision 2012/02/MC-EnC.

ANNEX A

CLARIFICATIONS OF TERMINOLOGY

This Annex supplies explanations or definitions of terms that are used in the other Annexes.

1. GEOGRAPHICAL NOTES

For statistical reporting purposes only, the following geographical definitions apply:

- Australia excludes the overseas territories,
- Denmark excludes the Faeroe Islands and Greenland,
- France includes Monaco and excludes the French overseas territories Guadeloupe, Martinique, Guyane, Reunion, St.-Pierre and Miquelon, New Caledonia, French Polynesia, Wallis and Futuna, Mayotte,
- Italy includes San Marino and the Vatican,
- Japan includes Okinawa,
- The Netherlands excludes Suriname and the Netherlands Antilles,
- Portugal includes the Açores and Madeira,
- Spain includes the Canary Islands, the Balearic Islands, and Ceuta and Melilla,
- Switzerland does not include Liechtenstein,
- United States includes the 50 States, the District of Columbia, the US Virgin Islands, Puerto Rico and Guam.

2. AGGREGATES

Producers are classified according to the purpose of production:

- Main activity producer: enterprises, both privately or publicly owned, which generate electricity and/or heat for sale to third parties, as their principal activity,
- Autoproducers: enterprises, both privately or publicly owned, which generate electricity and/or heat wholly or partly for their own use as an activity which supports their primary activity.

Note: the Commission may further clarify terminology by adding relevant NACE references in accordance with the regulatory procedure with scrutiny referred to in Article 11(2) after a revision of the NACE classification has entered into force.

2.1. Supply and Transformation Sectors

Production/Indigenous Production

Quantities of fuels extracted or produced, calculated after any operation for removal of inert matter. Production includes the quantities consumed by the producer in the production process (e.g. for heating or operation of equipment and auxiliaries) as well as supplies to other producers of energy for transformation or other uses.

Indigenous means: production from resources within the concerned state.

Imports/Exports

For geographical definitions see 'Geographical Notes' section.

Unless specified differently, 'imports' refer to ultimate origin (the country in which the energy product was produced) for use in the country and 'exports' to the ultimate country of consumption of the produced energy product.

Amounts are considered as imported or exported when they have crossed the political boundaries of the country, whether customs clearance has taken place or not.

Where no origin or destination can be reported 'Other' may be used.

Statistical differences may arise if only total import and export are available on the above basis, while the geographical breakdown is based on a different survey, source or concept. In this case, differences shall be included under 'Other'.

International Marine Bunkers

Quantities of fuels delivered to ships of all flags that are engaged in international navigation. The international navigation may take place at sea, on inland lakes and waterways, and in coastal waters. Excluded is:

- consumption by ships engaged in domestic navigation. The domestic/ international split should be determined on the basis of port of departure and port of arrival, and not by the flag or nationality of the ship
- consumption by fishing vessels
- consumption by military forces.

Stock Changes

The difference between the opening stock level and closing stock level for stocks held on national territory.

Gross Consumption (calculated)

Calculated value, defined as:

= Indigenous production + From other sources + Imports – Exports – International marine bunkers + Stock changes

Gross Consumption (observed)

The quantity actually recorded in surveys of end-use sectors.

Statistical Differences

Calculated value, defined as:

= Calculated gross consumption – Observed gross consumption.

Includes changes in stocks at final consumers when this cannot be specified as part of the 'Stock changes'.

Reasons for any major differences should be stated.

Main Activity Producer Electricity Plants

Fuel quantities used to produce electricity.

Fuels used by plants containing at least one CHP unit are to be reported under Main Activity Producer CHP Plants.

Main Activity Producer Combined Heat and Power (CHP) Plants

Quantities of fuels used to produce electricity and heat.

Main Activity Producer Heat Plants

Quantities of fuels used to produce heat.

Autoproducer Electricity Plants

Quantities of fuels used to produce electricity.

Fuels used by plants containing at least one CHP unit are to be reported under Autoproducer CHP Plants.

Autoproducer Combined Heat and Power (CHP) Plants

Quantities of fuels that correspond to the quantity of electricity produced and heat sold.

Autoproducer Heat Plants

Quantities of fuels that correspond to the quantity of heat sold.

Patent Fuel Plants

Quantities used to produce fuels.

Quantities used for heating and operation of equipment should not be declared here, but declared as consumption in the Energy sector.

Coke Ovens

Quantities used in coke ovens.

Quantities used for heating and operation of equipment should not be declared here, but declared as consumption in the Energy sector.

BKB/PB plants

Quantities of lignite used to produce brown coal briquettes (BKB) or of peat to produce peat briquettes (PB).

Quantities used for heating and operation of equipment should not be declared here, but declared as consumption in the Energy sector.

Gas Works

Quantities used to produce gas in gas works and coal gasification plants.

Quantities used as a fuel for heating and operation of equipment should not be included here, but declared as consumption in the Energy sector.

Blast furnace

Quantities of coking coal and/or bituminous coal (generally referred to as PCI) and coke oven coke transformed in blast furnaces.

Quantities used as a fuel for heating and operation of blast furnaces (e.g.: blast furnaces gas) should not be included here, but declared as consumption in the Energy sector.

Coal Liquefaction

Quantities of fuel used to produce synthetic oil.

Petroleum refineries

Quantities used to produce petroleum products.

Quantities used as a fuel for heating and operation of equipment should not be declared here, but declared as consumption in the Energy sector.

Not Elsewhere Specified – Transformation

Quantities used for transformation activities not included elsewhere. If used, what is included under this heading should be explained in the report.

2.2. *Energy sector and final consumption*

Total Energy Sector

Quantities consumed by the energy industry to support the extraction (mining, oil and gas production) or plant operations of transformation activities. This corresponds to NACE Divisions 05, 06, 08.92, 07.21, 09.1, 19 and 35.

Excludes quantities of fuels transformed into another energy form (which should be reported under the Transformation sector) or used in support of the operation of oil, gas and coal slurry pipelines (which should be reported in the Transport Sector).

Includes the manufacture of chemical materials for atomic fission and fusion and the products of these processes.

Electricity, CHP and Heat Plants

Quantities consumed as energy at electricity plants, combined heat and power plants (CHP) and heat plants.

Coal Mines

Quantities consumed as energy to support the extraction and preparation of coal within the coal mining industry.

Coal burned in pithead power stations should be reported in the Transformation Sector.

Patent fuel plants

Quantities consumed as energy at patent fuel plants.

Coke Ovens

Quantities consumed as energy at coking plants.

BKB/PB plants

Quantities used as energy in BKP/PB plants.

Gas Works/gasification works

Quantities consumed as energy at gas works and coal gasification plants.

Blast Furnaces

Quantities consumed as energy at blast furnaces.

Coal Liquefaction

Quantities consumed as energy at coal liquefaction plants.

Petroleum Refineries

Quantities consumed as energy at petroleum refineries.

Oil and Gas extraction

Quantities consumed as fuel in the oil and gas extraction process and in natural gas processing plants.

Excludes pipeline losses (to be reported as distribution losses) and energy quantities used to operate pipelines (to be reported in the Transport sector).

Total Final Consumption

Defined (calculated) as:

= Total non-energy use + Final Energy Consumption (Industry + Transport + Other sectors)

It excludes deliveries for transformation, use by the energy producing industries, and distribution losses.

Non-Energy Use

Energy products used as raw materials in the different sectors; that is, not consumed as a fuel or transformed into another fuel.

2.3. Energy end-use Specification

Final Energy Consumption

Total energy consumption in industry, transport and other sectors.

Industry Sector

This refers to fuel quantities consumed by the industrial undertaking in support of its primary activities.

For heat only or CHP plants, only quantities of fuels consumed for the production of heat used by the plant itself are applicable. Quantities of fuels consumed for the production of heat that is sold, and for the production of electricity, should be reported under the appropriate Transformation sector.

Iron and Steel: NACE Divisions 24.1, 24.2, 24.3, 24.51 and 24.52.

Chemical (including Petrochemical)

Chemical and petrochemical industries; NACE Divisions 20 and 21.

Non-Ferrous Metals

Non-ferrous metals industries; NACE Divisions 24.4, 24.53 and 24.54.

Non-Metallic Minerals

Glass, ceramic, cement and other building materials industries; NACE Division 23.

Transport Equipment

Industries related to the equipment used for transport; NACE Divisions 29 and 30.

Machinery

Fabricated metal products, machinery and equipment other than transport equipment; NACE Divisions 25, 26, 27 and 28.

Mining and Quarrying

NACE Divisions 07 (except 07.21), 08 (except 08.92) and 09.9; it excludes energy producing industries.

Food, Beverages and Tobacco: NACE Divisions 10, 11 and 12.

Pulp, Paper and Printing

Includes production of recorded media; NACE Divisions 17 and 18.

Wood and Wood Products (other than pulp and paper): NACE Division 16.

Construction: NACE Division 41, 42 and 43.

Textile and Leather; NACE Divisions 13, 14 and 15.

Not Elsewhere Specified – Industry

Consumption in sectors which is not covered above.

Transport Sector

Energy used in all transport activities irrespective of the economic sector in which the activity occurs; NACE Divisions 49, 50 and 51.

Transport Sector – Rail

All consumption for use in rail traffic, including industrial railways; NACE Divisions 49.1 and 49.2.

Transport Sector – Domestic Navigation

Quantities delivered to vessels of all flags not engaged in international navigation (see International marine bunkers). The domestic/international split should be determined on the basis of port of departure and port of arrival and not by the flag or nationality of the ship. NACE Division 50.

Transport Sector – Road

Quantities used in road vehicles.

Includes fuel used by agricultural vehicles on highways and lubricants for use in road vehicles.

Excludes energy used in stationary engines (see Other sector), for non-highway use in tractors (see Agriculture), military use in road vehicles (see Other sector – Not elsewhere specified), bitumen used in road surfacing and energy used in engines at construction sites (see Industry sub-sector Construction). NACE Divisions 49.3 and 49.4.

Transport Sector – Pipeline Transport

Quantities used as energy in the support and operation of pipelines transporting gases, liquids, slurries and other commodities; NACE Division 49.5.

Includes energy used for pump stations and maintenance of the pipeline.

Excludes energy used for the pipeline distribution of natural or manufactured gas, hot water or steam from the distributor to final users (to be reported in the energy sector), energy used for the final distribution of water to household, industrial, commercial and other users (to be included in Commercial and Public Services) and losses occurring during this transport between distributor and final users (to be reported as distribution losses).

Transport Sector – International Aviation

Quantities of aviation fuels delivered to aircraft for international aviation. The domestic/international split should be determined on the basis of departure and landing locations and not by the nationality of the airline. Part of NACE Division 51.

Excludes fuels used by airlines for their road vehicles (to be reported in the transport sector – Not

elsewhere specified) and military use of aviation fuels (to be reported in the Other sectors – Not elsewhere specified).

Transport Sector – Domestic Aviation

Quantities of aviation fuels delivered to aircraft for domestic aviation – commercial, private, agricultural, etc. Part of NACE Division 51.

Includes fuel used for purposes other than flying, e.g. bench testing of engines. The domestic/international split should be determined on the basis of departure and landing locations and not by the nationality of the airline.

Excludes fuels used by airlines for their road vehicles (to be reported in the transport sector – Not elsewhere specified) and military use of aviation fuels (to be reported in the Other sector – Not elsewhere specified).

Transport Sector – Not Elsewhere Specified

Quantities used for transport activities not included elsewhere.

Includes fuels used by airlines for their road vehicles and fuels used in ports for ships' unloaders, various types of cranes.

To be declared is what is included under this heading.

Other Sectors

Sectors not specifically mentioned or not belonging to energy, industry or transport.

Other Sectors – Commercial and Public Services

Fuels consumed by business and offices in the public and private sectors.

NACE Divisions 33, 36, 37, 38, 39, 45, 46, 47, 52, 53, 55, 56, 58, 59, 60, 61, 62, 63, 64, 65, 66, 68, 69, 70, 71, 72, 73, 74, 75, 77, 78, 79, 80, 81, 82, 84, 85, 86, 87, 88, 90, 91, 92, 93, 94, 95, 96 and 99.

Other Sectors – Residential

To be declared are fuels consumed by all households including 'households with employed persons'. NACE Divisions 97 and 98.

The following specific definitions apply for this sector:

Household sector:

Household means a person living alone or a group of people who live together in the same private dwelling and sharing expenditures including the joint provision of the essentials of living. The household sector, also known as the residential (or domestic) sector is therefore, a collective pool of all households in a country.

Collective residences which can be permanent (e.g. prisons) or temporary (e.g. hospitals) should be excluded as these are covered in consumption in the service sector. Energy used in all transport activities should be reported in the transport sector and not in the household sector.

Energy consumption associated with significant economic activities of households should also be excluded from the total household energy consumption. These activities include agricultural economic activities on small farms and other economic activities carried out in a household's residence and should be reported in the corresponding sector.

Space heating:

This energy service refers to the use of energy to provide heat in an interior area of a dwelling.

Space cooling:

This energy service is referred to the use of energy for cooling in a dwelling by a refrigeration system and/or unit.

Fans, blowers and other appliances not connected to a refrigeration unit are excluded from this section, but should be covered in the lighting and electrical appliances section.

Water heating:

This energy service is referred to the use of energy to heat water for hot running water, bathing, cleaning and other non-cooking applications.

Swimming pool heating is excluded, but should be covered in the other end uses section.

Cooking:

This energy service is referred to the use of energy to prepare meals.

Appliances for auxiliary cooking (microwave ovens, kettles, coffee makers, etc.) are excluded; they should be covered in the the lighting and electrical appliances section

Lighting and electrical appliances (electricity only):

Use of electricity for lighting and any other electrical appliances in a dwelling not considered within other end uses.

Other end uses:

Any other energy consumption in households such as use of energy for the outdoor and any other activities not included into the five energy end- uses mentioned above (e.g. lawn mowers, swimming pool heating, outdoor heaters, outdoor barbecues, saunas etc.).

Other Sectors – Agriculture/Forestry

Fuels consumed by users classified as agriculture, hunting and forestry; NACE Divisions 01 and 02.

Other Sectors – Fishing

Fuels delivered for inland, coastal and deep-sea fishing. Fishing should cover fuels delivered to ships of all flags that have refuelled in the country (include international fishing) and energy used in the fishing industry. NACE Division 03.

Other Sectors – Not Elsewhere Specified

These are activities not included elsewhere. This category includes military fuel use for all mobile and stationary consumption (e.g. ships, aircraft, road and energy used in living quarters), regardless of whether the fuel delivered is for the military of that country or for the military of another country. If used, what is included under this heading should be explained in the report.

3. *OTHER TERMS*

The meaning of the following abbreviations applies:

- TML: tetramethyl lead,
- TEL: tetraethyl lead,
- SBP: special boiling point,
- LPG: liquified petroleum gas,
- NGL: natural gas liquids,
- LNG: liquefied natural gas,
- CNG: compressed natural gas.

ANNEX B

ANNUAL ENERGY STATISTICS

This Annex describes the scope, units, reported period, frequency, deadline and transmission modalities for the annual collection of energy statistics.

Annex A applies for explanations of terms for which a specific explanation is not supplied in this Annex.

1. SOLID FOSSIL FUELS AND MANUFACTURED GASES

1.1. Applicable energy products

Unless otherwise specified this data collection applies to all of the following energy products:

1. Anthracite

High rank coal used for industrial and residential applications. It has generally less than 10% volatile matter and a high carbon content (about 90% fixed carbon). Its gross calorific value is greater than 24 000 kJ/kg on an ash-free but moist basis.

2. Coking Coal

Bituminous coal with a quality that allows the production of a coke suitable to support a blast furnace charge. Its gross calorific value is greater than 24 000 kJ/kg on an ash-free but moist basis.

3. Other Bituminous Coal (Steam coal)

Coal used for steam raising purposes and includes all bituminous coal that is not included under coking coal nor anthracite. It is characterised by higher volatile matter than anthracite (more than 10%) and lower carbon content (less than 90% fixed carbon). Its gross calorific value is greater than 24 000 kJ/kg on an ash-free but moist basis. If bituminous coal is used in coke ovens it should be reported as coking coal.

4. Sub-Bituminous Coal

Refers to non-agglomerating coal with a gross calorific value between 20 000 kJ/kg and 24 000 kJ/kg containing more than 31% volatile matter on a dry mineral matter free basis.

5. Lignite

Non-agglomerating coal with a gross calorific value less than 20 000 kJ/kg and greater than 31% volatile matter on a dry mineral matter free basis.

6. Patent Fuel

A composition fuel manufactured from hard coal fines with the addition of a binding agent. The amount of patent fuel produced may, therefore, be slightly higher than the actual amount of coal consumed in the transformation process.

7. Coke Oven Coke

The solid product obtained from carbonisation of coal, principally coking coal, at high temperature, it is low in moisture and volatile matter. Coke oven coke is used mainly in the iron and steel industry acting as energy source and chemical agent. Coke breeze and foundry

coke are included in this category.

Semi-coke (a solid product obtained from carbonisation of coal at low temperature) should be included in this category. Semi-coke is used as a domestic fuel or by the transformation plant itself. This heading also includes coke, coke breeze and semi-coke made from lignite.

8. Gas Coke

By-product of hard coal used for production of town gas in gas works. Gas Coke is used for heating purposes.

9. Coal Tar

A result of the destructive distillation of bituminous coal. Coal tar is the liquid by-product of the distillation of coal to make coke in the coke oven process or it is produced from brown coal ('low-temperature tar'). Coal tar can be further distilled into different organic products (e.g. benzene, toluene, naphthalene), which normally would be reported as a feedstock to the petrochemical industry.

10. BKB (Brown Coal Briquettes)

BKB is a composition fuel manufactured from lignite or sub-bituminous coal, produced by briquetting under high pressure without the addition of a binding agent, including dried lignite fines and dust.

11. Gas Works Gas

Covers all types of gases produced in public utility or private plants, whose main purpose is manufacture, transport and distribution of gas. It includes gas produced by carbonisation (including gas produced by coke ovens and transferred to gas works gas), by total gasification with or without enrichment with oil products (LPG, residual fuel oil, etc.), and by reforming and simple mixing of gases and/or air, reported under the rows 'From Other Sources'. Under the transformation sector identify amounts of gas works gas transferred to blended natural gas which will be distributed and consumed through the natural gas grid.

The production of other coal gases (i.e. coke oven gas, blast furnace gas and oxygen steel furnace gas) should be reported in the columns concerning such gases, and not as production of gas works gas. The coal gases transferred to gas works plants should then be reported (in their own column) in the transformation sector in the gas works plants row. The total amount of gas works gas resulting from transfers of other coal gases should appear in the production line for gas works gas.

12. Coke Oven Gas

Obtained as a by-product of the manufacture of coke oven coke for the production of iron and steel.

13. Blast Furnace Gas

Produced during the combustion of coke in blast furnaces in the iron and steel industry. It is recovered and used as a fuel partly within the plant and partly in other steel industry processes or in power stations equipped to burn it. The quantity of fuel should be reported on a gross calorific value basis.

14. Other recovered gases

By-product of the production of steel in an oxygen furnace, recovered on leaving the fur-

nace. The gases are also known as converter gas, LD gas or BOS gas. The quantity of recuperated fuel should be reported on a gross calorific value basis. Also covers non-specified manufactured gases not mentioned above, such as combustible gases of solid carbonaceous origin recovered from manufacturing and chemical processes not elsewhere defined.

15. Peat

A combustible soft, porous or compressed, sedimentary deposit of plant origin with high water content (up to 90% in the raw state), easily cut, of light to dark brown colour. Peat used for non-energy purposes is not included.

This definition is without prejudice to the definition of renewable energy sources in Directive 2009/28/EC and to the 2006 IPCC Guidelines for National Greenhouse Gas Inventories.

16. Peat Products

Products such as peat briquettes derived directly or indirectly from sod peat and milled peat.

17. Oil shale and oil sands

Oil shale and oil sands are sedimentary rock which contains organic matter in the form of kerogen. Kerogen is a waxy hydrocarbon-rich material regarded as a precursor of petroleum. Oil shale may be burned directly or processed by heating to extract shale oil. Shale oil and other products derived from liquefaction should be reported on the Annual oil questionnaire in Other hydrocarbons.

1.2. List of aggregates

The following list of aggregates shall be declared for all energy products listed in the previous paragraph unless otherwise specified.

Annex A applies for explanations of terms for which a specific explanation is not supplied in this annex.

1.2.1. Supply and Transformation Sectors

1. Production

1.1. Of which: underground

Applicable only for anthracite, coking coal, other bituminous coal, subbituminous coal and lignite.

1.2. Of which: surface

Applicable only for anthracite, coking coal, other bituminous coal, subbituminous coal and lignite.

2. From Other Sources

This consists of two components:

- recovered slurries, middlings and other low-grade coal products, which cannot be classified according to type of coal. This includes coal recovered from waste piles and other waste receptacles,
- supplies of fuel of which production is covered in other fuel energy balances, but for which consumption will occur in the coal energy balance.

2.1. Of which: from oil products

Not applicable for anthracite, coking coal, other bituminous coal, subbituminous coal, lignite, peat, peat products and oil shale and oil sands.

E.g.: petroleum coke addition to coking coal for coke ovens

2.2. Of which: from natural gas

Not applicable for anthracite, coking coal, other bituminous coal, subbituminous coal, lignite, peat, peat products and oil shale and oil sands.

E.g.: natural gas addition to gas works gas for direct final consumption

2.3. Of which: from renewables

Not applicable for anthracite, coking coal, other bituminous coal, subbituminous coal, lignite, peat, peat products and oil shale and oil sands.

E.g.: industrial waste as binding agent in the manufacturing of patent fuel

3. Imports

4. Exports

5. International Marine Bunkers

6. Stock changes

A stock build is shown as a negative number and a stock draw is shown as a positive number.

7. Gross consumption

8. Statistical differences

9. Total transformation Sector

Quantities of fuels used for the primary or secondary conversion of energy (e.g. coal to electricity, coke oven gas to electricity) or used for the transformation to derived energy products (e.g.: coking coal to coke).

9.1. Of which: Main Activity Producer Electricity Plants

9.2. Of which: Main Activity Producer CHP Plants

9.3. Of which: Main Activity Producer Heat Plants

9.4. Of which: Autoproducer Electricity plants

9.5. Of which: Autoproducer CHP plants

9.6. Of which: Autoproducer Heat plants

9.7. Of which: Patent Fuel Plants

9.8. Of which: Coke Ovens

9.9. Of which: BKB/PB Plants

9.10. Of which: Gas Works

9.11. Of which: Blast Furnaces

Quantities of coking coal and/or bituminous coal (generally referred to as PCI) and coke oven coke transformed in blast furnaces. Amounts used as a fuel for heating and operation of blast furnaces (e.g.: blast furnaces gas) should not be included in the transformation sector, but reported as consumption in the energy sector.

9.12. Of which: Coal Liquefaction

Shale oil and other products derived from liquefaction should be reported as per Chapter 4 of this annex.

9.13. Of which: For Blended Natural Gas

Quantities of coal gases blended with natural gas.

9.14. Of which: Not Elsewhere Specified – Transformation

1.2.2. Energy Sector

1. Total Energy Sector

1.1. Of which: Electricity, CHP and Heat plants

1.2. Of which: Coal Mines

1.3. Of which: Patent Fuel Plants

1.4. Of which: Coke Ovens

1.5. Of which: BKB/PB Plants

1.6. Of which: Gas Works

1.7. Of which: Blast Furnaces

1.8. Of which: Petroleum Refineries

1.9. Of which: Coal Liquefaction

1.10. Of which: Not Elsewhere Specified – Energy

2. Distribution losses

Losses occurred due to transport and distribution, as well as flaring of manufactured gases.

3. Total Final Consumption

4. Total Non-energy use

4.1. Of which: Industry, Transformation and Energy Sectors

Non-energy use in all industry, transformation and energy sub- sectors, e.g. coal used to make methanol or ammonia.

4.1.1. From 4.1, of which: in the petrochemical sector

Non-energy use e.g. coal use as feedstocks to produce fertiliser and as feedstocks for other petrochemical products.

4.2. Of which: Transport Sector

Non-energy use in all Transport sub-sectors.

4.3. Of which: Other Sectors

Non-energy use in Commercial and Public Services, Residential, Agriculture and Not Elsewhere Specified Other.

1.2.3. Energy end-use specification

1. Final Energy Consumption

2. Industry Sector

- 2.1. Of which: Iron and Steel
- 2.2. Of which: Chemical and Petrochemical
- 2.3. Of which: Non-Ferrous Metals
- 2.4. Of which: Non-Metallic Minerals
- 2.5. Of which: Transport Equipment
- 2.6. Of which: Machinery
- 2.7. Of which: Mining and Quarrying
- 2.8. Of which: Food, Beverages and Tobacco
- 2.9. Of which: Pulp, Paper and printing
- 2.10. Of which: Wood and Wood Products
- 2.11. Of which: Construction
- 2.12. Of which: Textile and Leather
- 2.13. Of which: Not Elsewhere Specified – Industry

3. Transport Sector

- 3.1. Of which: Rail
- 3.2. Of which: Domestic Navigation
- 3.3. Of which: Not Elsewhere Specified – Transport

4. Other Sectors

- 4.1. Of which: Commercial and Public Services
- 4.2. Of which: Residential
 - 4.2.1. Residential, of which: Space heating
 - 4.2.2. Residential, of which: Space cooling
 - 4.2.3. Residential, of which: Water heating
 - 4.2.4. Residential, of which: Cooking
 - 4.2.5. Residential, of which: Other end uses
- 4.3. Of which: Agriculture/Forestry
- 4.4. Of which: Fishing
- 4.5. Of which: Not Elsewhere Specified – Other

1.2.4. Imports and exports

Imports by country of origin, and exports by country of destination.

Applicable to anthracite, coking coal, other bituminous coal, sub-bituminous coal, lignite, patent fuel, coke oven coke, coal tar, bkb, peat, peat products and oil shale and oil sands.

1.3. Calorific values

Applicable for anthracite, coking coal, other bituminous coal, sub-bituminous coal, lignite, pat-

ent fuel, coke oven coke, gas coke, coal tar, bkb, peat, peat products, oil shale and oil sands.

Both gross and net calorific values are to be declared for the following main aggregates:

1. Production
2. Imports
3. Exports
4. Used in coke ovens
5. Used in blast furnaces
6. Used in Main Activity Producer Electricity, CHP and Heat Plants
7. Used in Industry
8. For Other Uses

1.4. Units of measurement

1. Energy quantities

10³ tonnes

Exception: for gases (gas works gas, coke oven gas, blast furnace gas, other recovered gases) the measurement is directly in energy content and the unit to be used is therefore TJ (based on gross calorific values).

2. Calorific values

MJ/tonne

1.5. Derogations and exemptions

Not applicable.

2. NATURAL GAS

2.1. Applicable energy products

This data collection applies to natural gas, which comprises gases occurring in underground deposits, whether liquefied or gaseous, consisting mainly of methane.

It includes both 'non-associated' gas originating from fields producing hydrocarbons only in gaseous form, and 'associated' gas produced in association with crude oil as well as methane recovered from coal mines (colliery gas) or from coal seams (coal seam gas).

It does not include gases created by anaerobic digestion of biomass (e.g. municipal or sewage gas) nor gas works gas.

2.2. List of aggregates

The following list of aggregates shall be declared for all energy products listed in the previous paragraph unless otherwise specified.

2.2.1. Supply and Transformation Sectors

To be declared are quantities expressed in both volume and energy units, and including the gross and net calorific values, for the following aggregates:

1. Indigenous Production

All dry marketable production within national boundaries, including offshore production. Production is measured after purification and extraction of NGLs and sulphur.

Excludes extraction losses and quantities reinjected, vented or flared.

Includes quantities used within the natural gas industry; in gas extraction, pipeline systems and processing plants.

1.1. Of which: Associated Gas

Natural gas produced in association with crude oil.

1.2. Of which: Non-Associated Gas

Natural gas originating from fields producing hydrocarbons only in gaseous form.

1.3. Of which: Colliery Gas

Methane produced at coal mines or from coal seams, piped to the surface and consumed at collieries or transmitted by pipeline to consumers.

2. From Other Sources

Fuel which are blended with natural gas, and consumed as a blend.

2.1. Of which: from oil products

LPG for upgrading the quality e.g. heat content

2.2. Of which: from coal

manufactured gas for blending with natural gas

2.3. Of which: from renewables

biogas for blending with natural gas

3. Imports

4. Exports

5. International Marine Bunkers

6. Stock changes

A stock build is shown as a negative number and a stock draw is shown as a positive number.

7. Gross consumption

8. Statistical differences

The requirement of declaring calorific values is not applicable here.

9. Recoverable gas: opening and closing stocks

Quantities of gas available for delivery during any input-output cycle. This refers to recoverable natural gas stored in special storage facilities (depleted gas and/or oil field, aquifer, salt cavity, mixed caverns, or other) as well as liquefied natural gas storage. Cushion gas should be excluded.

The requirement of declaring calorific values is not applicable here.

10. Gas Vented

The volume of gas released into the air on the production site or at the gas processing plant.

The requirement of declaring calorific values is not applicable here.

11. Gas Flared

The volume of gas burned in flares on the production site or at the gas processing plant.

The requirement of declaring calorific values is not applicable here.

12. Total transformation Sector

Quantities of fuels used for the primary or secondary conversion of energy (e.g. natural gas to electricity) or used for the transformation to derived energy products (e.g. natural gas to methanol).

12.1. Of which: Main Activity Producer Electricity Plants

12.2. Of which: Autoproducer Electricity plants

12.3. Of which: Main Activity Producer CHP Plants

12.4. Of which: Autoproducer CHP plants

12.5. Of which: Main Activity Producer Heat Plants

12.6. Of which: Autoproducer Heat plants

12.7. Of which: Gas Works

12.8. Of which: Coke Ovens

12.9. Of which: Blast Furnaces

12.10. Of which: Gas to liquids

Quantities of natural gas used as feedstock for the conversion to liquids e.g. the quantities of fuel entering the methanol production process for transformation into methanol.

12.11. Of which: Non specified – Transformation

2.2.2. *Energy Sector*

1. Total Energy Sector

1.1. Of which: Coal Mines

1.2. Of which: Oil and Gas extraction

1.3. Of which: Inputs to oil refineries

1.4. Of which: Coke Ovens

1.5. Of which: Blast Furnaces

1.6. Of which: Gas Works

1.7. Of which: Electricity, CHP and Heat Plants

1.8. Of which: Liquefaction (LNG) or Gasification

1.9. Of which: Gas to Liquids

1.10. Of which: Not Elsewhere Specified – Energy

2. Losses of distribution and transport

2.2.3. *Energy end-use specification*

Consumption of natural gas needs to be reported for both energy use and (wherever applicable) non-energy use separately, for all of the following aggregates:

1. Total Final Consumption

Final energy consumption and non-energy use to be declared separately under this heading.

2. Transport Sector

2.1. Of which: Transport by road

Includes both CNG and biogas.

2.1.1. Of which: Biogas fraction in Transport by Road

2.2. Of which: Pipeline transport

2.3. Of which: Not Elsewhere Specified – Transport

3. Industry Sector

3.1. Of which: Iron and Steel

3.2. Of which: Chemical and Petrochemical

3.3. Of which: Non-Ferrous Metals

3.4. Of which: Non-Metallic Minerals

3.5. Of which: Transport Equipment

3.6. Of which: Machinery

3.7. Of which: Mining and Quarrying

3.8. Of which: Food, Beverages and Tobacco

3.9. Of which: Pulp, Paper and printing

3.10. Of which: Wood and Wood Products

3.11. Of which: Construction

3.12. Of which: Textile and Leather

3.13. Of which: Not Elsewhere Specified – Industry

4. Other Sectors

4.1. Of which: Commercial and Public Services

4.2. Of which: Residential

4.2.1. Residential, of which: Space heating

4.2.2. Residential, of which: Space cooling

4.2.3. Residential, of which: Water heating

4.2.4. Residential, of which: Cooking

4.2.5. Residential, of which: Other end uses

4.3. Of which: Agriculture/Forestry

4.4. Of which: Fishing

4.5. Of which: Not Elsewhere Specified – Other

2.2.4. Imports and exports

To be declared are both the quantities of the total natural gas and of the LNG part of it, per country of origin for imports and per country of destination for exports.

2.2.5. Gas Storage Capacities

1. Name

Name of the site of the storage facility.

2. Type

Type of storage, such as depleted gas field, salt cavern, etc.

3. Working Capacity

Total gas storage capacity, minus the cushion gas. The cushion gas is the total volume of gas required as a permanent inventory to maintain adequate underground storage reservoir pressures and deliverability rates throughout the output cycle.

4. Peak Output

Maximum rate at which gas can be withdrawn from the concerned storage; this corresponds to the maximum withdrawal capacity.

2.3. Units of measurement

1. Energy quantities

Unless indicated differently, quantities of natural gas are declared by its energy content, i.e. in TJ, based on the gross calorific value. Where physical quantities are required, the unit is in 10^6 m^3 assuming reference gas conditions (15 °C, 101,325 kPa).

2. Calorific values

kJ/m^3 , assuming reference gas conditions (15 °C, 101,325 kPa).

3. Storage working capacity

10^6 m^3 , assuming reference gas conditions (15 °C, 101,325 kPa).

4. Peak output

$10^6 \text{ m}^3 / \text{day}$, assuming reference gas conditions (15 °C, 101,325 kPa).

2.4. Derogations and exemptions

Not applicable.

3. ELECTRICITY AND HEAT

3.1. Applicable energy products

This chapter covers heat and electricity.

3.2. List of aggregates

The following list of aggregates shall be declared for all energy products listed in the previous para-

graph unless otherwise specified.

Annex A applies for explanations of terms for which a specific explanation is not supplied in this chapter. The definitions and units mentioned in Chapters 1, 2, 4 and 5 apply to energy products belonging to solid fuels and manufactured gases, natural gas, oil and petroleum products, and renewable energy and energy from waste.

3.2.1. Supply and Transformation Sectors

The following specific definitions apply to aggregates for electricity and heat in this chapter:

- Gross Electricity Production: the sum of the electrical energy production by all the generating sets concerned (including pumped storage) measured at the output terminals of the main generators.
- Gross Heat Production: the total heat produced by the installation and includes the heat used by the installation's auxiliaries which use a hot fluid (space heating, liquid fuel heating etc.) and losses in the installation/network heat exchanges, as well as heat from chemical processes used as a primary energy form.
- Net Electricity Production: the gross electricity production less the electrical energy absorbed by the generating auxiliaries and the losses in the main generator transformers.
- Net Heat Production: the heat supplied to the distribution system as determined from measurements of the outgoing and return flows.

The aggregates mentioned in the next table must be declared separately for main activity producer plants and for autoproducer plants. Within these two types of plants, both gross and net electricity and heat production must be declared for electricity only, for CHP and for heat only plants separately wherever applicable, for the following aggregates:

1. Total production
 - 1.1. Of which: Nuclear
 - 1.2. Of which: Hydro
 - 1.2.1. Of which: part of hydro produced from pumped storage
 - 1.3. Of which: Geothermal
 - 1.4. Of which: Solar
 - 1.5. Of which: Tide, wave, ocean
 - 1.6. Of which: Wind
 - 1.7. Of which: Combustible fuels

Fuels capable of igniting or burning, i.e. reacting with oxygen to produce a significant rise in temperature and combusted directly for the production of electricity and/or heat.

- 1.8. Of which: Heat Pumps

Heat output from heat pumps only where the heat is sold to third parties (i.e. in cases where production occurs in the Transformation Sector).

- 1.9. Of which: Electric Boilers

Quantities of heat from electric boilers where the output is sold to third parties.

1.10. Of which: Heat from Chemical Processes

Heat originating from processes without input energy, such as a chemical reaction.

Excludes waste heat originating from energy driven processes, which should be reported as heat produced from the corresponding fuel.

1.11. Of which: Other Sources (please specify)

The aggregates mentioned in the next table must be declared as totals, for electricity and heat separately, wherever applicable. For the three first aggregates in the next table, quantities should be calculated from and be compatible with the values declared according to the previous table.

1. Total Gross Production

2. Own Use by Plant

3. Total Net Production

4. Imports

See also explanation under 5 'Exports'.

5. Exports

Amounts of electricity are considered as imported or exported when they have crossed the political boundaries of the country, whether customs clearance has taken place or not. If electricity is transited through a country, the amount should be reported as both an import and an export.

6. Used for Heat Pumps

7. Used for Electric Powered Steam Boilers

8. Used for Pumped Storage

9. Used for Electricity Production

10. Energy Supplied

For electricity: the sum of the net electrical energy production supplied by all power stations within the country, reduced by the amount used simultaneously for heat pumps, electrically powered steam boilers, pumping and reduced or increased by exports to or imports from abroad.

For heat: the sum of the net heat production for sale by all plants within a country, reduced by heat used for electricity production and reduced or increased by exports or imports from abroad.

11. Transmission and Distribution Losses

All losses due to transport and distribution of electrical energy and heat.

For electricity, includes losses in transformers which are not considered as integral parts of the power plants.

12. Total Consumption (calculated)

13. Statistical Difference

14. Total Consumption (observed)

The electricity produced, the heat sold and the fuel quantities used including their corresponding total energy from the combustibles listed in the next table must be declared separately for main

activity producer plants and for autoproducer plants. Within these two types of plants, this electricity and heat production must be declared for electricity (only) plants, for CHP and for heat (only) plants separately wherever applicable:

1. Solid fuels and manufactured gases:

- 1.1. Anthracite
- 1.2. Coking Coal
- 1.3. Other Bituminous Coal
- 1.4. Sub-Bituminous Coal
- 1.5. Lignite
- 1.6. Peat
- 1.7. Patent Fuel
- 1.8. Coke Oven Coke
- 1.9. Gas Coke
- 1.10. Coal Tar
- 1.11. BKB (Brown Coal Briquettes)
- 1.12. Gas Works Gas
- 1.13. Coke Oven Gas
- 1.14. Blast Furnace Gas
- 1.15. Other recovered Gases
- 1.16. Peat products
- 1.17. Oil shale and oil sands

2. Oil and Petroleum Products:

- 2.1. Crude Oil
- 2.2. NGL
- 2.3. Refinery Gas
- 2.4. LPG
- 2.5. Naphtha
- 2.6. Kerosene Type Jet Fuel
- 2.7. Other Kerosene
- 2.8. Gas/Diesel (Distillate Fuel Oil)
- 2.9. Heavy Fuel Oil
- 2.10. Bitumen (Including Orimulsion)
- 2.11. Petroleum Coke
- 2.12. Other Oil Products

3. Natural Gas

4. Renewable Energy and Energy from Waste

- 4.1. Industrial Waste (Non-Renewable)

- 4.2. Municipal Waste (Renewable)
- 4.3. Municipal Waste (Non-Renewable)
- 4.4. Solid biofuels
- 4.5. Biogases
- 4.6. Biodiesels
- 4.7. Other Liquid Biofuels

3.2.2. *Electricity and heat consumption in the Energy Sector*

1. Total Energy Sector

Excludes own use by plant, used for pumped storage, heat pumps and electric boilers.

- 1.1. Of which: Coal Mines
- 1.2. Of which: Oil and Gas Extraction
- 1.3. Of which: Patent Fuel Plants
- 1.4. Of which: Coke Ovens
- 1.5. Of which: BKB/PB Plants
- 1.6. Of which: Gas Works
- 1.7. Of which: Blast Furnaces
- 1.8. Of which: Petroleum Refineries
- 1.9. Of which: Nuclear Industry
- 1.10. Of which: Coal Liquefaction Plants
- 1.11. Of which: Liquefaction (LNG)/Regasification Plants
- 1.12. Of which: Gasification Plants (biogas)
- 1.13. Of which: Gas-to-Liquids
- 1.14. Of which: Charcoal Production Plants
- 1.15. Of which: Not Elsewhere Specified – Energy

3.2.3. *Energy end-use specification*

1. Industry Sector

- 1.1. Of which: Iron and Steel
- 1.2. Of which: Chemical and Petrochemical
- 1.3. Of which: Non-Ferrous Metals
- 1.4. Of which: Non-Metallic Minerals
- 1.5. Of which: Transport Equipment
- 1.6. Of which: Machinery
- 1.7. Of which: Mining and Quarrying
- 1.8. Of which: Food, Beverages and Tobacco

- 1.9. Of which: Pulp, Paper and printing
- 1.10. Of which: Wood and Wood Products
- 1.11. Of which: Construction
- 1.12. Of which: Textile and Leather
- 1.13. Of which: Not Elsewhere Specified – Industry
- 2. Transport Sector
 - 2.1. Of which: Rail
 - 2.2. Of which: Pipeline transport
 - 2.3. Of which: Road
 - 2.4. Of which: Not Elsewhere Specified – Transport
- 3. Residential Sector
 - 3.1. Residential, of which: Space heating
 - 3.2. Residential, of which: Space cooling
 - 3.3. Residential, of which: Water heating
 - 3.4. Residential, of which: Cooking
 - 3.5. Residential, of which: Lighting and electrical appliances

This applies only to electricity.
 - 3.6. Residential, of which: Other end uses
- 4. Commercial and Public Services
- 5. Agriculture/Forestry
- 6. Fishing
- 7. Not Elsewhere Specified – Other

3.2.4. Imports and exports

Imports and exports of energy quantities of electricity and heat by country.

3.2.5. Net production of electricity generation and net heat production from autoproducers

Net production of electricity and net generation of heat from autoproducers of electricity generation and heat production are to be declared, for CHP plants, for electricity (only) plants and for heat (only) plants separately, in the following plants or activities:

- 1. Total Energy Sector
 - 1.1. Of which: Coal Mines
 - 1.2. Of which: Oil and Gas Extraction
 - 1.3. Of which: Patent Fuel Plants
 - 1.4. Of which: Coke Ovens
 - 1.5. Of which: BKB/PB Plants
 - 1.6. Of which: Gas Works

- 1.7. Of which: Blast Furnaces
- 1.8. Of which: Petroleum Refineries
- 1.9. Of which: Coal Liquefaction Plants
- 1.10. Of which: Liquefaction (LNG)/Regasification Plants
- 1.11. Of which: Gasification Plants (biogas)
- 1.12. Of which: Gas-to-Liquids
- 1.13. Of which: Charcoal Production Plants
- 1.14. Of which: Not Elsewhere Specified – Energy
2. Transport Sector
 - 2.1. Of which: Rail
 - 2.2. Of which: Pipeline transport
 - 2.3. Of which: Road
 - 2.4. Of which: Not Elsewhere Specified – Transport
3. All other sectors: identical to the aggregate list as per '3.2.3 Energy end-use specification'.

3.3. Structural data on electricity and heat generation

3.3.1. Net Maximum Electrical Capacity And Peak Load

The capacity should be reported at 31 December of the relevant reported year.

Includes electrical capacity of both electricity (only) and CHP plants.

The Net Maximum Electrical Capacity is the sum of the net maximum capacities of all stations taken individually throughout a given period of operation. The period of operation assumed for present purposes is continuous running: in practice 15 hours or more per day. The net maximum capacity is the maximum power assumed to be solely active power that can be supplied, continuously, with all plant running, at the point of outlet to the network. The Peak Load is defined as the highest value of the power absorbed or supplied by a network or combination of networks within the country.

The Net Maximum Electrical Capacity must be declared for both main activity producers and auto-producers:

1. Total
2. Nuclear
3. Hydro
 - 3.1. Of which: mixed plants
 - 3.2. Of which: pure pumped storage
4. Geothermal
5. Solar photovoltaic
6. Solar thermal
7. Tide, wave, ocean
8. Wind
9. Combustible fuels

- 9.1. Of which: Steam
- 9.2. Of which: Internal combustion
- 9.3. Of which: Gas turbine
- 9.4. Of which: Combined cycle
- 9.5. Of which: Other

To be specified if declared.

The following information about the peak load must be declared for the network:

- 10. Peak load
- 11. Available capacity at time of peak
- 12. Date and time of peak load occurrence

3.3.2. *Net Maximum Electrical Capacity Of Combustible Fuels*

Net maximum electrical capacity of combustible fuels must be declared for both main activity producers and autoproducers, and separately for each type of single-fired or multi-fired plant mentioned in the next table. Indications on which type of fuel is used as primary and alternate fuels must be added for all cases of multi-fired plants.

- 1. Single Fuel Fired:
 - 1.1. Fired with Coal or coal products

Includes coke oven gas, blast furnace and oxygen steel furnace gas capacity.
 - 1.2. Fired with Liquids fuels

Includes refinery gas capacity.
 - 1.3. Fired with Natural gas

Includes gas works gas capacity.
 - 1.4. Fired with Peat
 - 1.5. Fired with Combustible renewables and wastes
- 2. Multi-Fired, Solids And Liquids
- 3. Multi-Fired, Solids And Natural Gas
- 4. Multi-Fired, Liquids And Natural Gas
- 5. Multi-Fired, Solids Liquids And Natural Gas

Multi-fired systems include only units which can burn more than one fuel type on a continuous basis. Stations which have separate units using different fuels should be divided into the appropriate single-fuel categories.

3.4. **Data on nuclear energy**

The following data concerning the civil use of nuclear energy must be declared:

- 1. Enrichment capacity

The annual separative work capacity of operational enrichment plants (isotopic separation of Uranium).

2. Production capacity of fresh fuel elements

The annual production capacity of fuel fabrication plants. MOX fuel fabrication plants are excluded.

3. Production capacity of MOX fuel fabrication plants

The annual production capacity of MOX fuel fabrication plants. MOX fuel contains a mixture of Plutonium and Uranium (Mixed Oxide).

4. Production of fresh fuel elements

Production of finished fresh fuel elements in nuclear fuel fabrication plants. Rods or other partial products are not included. Fabrication plants producing MOX fuel are also excluded.

5. Production of MOX fuel elements

Production of finished fresh fuel elements in MOX fuel fabrication plants. Rods or other partial products are not included.

6. Production of nuclear heat

The total amount of heat generated by nuclear reactors for the production of electricity or for other useful applications of heat.

7. Annual average burnup of definitively discharged irradiated fuel elements

Calculated average of the burnup of the fuel elements which have been definitively discharged from the nuclear reactors during the concerned reference year. Excludes fuel elements which are temporarily discharged and are likely to be reloaded again later.

8. Production of Uranium and Plutonium in reprocessing plants

Uranium and Plutonium produced during the reference year in reprocessing plants.

9. Capacity (Uranium and Plutonium) of reprocessing plants

Annual reprocessing capacity of Uranium and Plutonium.

3.5. Units of measurement

1. Energy quantities

Electricity: GWh

Heat: TJ

Solid fuels and manufactured gases: the units of measurement in Chapter 1 of this annex apply.

Natural gas: the units of measurement in chapter 2 of this annex apply.

Oil and petroleum products: the units of measurement in chapter 4 of this annex apply.

Renewables and waste: the units of measurement in chapter 5 of this annex apply.

Uranium and Plutonium: tHM (tons of heavy metal).

2. Capacity

Electrical generation capacity: MWe

Heat generation capacity: MWt

Enrichment capacity (isotopic separation of Uranium): tSWU (tons of Separative Work Units).

Production capacity of nuclear fuel elements: tHM (tons of heavy metal).

3.6. Derogations and exemptions

France has a derogation for reporting the aggregates relating to heat. That derogation shall lapse as soon as France is able to forward this report and, at all events, no more than 4 years after the date of entry into force of this Regulation.

4. OIL AND PETROLEUM PRODUCTS

4.1. Applicable energy products

Unless otherwise specified this data collection applies to all of the following energy products:

1. Crude Oil

Crude oil is a mineral oil of natural origin comprising a mixture of hydrocarbons and associated impurities, such as sulphur. It exists in the liquid phase under normal surface temperature and pressure and its physical characteristics (density, viscosity, etc.) are highly variable. This category includes field or lease condensate recovered from associated and non-associated gas where it is commingled with the commercial crude oil stream.

2. NGL

NGL are liquid or liquefied hydrocarbons recovered from natural gas in separation facilities or gas processing plants. Natural gas liquids include ethane, propane, butane (normal and iso-), (iso) pentane and pentanes plus (sometimes referred to as natural gasoline or plant condensate).

3. Refinery Feedstocks

A refinery feedstock is a processed oil destined for further processing (e.g. straight run fuel oil or vacuum gas oil) excluding blending. With further processing, it will be transformed into one or more components and/or finished products. This definition also covers returns from the petrochemical industry to the refining industry (e.g. pyrolysis gasoline, C4 fractions, gasoil and fuel oil fractions).

4. Additives/Oxygenates

Additives are non-hydrocarbon compounds added to or blended with a product to modify fuel properties (octane, cetane, cold properties, etc.):

- oxygenates, such as alcohols (methanol, ethanol), ethers (such as MTBE (methyl tertiary butyl ether), ETBE (ethyl tertiary butyl ether), TAME (tertiary amyl methyl ether));
- esters (e.g. rapeseed oil or dimethylester, etc.);
- chemical compounds (such as TML, TEL and detergents).

Note: Quantities of additives/oxygenates (alcohols, ethers, esters and other chemical compounds) reported in this category should relate to the quantities destined for blending with fuels or for fuel use.

4.1. Of Which: Biofuels

Biogasoline and Biodiesels. The definitions of Chapter 5, Renewable Energy and Energy from Waste, apply.

Quantities of liquid biofuels reported in this category relate to the biofuel and not to the total volume of liquids into which the biofuels are blended.

Excludes all trade of biofuels which have not been blended with transport fuels (i.e. in their pure form); these should be reported as per Chapter 5. The biofuels traded as part of transport fuels should be reported in the appropriate product indicating the biofuel portion.

5. Other Hydro-carbons

Synthetic crude oil from tar sands, shale oil, etc., liquids from coal liquefaction, (see Chapter 1), output of liquids from natural gas conversion into gasoline (see Chapter 2), hydrogen and emulsified oils (e.g. Orimulsion).

Excludes oil shale production, for which Chapter 1 applies.

The production of shale oil (secondary product) is to be reported as 'From other sources' in the 'Other hydrocarbons category'.

6. Refinery Gas (not liquefied)

Refinery gas includes a mixture of non-condensable gases mainly consisting of hydrogen, methane, ethane and olefins obtained during distillation of crude oil or treatment of oil products (e.g. cracking) in refineries. This also includes gases which are returned from the petrochemical industry.

7. Ethane

A naturally gaseous straight-chain hydrocarbon, (C_2H_6) extracted from natural gas and refinery gas streams.

8. LPG

LPG are light paraffinic hydrocarbons derived from the refinery processes, crude oil stabilisation and natural gas processing plants. They consist mainly of propane (C_3H_8) and butane (C_4H_{10}) or a combination of the two. They could also include propylene, butylene, isopropylene and isobutylene. LPG are normally liquefied under pressure for transportation and storage.

9. Naphtha

Naphtha is a feedstock destined for either the petrochemical industry (e.g. ethylene manufacture or aromatics production) or for gasoline production by reforming or isomerisation within the refinery.

Naphtha comprises material in the 30 °C and 210 °C distillation range or part of this range.

10. Motor Gasoline

Motor gasoline consists of a mixture of light hydrocarbons distilling between 35 °C and 215 °C. It is used as a fuel for land based spark ignition engines. Motor gasoline may include additives, oxygenates and octane enhancers, including lead compounds such as TEL and TML.

Includes motor gasoline blending components (excluding additives/oxygenates), e.g. alkylates, isomerate, reformate, cracked gasoline destined for use as finished motor gasoline.

10.1. Of which: Biogasoline

The definitions of Chapter 5, Renewable Energy and Energy from Waste, apply.

11. Aviation Gasoline

Motor spirit prepared especially for aviation piston engines, with an octane number suited to the engine, a freezing point of – 60 °C and a distillation range usually within the limits of 30 °C and 180 °C.

12. Gasoline Type Jet Fuel (Naphtha Type Jet Fuel or JP4)

This includes all light hydrocarbon oils for use in aviation turbine power units, distilling between 100 °C and 250 °C. They are obtained by blending kerosenes and gasoline or naphthas in such a way that the aromatic content does not exceed 25% in volume, and the vapour pressure is between 13,7kPa and 20,6kPa.

13. Kerosene Type Jet Fuel

Distillate used for aviation turbine power units. It has the same distillation characteristics between 150 °C and 300 °C (generally not above 250 °C) and flash point as kerosene. In addition, it has particular specifications (such as freezing point) which are established by the International Air Transport Association (IATA).

Includes kerosene blending components.

13.1. Bio jet kerosene

Liquid biofuels derived from biomass and blended with or replacing jet kerosene.

14. Other Kerosene

Refined petroleum distillate used in sectors other than aircraft transport. It distils between 150 °C and 300 °C.

15. Gas/Diesel Oil (Distillate Fuel Oil)

Gas/diesel oil is primarily a medium distillate distilling between 180 °C and 380 °C. Includes blending components. Several grades are available depending on uses:

15.1. Of which: Road Diesel

On-road diesel oil for diesel compression ignition (cars, trucks, etc.), usually of low sulphur content;

15.1.1. From 15.1, of which: Biodiesels

The definitions of Chapter 5, Renewable Energy and Energy from Waste, apply.

15.2. Of which: Heating and Other Gasoil

Light heating oil for industrial and commercial uses, marine diesel and diesel used in rail traffic, other gas oil including heavy gas oils which distil between 380 °C and 540 °C and which are used as petrochemical feedstocks.

16. Fuel Oil

All residual (heavy) fuel oils (including those obtained by blending). Kinematic viscosity is above 10 cSt at 80 °C. The flash point is always above 50 °C and density is always more than 0,90 kg/l.

16.1. Of which: Low Sulphur Content

Heavy fuel oil with sulphur content lower than 1%.

16.2. Of which: High Sulphur Content

Heavy fuel oil with sulphur content of 1% or higher.

17. White Spirit And SBP

Refined distillate intermediates with a distillation in the naphtha/kerosene range. They are sub-divided as:

- Industrial Spirit (SBP): Light oils distilling between 30 °C and 200 °C. There are 7 or 8 grades of industrial spirit, depending on the position of the cut in the distillation range. The grades are defined according to the temperature difference between the 5% volume and 90% volume distillation points (which is not more than 60 °C).
- White Spirit: Industrial spirit with a flash point above 30 °C. The distillation range of white spirit is 135 °C to 200 °C.

18. Lubricants

Hydrocarbons produced from distillate by product; they are mainly used to reduce friction between bearing surfaces.

Includes all finished grades of lubricating oil, from spindle oil to cylinder oil, and those used in greases, motor oils and all grades of lubricating oil base stocks.

19. Bitumen

Solid, semi-solid or viscous hydrocarbon with a colloidal structure, being brown to black in colour, obtained as a residue in the distillation of crude oil, by vacuum distillation of oil residues from atmospheric distillation. Bitumen is often referred to as asphalt and is primarily used for construction of roads and for roofing material.

Includes fluidised and cut back bitumen.

20. Paraffin Waxes

These are saturated aliphatic hydrocarbons. These waxes are residues extracted when dewaxing lubricant oils. They have a crystalline structure which is more-or-less fine according to the grade. Their main characteristics are as follows: they are colourless, odourless and translucent, with a melting point above 45 °C.

21. Petroleum Coke

Black solid by-product, obtained mainly by cracking and carbonising petroleum derived feedstock, vacuum bottoms, tar and pitches in processes such as delayed coking or fluid coking. It consists mainly of carbon (90 to 95%) and has a low ash content. It is used as a feedstock in coke ovens for the steel industry, for heating purposes, for electrode manufacture and for production of chemicals. The two most important qualities are 'green coke' and 'calcinated coke'.

Includes 'catalyst coke' deposited on the catalyst during refining processes; this coke is not recoverable and is usually burned as refinery fuel.

22. Other Products

All products not specifically mentioned above, for example: tar and sulphur. Includes aromatics (e.g. BTX or benzene, toluene and xylene) and olefins (e.g. propylene) produced within refineries.

4.2. List of aggregates

The following list of aggregates shall be declared for all energy products listed in the previous paragraph unless otherwise specified.

4.2.1. *Supply of crude oil, NGL, refinery feedstocks, additives and other hydrocarbons*

The following table applies to crude oil, natural gas liquids, refinery feedstocks, additives/oxygenates (and its bio part) and other hydrocarbons:

1. Indigenous Production

Not applicable for refinery feedstocks and for biofuels.

2. From Other Sources. Additives, Biofuels and Other hydrocarbons, the production of which has already been covered in other fuel balances.

Not applicable for crude oil, NGL and refinery feedstocks.

2.1. Of which: from Coal

Includes liquids produced from coal liquefaction plants, liquid output from coke ovens.

2.2. Of which: from Natural Gas

The manufacture of synthetic gasoline may require natural gas as feedstock. The amount of gas for methanol manufacture is declared according to Chapter 2, while the receipts of methanol are declared here.

2.3. Of which: from Renewables

Includes biofuels which are for blending with transport fuels.

Production is declared as per Chapter 5, while amounts for blending are declared here.

3. Backflows From Petrochemical Sector

Finished or semi-finished products which are returned from final consumers to refineries for processing, blending or sale. They are usually by-products of petrochemical manufacturing.

Only applicable for refinery feedstocks.

4. Products Transferred

Imported petroleum products which are reclassified as feedstocks for further processing in the refinery, without delivery to final consumers.

Only applicable for refinery feedstocks.

5. Imports and exports

Includes quantities of crude oil and products imported or exported under processing agreements (i.e. refining on account). Crude oil and NGLs should be reported as coming from the country of ultimate origin; refinery feedstocks and finished products should be reported as coming from the country of last consignment.

Includes any gas liquids (e.g. LPG) extracted during the regasification of imported liquefied natural gas and petroleum products imported or exported directly by the petrochemical industry.

Note: All trade of biofuels which have not been blended with transport fuels (i.e. in their pure form) should be reported in the Renewables Questionnaire.

Re-exports of oil imported for processing within bonded areas should be included as an export of product from the processing country to the final destination.

6. Direct Use

Crude oil, NGL, Additives and Oxygenates (and the part which are biofuels), and other hydrocarbons used directly without being processed in petroleum refineries.

Includes crude oil burned for electricity generation.

7. Stock changes

A stock build is shown as a negative number and a stock draw is shown as a positive number.

8. Calculated Refinery Intake

Total amount of product calculated to have entered the refinery process. It is defined as:

= Indigenous production + From other sources + Backflows from industry + Products transferred + Imports – Exports – Direct use + Stock changes

9. Statistical differences

Defined as the calculated refinery intake minus the observed one.

10. Observed Refinery Intake

Amounts measured as input to refineries

11. Refinery Losses

The difference between Refinery intake (observed) and Gross refinery output. Losses may occur during the distillation processes due to evaporation. Reported losses are positive. There may be volumetric gains but no gains in mass.

12. Opening and Closing Total Stocks On National Territory

All stocks on national territory, including stocks held by governments, by major consumers or by stockholding organisations, stocks held on board incoming ocean vessels, stocks held in bonded areas and stocks held for others, whether under bilateral government agreement or not. Opening and closing refers to the first and to the last day of the reporting period respectively.

13. Net Calorific Value

Production, imports and exports, and overall average.

4.2.2. Supply of oil products

The following table applies to finished products (refinery gas, ethane, LPG, naphtha, motor gasoline as well as its part of biogasoline, aviation gasoline, gasoline type jet fuel, kerosene type jet fuel as well as its bio part, other kerosene, gas/diesel oil, low and high sulphur fuel oil, white spirit and SBP, lubricants, bitumen, paraffin waxes, petroleum coke and other products). Crude oil and NGL used for direct burn should be included in deliveries of finished products and interproduct transfers.

1. Primary Product Receipts

Includes quantities of indigenous or imported crude oil (including condensate) and indigenous NGL used directly without being processed in a petroleum refinery and quantities of Backflows from the Petrochemical industry which, although not primary fuel, are used

directly.

2. Gross Refinery Output

Production of finished products at a refinery or blending plant.

Excludes refinery losses, but includes Refinery fuel.

3. Recycled Products

Finished products which pass a second time through the marketing network, after having been once delivered to final consumers (e.g. used lubricants which are reprocessed). These quantities should be distinguished from petrochemical Backflows.

4. Refinery Fuel

Petroleum products consumed in support of the operation of a refinery.

Excludes products used by oil companies outside the refining process, e.g. bunkers or oil tankers.

Includes fuels used for the production at the refineries of electricity and heat sold.

4.1. Of which: used for electricity generation

Amounts used to generate electricity in plants at refineries.

4.2. Of which: used for CHP production

Amounts used in CHP plants at refineries.

4.3. Of which: used for heat generation

Amounts used to generate heat at refineries.

5. Imports and Exports

6. International Marine Bunkers

7. Interproduct Transfers

Quantities reclassified either because their specification has changed or because they are blended into another product.

A negative entry for one product is compensated by a positive entry (or several entries) for one or several products and vice versa; the total net effect should be zero.

8. Products Transferred

Imported petroleum products which are reclassified as feedstocks for further processing in the refinery, without delivery to final consumers.

9. Stock Changes

A stock build is shown as a negative number and a stock draw is shown as a positive number.

10. Calculated Gross Inland Deliveries

This is defined as:

= Primary product receipts + Gross refinery output + Recycled products – Refinery fuel + Imports – Exports – International marine bunkers + Interproduct transfers – Products transferred + Stock changes

11. Statistical Difference

Defined as the calculated gross inland delivery minus the observed one.

12. Observed Gross Inland Deliveries

The observed delivery of finished petroleum products from primary sources (e.g. refineries, blending plants, etc.) to the inland market.

This figure may differ from the calculated figure due, for example, to differences in coverage and/or differences of definition in different reporting systems.

12.1. Of which: Gross Deliveries To The Petrochemical Sector

Quantities of fuels delivered to the Petrochemical sector.

12.2. Of which: Energy Use In The Petrochemical Sector

Quantities of oil used as fuel for petrochemical processes such as steam cracking.

12.3. of which: Non-Energy Use In The Petrochemical Sector

Quantities of oil used in the petrochemical sector for the purpose of producing ethylene, propylene, butylene, synthesis gas, aromatics, butadiene and other hydrocarbon-based raw materials in processes such as steam cracking, aromatics plants and steam reforming. Excludes amounts of oil used for fuel purposes.

13. Backflows From Petrochemical Sector To Refineries

14. Opening and Closing Stock Levels

All stocks on national territory, including stocks held by governments, by major consumers or by stockholding organisations, stocks held on board incoming ocean vessels, stocks held in bonded areas and stocks held for others, whether under bilateral government agreement or not. Opening and closing refers to the first and to the last day of the reporting period respectively.

15. Stock Changes At Public Utilities

Changes in stocks which are held by public utilities and not included in the Stock levels and Stock changes reported elsewhere. A stock build is shown as a negative number and a stock draw is shown as a positive number.

Includes Crude oil and NGL used for direct burn, if applicable.

16. Net Calorific Value Of Gross Inland Deliveries

4.2.3. Gross inland deliveries by sector

In the now following tables, the following aggregates apply for crude oil, natural gas liquids, refinery gas, ethane, LPG, naphtha, total motor gasoline and its bio part, aviation gasoline, gasoline type jet fuel, total kerosene type jet fuel and its bio part, other kerosene, gas/diesel oil (and its fractions of road diesel, heating and other gas oil, biodiesels and Non- bio gas/diesel oil), total fuel oil (including its fractions of low and of high sulfur content), white spirit and SBP, lubricants, bitumen, paraffin waxes, petroleum coke, other oil products.

Both the quantities involved for energy use and non-energy use and their total sum need to be declared.

1. Total transformation Sector

Total quantities of fuels used for the primary or secondary conversion of energy.

1.1. Of which: Main Activity Producer Electricity Plants

- 1.2. Of which: Autoproducer Electricity plants
- 1.3. Of which: Main Activity Producer CHP Plants
- 1.4. Of which: Autoproducer CHP plants
- 1.5. Of which: Main Activity Producer Heat Plants
- 1.6. Of which: Autoproducer Heat plants
- 1.7. Of which: Gas Works/Gasification Plants
- 1.8. Of which: Blended Natural Gas
- 1.9. Of which: Coke Ovens
- 1.10. Of which: Blast Furnaces
- 1.11. Of which: Petrochemical Industry
- 1.12. Of which: Patent Fuel Plants
- 1.13. Of which: Not Elsewhere Specified – Transformation

2. Total Energy Sector

Total quantity used as energy in the energy sector

- 2.1. Of which: Coal Mines
- 2.2. Of which: Oil and Gas Extraction
- 2.3. Of which: Coke Ovens
- 2.4. Of which: Blast Furnaces
- 2.5. Of which: Gas Works
- 2.6. Of which: Power Plants

Electricity, CHP and heat plants.

- 2.7. Of which: Not Elsewhere Specified – Energy

3. Distribution losses

Losses occurred outside the refinery due to transport and distribution.

Includes pipeline losses.

4. Final Energy Consumption

5. Industry Sector

- 5.1. Of which: Iron and Steel
- 5.2. Of which: Chemical and Petrochemical
- 5.3. Of which: Non-Ferrous Metals
- 5.4. Of which: Non-Metallic Minerals
- 5.5. Of which: Transport Equipment
- 5.6. Of which: Machinery
- 5.7. Of which: Mining and Quarrying
- 5.8. Of which: Food, Beverages and Tobacco
- 5.9. Of which: Pulp, Paper and printing

- 5.10. Of which: Wood and Wood Products
- 5.11. Of which: Construction
- 5.12. Of which: Textile and Leather
- 5.13. Of which: Not Elsewhere Specified – Industry
- 6. Transport Sector
 - 6.1. Of which: International Aviation
 - 6.2. Of which: Domestic Aviation
 - 6.3. Of which: Road
 - 6.4. Of which: Rail
 - 6.5. Of which: Domestic Navigation
 - 6.6. Of which: Pipeline Transport
 - 6.7. Of which: Not Elsewhere Specified – Transport
- 7. Other Sectors
 - 7.1. Of which: Commercial and Public Services
 - 7.2. Of which: Residential
 - 7.2.1. Residential, of which: Space heating
 - 7.2.2. Residential, of which: Space cooling
 - 7.2.3. Residential, of which: Water heating
 - 7.2.4. Residential, of which: Cooking
 - 7.2.5. Residential, of which: Other end uses
 - 7.3. Of which: Agriculture/Forestry
 - 7.4. Of which: Fishing
 - 7.5. Of which: Not Elsewhere Specified – Other
- 8. Total Non-Energy Use

Quantities used as raw materials in the different sectors and not consumed as a fuel or transformed into another fuel. These quantities are included into the aggregates listed above.

- 8.1. Of which: Transformation Sector
- 8.2. Of which: Energy Sector
- 8.3. Of which: Transport Sector
- 8.4. Of which: Industry Sector
 - 8.4.1 Industry Sector of which: Chemical (incl. Petrochemical)
- 8.5. Of which: Other Sectors

4.2.4. Imports and exports

Imports by country of origin, and exports by country of destination. See also notes under point 4.2.1, aggregate 5.

4.3. Units of measurement

1. Energy quantities
10³ tonnes
2. Calorific values
MJ/tonne

4.4. Derogations and exemptions

Cyprus is exempted from reporting the aggregates defined in Section 4.2.3 under point 7 (Other Sectors) and point 8 (Total Non-Energy Use); only the total values shall be applicable.

5. RENEWABLE ENERGY AND ENERGY FROM WASTE

5.1. Applicable energy products

Unless otherwise specified this data collection applies to all of the following energy products:

1. Hydro power
Potential and kinetic energy of water converted into electricity in hydroelectric plants. Pumped storage must be included. Production must be reported for plant sizes of < 1 MW, 1 to < 10 MW, ≥ 10 MW and from pumped storage.
2. Geothermal
Energy available as heat emitted from within the earth's crust, usually in the form of hot water or steam. This energy production is the difference between the enthalpy of the fluid produced in the production borehole and that of the fluid eventually disposed of. It is exploited at suitable sites:
 - for electricity generation using dry steam or high enthalpy brine after flashing
 - directly as heat for district heating, agriculture etc.
3. Solar Energy
Solar radiation exploited for hot water production and electricity generation. This energy production is the heat available to the heat transfer medium, i.e. the incident solar energy less the optical and collectors losses. Passive solar energy for the direct heating, cooling and lighting of dwellings or other buildings is not included.
 - 3.1. Of which: Solar Photovoltaic
Sunlight converted into electricity by the use of solar cells usually made of semi-conducting material which exposed to light will generate electricity.
 - 3.2. Of which: Solar Thermal
Heat from solar radiation; can consist of:
 - (a) solar thermal-electric plants, or
 - (b) equipment for the production of domestic hot water or for the seasonal heating of swimming pools (e.g. flat plate collectors, mainly of the thermosyphon type).
4. Tide, Wave, Ocean

Mechanical energy derived from tidal movement, wave motion or ocean current and exploited for electricity generation.

5. Wind

Kinetic energy of wind exploited for electricity generation in wind turbines.

6. Industrial Waste (non- renewable)

Report wastes of industrial non-renewable origin (solids or liquids) combusted directly for the production of electricity and/or heat. The quantity of fuel used should be reported on a net calorific value basis. Renewable industrial waste should be reported in the Solid Biomass, Biogas and/or Liquid Biofuels categories.

7. Municipal Waste:

Wastes produced by households, hospitals and the tertiary sector incinerated at specific installations, on a net calorific value basis.

7.1. Of which: Renewable

The portion of municipal waste which is of biological origin.

7.2. Of which: Non-Renewable

The portion of municipal waste which is of non- biological origin.

8. Solid Biofuels:

Covers organic, non-fossil material of biological origin which may be used as fuel for heat production or electricity generation. It comprises:

8.1. Of which: Charcoal

The solid residue of the destructive distillation and pyrolysis of wood and other vegetal material.

9. Biogas:

A gas composed principally of methane and carbon dioxide produced by anaerobic digestion of biomass.

10. Liquid Biofuels

The quantities of liquid biofuels reported in this category should relate to the quantities of biofuel and not to the total volume of liquids into which the biofuels are blended. For the particular case of imports and exports of liquid biofuels, only trade of quantities that have not been blended with transport fuels is concerned (i.e. in their pure form); trade of liquids biofuels blended to transport fuels should be reported in the oil data in Chapter 4.

The following liquid biofuels are concerned:

10.1. Of which: Biogasoline

This category includes bioethanol (ethanol produced from biomass and/or the biodegradable fraction of waste), biomethanol (methanol produced from biomass and/or the biodegradable fraction of waste), bioETBE (ethyl-tertio-butyl- ether produced on the basis of bioethanol; the percentage by volume of bioETBE that is calculated as biofuel is 47%) and bioMTBE (methyl-tertio- butyl-ether produced on the basis of biomethanol: the percentage by volume of bioMTBE that is calculated as biofuel is 36%).

10.1.1. Biogasoline of which: Bioethanol

Ethanol produced from biomass and/or the biodegradable fraction of waste

10.2. Of which: Biodiesels

This category includes biodiesel (a methyl-ester produced from vegetable or animal oil, of diesel quality), biodimethylether (dimethylether produced from biomass), Fischer Tropsch (Fischer Tropsch produced from biomass), cold extracted bio-oil (oil produced from oil seed through mechanical processing only) and all other liquid biofuels which are added to, blended with or used straight as transport diesel.

10.3. Bio jet kerosene

Liquid biofuels derived from biomass and blended with or replacing Jet kerosene.

10.4. Other liquid biofuels

Liquid biofuels, used directly as fuel, not included in biogasoline nor biodiesels.

5.2. List of aggregates

The following list of aggregates shall be declared for all energy products listed in the previous paragraph unless otherwise specified.

5.2.1. Gross Electricity and Heat Production

Electricity and heat produced from the energy products mentioned in Section 5.1 (except charcoal, biogasoline and bio jet kerosene) must be declared, wherever applicable, separately:

- for main activity producer plants and for autoproducer plants;
- for electricity-only producing plants, for heat-only producing plants, and for combined heat and power (CHP) plants.

This requirement excludes charcoal. For the liquid biofuels, it excludes the biogasoline and the bio jet kerosene. For the hydro, declarations must be subdivided in plants with electrical output up 1 MW, between 1 and 10 MW, and above 10 MW.

5.2.2. Supply and Transformation Sectors

Quantities of energy products that are mentioned in Section 5.1 (except for hydro power, solar photovoltaic energy, energy from tides, waves and oceans and wind energy) and used in the Supply and Transformation Sectors must be declared for the following aggregates:

1. Production
2. Imports
3. Exports
4. Stock changes

A stock build is shown as a negative number and a stock draw is shown as a positive number.

5. Gross consumption
6. Statistical differences
7. Total transformation Sector

Quantities of renewables and wastes used for the conversion of primary forms of energy to secondary (e.g. landfill gases to electricity) or used for the transformation to derived energy products (e.g.: biogas used for blended natural gas).

7.1. Of which: Main Activity Producer Electricity Plants

7.2. Of which: Main Activity Producer CHP Plants

7.3. Of which: Main Activity Producer Heat Plants

7.4. Of which: Autoproducer Electricity plants

7.5. Of which: Autoproducer CHP plants

7.6. Of which: Autoproducer Heat plants

7.7. Of which: Patent Fuel Plants

Quantities of renewables and wastes used to produce patent fuel. Renewables and wastes used for heating and operation of equipment must be reported as consumption in the Energy sector.

7.8. Of which: BKB/PB Plants

Quantities of renewables and wastes used to produce BKB. Renewables and wastes used for heating and operation of equipment must be reported as consumption in the Energy sector.

7.9. Of which: Gas Works Gas

Quantities of renewables and wastes used to produce gas works gas. Renewables and wastes used for heating and operation of equipment must be reported as consumption in the Energy sector.

7.10. Of which: blast furnaces

Quantities of renewable energy (e.g. charcoal) transformed in blast furnaces.

Renewable energy used for heating and operations of equipment should not be reported here, but reported as consumption in the Energy sector.

7.11. Of which: Natural gas blending plants

Quantities of biogases blended with natural gas which are injected to the natural gas network.

7.12. Of which: blending with Motor gasoline/Diesel/Kerosene

Quantities of liquid biofuels which are not delivered to the final consumption but are used with other petroleum products reported in the oil questionnaire.

7.13. Of which: Charcoal production plants

Quantities of wood used for the production of Charcoal.

7.14. Of which: Not Elsewhere Specified – Transformation

5.2.3. Energy Sector

Quantities of energy products that are mentioned in Section 5.1 (except for hydro power, solar photovoltaic energy, energy from tides, waves and oceans and wind energy) and used in the energy sector or for final consumption must be declared for the following aggregates:

1. Total Energy Sector

Renewable energies and wastes consumed by the energy industry to support the transformation activity. For example renewable energies and wastes used for heating, lighting or operating pumps/ compressors.

Quantities of renewable energies and wastes transformed into another energy form should be reported under the Transformation sector.

- 1.1. Of which: Gasification plants
- 1.2. Of which: Public Electric, CHP & Heat plants
- 1.3. Of which: Coal Mines
- 1.4. Of which: Patent Fuel Plants
- 1.5. Of which: Coke Ovens
- 1.6. Of which: Petroleum Refineries
- 1.7. Of which: BKB/PB Plants
- 1.8. Of which: Gas Works Gas
- 1.9. Of which: Blast Furnaces
- 1.10. Of which: Charcoal production plants
- 1.11. Of which: Not Elsewhere Specified
2. Distribution Losses

All losses occurred due to transport and distribution.

5.2.4. *Energy end-use*

Quantities of energy products that are mentioned in Section 5.1 (except for hydro power, solar photovoltaic energy, energy from tides, waves and oceans and wind energy) must be declared for the following aggregates:

1. Final Energy Consumption
2. Industry Sector
 - 2.1. Of which: Iron and Steel
 - 2.2. Of which: Chemical and Petrochemical
 - 2.3. Of which: Non-Ferrous Metals
 - 2.4. Of which: Non-Metallic Minerals
 - 2.5. Of which: Transport Equipment
 - 2.6. Of which: Machinery
 - 2.7. Of which: Mining and Quarrying
 - 2.8. Of which: Food, Beverages and Tobacco
 - 2.9. Of which: Pulp, Paper and printing
 - 2.10. Of which: Wood and Wood Products
 - 2.11. Of which: Construction
 - 2.12. Of which: Textile and Leather

2.13. Of which: Not Elsewhere Specified – Industry

3. Transport Sector

3.1. Of which: Rail

3.2. Of which: Road

3.3. Of which: Domestic Navigation

3.4. Of which: Not Elsewhere Specified – Transport

4. Other Sectors

4.1. Of which: Commercial and Public Services

4.2. Of which: Residential

4.2.1. Residential, of which: Space heating

4.2.2. Residential, of which: Space cooling

4.2.3. Residential, of which: Water heating

4.2.4. Residential, of which: Cooking

4.2.5. Residential, of which: Other end uses

4.3. Of which: Agriculture/Forestry

4.4. Of which: Fishing

4.5. Of which: Not Elsewhere Specified – Other

5.2.5. Technical Characteristics of Installations

The following electricity generation capacities are to be declared as applicable at the end of the reported year:

1. Hydro power

Capacity must be reported for plant sizes of < 1 MW, 1 to < 10 MW, \geq 10 MW, for mixed plants and for pure pumped storage, as well as for all sizes combined. Detailed plant sizes should be reported net of pumped storage.

2. Geothermal

3. Solar Photovoltaic

4. Solar Thermal

5. Tide, Wave, Ocean

6. Wind

7. Industrial Waste (non-renewable)

8. Municipal Waste

9. Solid biofuels

10. Biogases

11. Biodiesels

12. Other liquid Biofuels

The total surface installed of solar collectors is to be declared.

The following biofuel production capacities are to be declared:

1. Biogasoline
2. Biodiesels
3. Bio jet kerosene
4. Other Liquid Biofuels

5.2.6. Imports and exports

Imports by country of origin, and exports by country of destination are to be declared for the following products:

1. Biogasoline
 - 1.1. Of which: Bioethanol
2. Bio jet kerosene
3. Biodiesels
4. Other Liquid Biofuels
5. Wood pellets

5.2.7. Production of solid biofuels and biogases

The production of the following products is to be declared:

1. Solid biofuels (excluding charcoal)
 - 1.1. Of which: fuelwood, wood residues and by-products
 - 1.1.1. From fuelwood, wood residues and by-products, of which: wood pellets
 - 1.2. Of which: black liquor
 - 1.3. Of which: bagasse
 - 1.4. Of which: animal waste
 - 1.5. Of which: other vegetal materials and residues
2. Biogases from anaerobic fermentation
 - 2.1. Of which: landfill gas
 - 2.2. Of which: sewage sludge gas
 - 2.3. Of which: other biogases from anaerobic fermentation
3. Biogases from thermal processes

5.3. Calorific values

Average net calorific values are to be declared for the following products:

1. Biogasoline
2. Bioethanol
3. Biodiesel
4. Bio jet kerosene

5. Other liquid biofuels
6. Charcoal

5.4. Units of measurement

1. Electricity generation: MWh
2. Heat production: TJ
3. Renewable energy products
 - Biogasoline, biodiesels and other liquid biofuels: tonnes
 - Charcoal: 1 000 tonnes
 - All others: TJ (on the basis of net calorific values).
4. Solar collectors surface: 1 000 m²
5. Plants capacity
 - Biofuels: tonnes/year All others: MWe
6. Calorific values: kJ/kg (net calorific value).

5.5. Derogations and exemptions

Not applicable.

6. APPLICABLE PROVISIONS

The following provisions apply for the data collection as described in all preceding chapters:

1. Reported period:
 - A calendar year (1 January to 31 December).
2. Frequency
 - Annual.
3. Deadline for transmission of data
 - 30 November of the year following the reported period.
4. Transmission format and method
 - The transmission format shall conform to an appropriate interchange standard specified by Eurostat.
 - Data shall be transmitted or uploaded by electronic means to the single entry point for data at Eurostat.

ANNEX C

MONTHLY ENERGY STATISTICS

This Annex describes the scope, units, reported period, frequency, deadline and transmission modalities for the monthly collection of energy statistics.

Annex A applies for explanations of terms for which a specific explanation is not supplied in this Annex.

1. SOLID FUELS

1.1. Applicable energy products

Unless otherwise specified this data collection applies to all of the following energy products:

1. Hard coal

Hard coal refers to coal of gross calorific value equal to or greater than 20 000 kJ/kg on an ash-free but moist basis and with a mean random reflectance of vitrinite of at least 0,6 percent.

2. Lignite

Non-agglomerating coal with a gross calorific value less than 20 000 kJ/kg and greater than 31% volatile matter on a dry mineral matter free basis.

3. Peat

A combustible soft, porous or compressed, fossil sedimentary deposit of plant origin with high water content (up to 90 percent in the raw state), easily cut, and of light to dark brown colour. Peat used for non-energy purposes should not included here. Milled peat is included here.

4. Patent fuel

A composition fuel manufactured from hard coal fines with the addition of a binding agent.

5. BKB (brown coal briquettes)

BKB is a composition fuel manufactured from lignite or sub-bituminous coal, produced by briquetting under high pressure without the addition of a binding agent, including dried lignite fines and dust.

6. Coke

The solid product obtained from carbonisation of coal, principally coking coal, at high temperature, it is low in moisture and volatile matter. Coke oven coke is used mainly in the iron and steel industry acting as energy source and chemical agent. Coke breeze and foundry coke are included in this category. Semi-coke (a solid product obtained from carbonisation of coal at low temperature) should be included in this category. Semi-coke is used as a domestic fuel or by the transformation plant itself. This heading also includes coke, coke breeze, gas coke and semi-coke made from lignite.

1.2. List of aggregates

The following list of aggregates shall be declared for all energy products listed in the previous paragraph unless otherwise specified.

Annex A applies for explanations of terms for which a specific explanation is not supplied in this Annex.

1.2.1. Supply Sector

The following aggregates apply to hard coal, lignite and peat:

1. Production
2. Recovered products (applies to hard coal only)
Slurries and waste-heap shale recovered by mines.
3. Total imports
4. Total exports
5. Stocks:
 - Beginning of period
 - End of period
 - Stock changes

These are the quantities held by mines and importers.

Excludes consumer stocks (e.g. those held in power stations and coking plants) except stocks held by consumers who import directly.

A stock build is shown as a negative number and a stock draw is shown as a positive number.

6. Calculated Inland Deliveries.

Total amount of product calculated to have been delivered for inland consumption. It is defined as:

= Production + recovered products + Imports - Exports + Stock changes

7. Statistical difference.

Equals to calculated minus observed inland deliveries.

Applies to hard coal only.

8. Observed Internal Deliveries.

Quantities delivered to the internal market. Equal to the total of the deliveries to the different types of consumers. A difference may occur between the calculated and observed deliveries.

Applies to hard coal only.

8.1. Of which: deliveries to main activity producer power stations

8.2. Of which: deliveries to coking plants

8.3. Of which: deliveries to Patent fuel plants

Quantities used for transformation in patent fuels plants (pithead and independent).

8.4. Of which: deliveries to total industry

8.5. Of which: other deliveries (services, households, etc.)

Quantities of fuel to households (including colliery coal supplied to workers in mines and associated plants) and services (administrations, shops, etc.) and also to sectors not elsewhere specified.

The following aggregates apply to coke, patent fuels and brown coal briquettes:

1. Production
2. Total imports
3. Total exports
4. Stocks:

- Beginning of period
- End of period
- Stock changes

Quantities held in coking plants (coke) and patent fuel plants (patent fuels).

Excludes consumers' stocks excepted stocks held by consumers which import directly.

A stock build is shown as a negative number and a stock draw is shown as a positive number.

5. Calculated Inland Deliveries

Total amount of product calculated to have been delivered for inland consumption. It is defined as:

$$= \text{Production} + \text{Imports} - \text{Exports} + \text{Stock changes}$$

6. Deliveries to Iron & steel industry (applies to coke only)

1.2.2. Imports

Imports by country of origin and exports by country of destination are to be declared for hard coal.

1.3. Units of measurement

All product quantities are expressed in 10^3 tonnes.

1.4. Derogations and exemptions

Not applicable.

2. ELECTRICITY

2.1. Applicable energy products

This chapter covers electrical energy.

2.2. List of aggregates

The following list of aggregates shall be declared.

2.2.1. Production Sector

For the following aggregates both gross and net quantities must be declared:

1. Total electricity production
 - 1.1. Of which: Nuclear
 - 1.2. Of which: Hydro
 - 1.2.1. From 1.2, of which: part of hydro produced from pumped storage
 - 1.3. Of which: Geothermal
 - 1.4. Of which: Conventional thermal
 - 1.5. Of which: Wind

Also the following quantities of electrical energy must be declared:

2. Imports
 - 2.1. Of which: intra-EU imports
3. Exports
 - 3.1. Of which: extra-EU exports
4. Used for pumped storage
5. Used for the internal market

This is calculated as:

= Total net production + Imports - Exports - Used for pumped storage

For the fuel consumption in main activity producer plants the following aggregates apply (refer to Annex B for the definition of lignite and Annex C for the definition of hard coal):

6. Total fuel consumption in main activity producer plants

Total quantity of fuel consumed for the purpose of producing electricity and also for the production of heat to be sold to third parties exclusively.

 - 6.1. Of which: Hard coal
 - 6.2. Of which: Lignite
 - 6.3. Of which: Petroleum products
 - 6.4. Of which: Natural gas
 - 6.5. Of which: Derived gas (these are manufactured gases)
 - 6.6. Of which: Other fuels

2.2.2. *Fuel stocks in main activity producers*

By main activity producers are meant public utilities generating electricity by using fuels. The following closing stocks (stocks at the end of the reported month) must be declared:

1. Hard coal
2. Lignite
3. Petroleum products

2.3. Units of measurement

1. Energy quantities

Electricity: GWh

Hard coal, lignite and petroleum products: both in 10^3 tonnes and in TJ on the basis of the net calorific value.

Natural gas and derived gases: TJ on the basis of the gross calorific value.

Other fuels: TJ on the basis of the net calorific value.

Nuclear heat: TJ.

2. Stocks

10^3 tonnes

2.4. Derogations and exemptions

Not applicable.

3. OIL AND PETROLEUM PRODUCTS

3.1. Applicable energy products

Unless otherwise specified this data collection applies to all of the following energy products, for which the definitions in Annex B Chapter 4 apply: crude oil, NGL, refinery feedstocks, other hydro-carbons, refinery gas (not liquefied), ethane, LPG, naphtha, motor gasoline, aviation gasoline, gasoline type jet fuel (naphtha type jet fuel or JP4), kerosene type jet fuel, other kerosene, gas/diesel oil (distillate fuel oil), transport diesel, heating and other gasoil, fuel oil (both low and high sulphur content), white spirit and SBP, lubricants, bitumen, paraffin waxes and petroleum coke.

Where applicable, motor gasoline must be declared in two categories namely biogasoline and non-biogasoline; jet kerosene must be declared in two categories namely bio jet kerosene and non-bio jet kerosene; gas/ diesel oil must be declared in four categories namely road diesel, heating and other gas oil, biodiesels and non-bio gas/diesel oil.

'Other Products' include both the quantities that correspond to the definition in Annex B Chapter 4) and in addition the quantities of white spirit and SBP, lubricants, bitumen and paraffin waxes; these products must not be declared separately.

3.2. List of aggregates

The following list of aggregates shall be declared for all energy products listed in the previous paragraph unless otherwise specified.

3.2.1. Supply Sector

The following table applies only to crude oil, NGL, refinery feedstocks, additives/oxygenates, biofuels and other hydrocarbons only:

1. Indigenous Production

Not applicable for refinery feedstocks.

2. From Other Sources

Additives, Biofuels and Other hydrocarbons, the production of which has already been cov-

ered in other fuel balances.

Not applicable for crude oil, NGL and refinery feedstocks.

3. Backflows From Petrochemical Sector

Finished or semi-finished products which are returned from final consumers to refineries for processing, blending or sale. They are usually by-products of petrochemical manufacturing.

Only applicable for refinery feedstocks.

4. Products Transferred

Imported petroleum products which are reclassified as feedstocks for further processing in the refinery, without delivery to final consumers.

Only applicable for refinery feedstocks.

5. Imports and exports

Includes quantities of crude oil and products imported or exported under processing agreements (i.e. refining on account). Crude oil and NGLs should be reported as coming from the country of ultimate origin; refinery feedstocks and finished products should be reported as coming from the country of last consignment.

Includes any gas liquids (e.g. LPG) extracted during the regasification of imported liquefied natural gas and petroleum products imported or exported directly by the petrochemical industry.

Note: All trade of biofuels which have not been blended with transport fuels (i.e. in their pure form) should be reported in the Renewables Questionnaire.

6. Direct Use

Crude oil, NGL and Other hydrocarbons used directly without being processed in petroleum refineries.

Includes crude oil burned for electricity generation.

7. Stock changes

A stock build is shown as a positive number and a stock draw is shown as a negative number.

8. Calculated Refinery Intake

Total amount of product calculated to have entered the refinery process. It is defined as:

= Indigenous production + From other sources + Backflows from industry + Products transferred + Imports - Exports - Direct use - Stock changes

9. Statistical differences

Defined as the calculated refinery intake minus the observed one.

10. Observed Refinery Intake

Amounts measured as input to refineries

11. Refinery Losses

The difference between Refinery intake (observed) and Gross refinery output. Losses may occur during the distillation processes due to evaporation. Reported losses are positive. There may be volumetric gains but no gains in mass.

The following table does not apply to refinery feedstocks nor to additives/ oxygenates:

1. Primary Product Receipts

Includes quantities of indigenous or imported crude oil (including condensate) and indigenous NGL used directly without being processed in a petroleum refinery and quantities of Backflows from the Petrochemical industry which, although not primary fuel, are used directly.

2. Gross Refinery Output

Production of finished products at a refinery or blending plant.

Excludes refinery losses, but includes Refinery fuel.

3. Recycled Products

Finished products which pass a second time through the marketing network, after having been once delivered to final consumers (e.g. used lubricants which are reprocessed). These quantities should be distinguished from petrochemical Backflows.

4. Refinery Fuel

Petroleum products consumed in support of the operation of a refinery.

Excludes products used by oil companies outside the refining process, e.g. bunkers or oil tankers.

Includes fuels used for the production at the refineries of electricity and heat sold.

5. Imports and Exports

6. International Marine Bunkers

7. Interproduct Transfers

Quantities reclassified either because their specification has changed or because they are blended into another product.

A negative entry for one product is compensated by a positive entry (or several entries) for one or several products and vice versa; the total net effect should be zero.

8. Products Transferred

Imported petroleum products which are reclassified as feedstocks for further processing in the refinery, without delivery to final consumers.

9. Stock Changes

A stock build is shown as a positive number and a stock draw is shown as a negative number.

10. Calculated Gross Inland Deliveries

This is defined as:

= Primary product receipts + Gross refinery output + Recycled products - Refinery fuel + Imports - Exports - International marine bunkers + Interproduct transfers - Products transferred - Stock changes

11. Statistical Difference

Defined as the calculated gross inland delivery minus the observed one.

12. Observed Gross Inland Deliveries

The observed delivery of finished petroleum products from primary sources (e.g. refineries, blending plants, etc.) to the inland market.

This figure may differ from the calculated figure due, for example, to differences in coverage and/or differences of definition in different reporting systems.

- 12.1. Of which: Deliveries to International Civil Aviation
- 12.2. Of which: Deliveries to main activity producer power plants
- 12.3. Of which: Deliveries of Automotive LPG
- 12.4. Of which: Deliveries (gross) to Petrochemical sector
13. Backflows from Petrochemical sector to refineries
14. Total net inland deliveries

3.2.2. Stocks

The following opening and closing stocks must be declared for all energy products including for additives/oxygenates but except for refinery gas:

1. Stocks on national territory

Stocks in the following locations: refinery tanks, bulk terminals, pipeline tankage, barges and coastal tankers (when port of departure and destination are in the same country), tankers in a port of a member country (if their cargo is to be discharged at the port), inland ship bunkers. Exclude stocks of oil held in pipelines, in rail tanks cars, in truck tanks cars, in sea-going ships' bunkers, in service stations, in retail stores and in bunkers at sea.

2. Stocks held for other countries under bilateral government agreements

Stocks on national territory which belong to another country and to which the access is guaranteed by an agreement between the respective governments.

3. Stocks with known foreign destination

Stocks not included in point 2 on national territory which belong to and are destined for another country. These stocks may be located inside or outside bonded areas.

4. Other stocks held in bonded areas

Includes stocks not included in point 2 nor 3 irrespective of whether they have received customs clearance or not.

5. Stocks held by major consumers

Include stocks which are subject to government control. This definition does not include other consumer stocks.

6. Stocks held on board incoming ocean vessels in port or at mooring

Stocks irrespective of whether they have been cleared by customs or not. This category excludes stocks on board vessels at high seas.

Includes oil in coastal tankers if both their port of departure and destination are in the same country. In the case of incoming vessels with more than one port of unloading, only report the amount to be unloaded in the reporting country.

7. Stocks held by government on national territory

Includes non-military stocks held within the national territory by government, which are government owned or controlled and held exclusively for emergency purposes.

Excludes stocks held by state oil companies or electric utilities or stocks held directly by oil companies on behalf of governments.

8. Stocks held by stock holding organisation on national territory

Stocks held by both public and private corporations established to maintain stocks exclusively for emergency purposes.

Excludes mandatory stocks held by private companies.

9. All other stocks held on national territory

All other stocks satisfying the conditions described in point 1 above.

10. Stocks held abroad under bilateral government agreements

Stocks belonging to the reporting country but held in another country, to which access is guaranteed by an agreement between the respective governments.

10.1. Of which: Government stocks

10.2. Of which: Holding organisation's stocks

10.3. Of which: Other stocks

11. Stocks held abroad designated definitely for import stocks

Stocks not included in category 10 which belonging to the reporting state but which are held in another state and awaiting import there.

12. Other stocks in bonded areas

Other stocks in the national territory not included in the above categories.

13. Pipeline fill

Oil (crude oil and petroleum products) contained in pipelines, necessary to maintain the flow in the pipelines.

In addition, a breakdown of quantities per corresponding country must be declared for:

- closing stocks held for other countries under official agreement, by beneficiary,
- closing stocks held for other countries under official agreement, of which held as stock tickets, by beneficiary,
- closing stocks with known foreign destination, by beneficiary,
- closing stocks held abroad under official agreement, by location,
- closing stocks held abroad under official agreement, of which held as stock tickets, by location,
- closing stocks held abroad designated definitely for import into the declarer's country, by location.

By opening stocks are meant the stocks on the last day of the month preceding the reported one.

By closing stocks are meant the stocks on the last day of the reported month.

3.2.3. Imports and exports

Imports by country of origin, and exports by country of destination.

3.3. Units of measurement

Energy quantities: 10³ tonnes

3.4. Geographical notes

For statistical reporting purposes only, the clarifications of Annex A Chapter 1 apply with the following specific exceptions:

1. Denmark includes the Faeroe Islands and Greenland.
2. Switzerland includes Liechtenstein.

3.5. Derogations and exemptions

Not applicable.

4. NATURAL GAS

4.1. Applicable energy products

Natural gas is defined in Annex B Chapter 2.

4.2. List of aggregates

The following list of aggregates shall be declared for all energy products listed in the previous paragraph unless otherwise specified.

4.2.1. Supply Sector

1. Indigenous Production

All dry marketable production within national boundaries, including offshore production. Production is measured after purification and extraction of NGLs and sulphur.

Excludes extraction losses and quantities reinjected, vented or flared.

Includes quantities used within the natural gas industry; in gas extraction, pipeline systems and processing plants.

2. Imports

3. Exports

4. Stock changes

A stock build is shown as a positive number and a stock draw is shown as a negative number.

5. Calculated Gross Inland Deliveries

This is defined as:

= Indigenous Production + Imports - Exports - Stock Change

6. Statistical Difference

Defined as the calculated gross inland delivery minus the observed one.

7. Observed Gross Inland Deliveries

Includes gas used by the gas industry for heating and operation of their equipment (i.e. consumption in gas extraction, in the pipeline system and in processing plants) and losses in distribution.

8. Opening and closing levels of stocks held on national territory

Quantities stored in special storage facilities (depleted gas and/or oil field, aquifer, salt cavity,

mixed caverns or other) as well as liquefied natural gas storage. By opening stocks are meant the stocks on the last day of the month preceding the reported one. By closing stocks are meant the stocks on the last day of the reported month.

9. Own use and losses of the natural gas industry

Own used quantities by the gas industry for heating and operation of its equipment (i.e. consumption in gas extraction, in the pipeline system and in processing plants).

Includes losses in distribution.

4.2.2. Imports and exports

Contrary to the definitions in Annexe A, imports and exports are to be declared by neighbouring country in this case.

4.3. Units of measurement

Quantities must be declared in two units:

- in physical quantity, in 10^6 m^3 assuming reference gas conditions (15 °C, 101,325 kPa),
- in energy content, i.e. in TJ, based on the gross calorific value.

4.4. Derogations and exemptions

Not applicable.

5. APPLICABLE PROVISIONS

The following provisions apply for the data collection as described in all preceding chapters:

1. Reported period:

A calendar month.

2. Frequency

Monthly.

3. Deadline for transmission of data

All data described under Section 3 (oil and petroleum products) and under Section 4 (natural gas): within 55 days following the reported month.

All other data: within three months following the reported month.

4. Transmission format and method

The transmission format shall conform to an appropriate interchange standard specified by Eurostat.

Data shall be transmitted or uploaded by electronic means to the single entry point for data at Eurostat.

ANNEX D

SHORT TERM MONTHLY STATISTICS

This Annex describes the scope, units, reported period, frequency, deadline and transmission modalities for the short-term monthly collection of statistical data.

Annex A applies for explanations of terms for which a specific explanation is not supplied in this Annex.

1. NATURAL GAS

1.1. Applicable energy products

This chapter covers natural gas only. Natural gas is defined in chapter 2 of Annex B.

1.2. List of aggregates

The following list of aggregates shall be declared.

1. Production
2. Imports
3. Exports
4. Stock change

A stock build is shown as a negative number and a stock draw is shown as a positive number.

5. Supply

This is calculated as:

= Production + Imports - Exports + Stock change

6. Stocks at the end of month

1.3. Units of measurement

Quantities of natural gas must be declared in TJ, based on the gross calorific value.

1.4. Other applicable provisions

1. Reported period:

A calendar month.

2. Frequency

Monthly.

3. Deadline for transmission of data

Within one month following the reported month.

4. Transmission format and method

The transmission format shall conform to an appropriate interchange standard specified by

Eurostat.

Data shall be transmitted or uploaded by electronic means to the single entry point for data at Eurostat.

1.5. Derogations and exemptions

Germany has a derogation from this data collection until 30 September 2014.

2. ELECTRICITY

2.1. Applicable energy products

This chapter covers electricity only.

2.2. List of aggregates

The following list of aggregates shall be declared.

1. Total electricity production
 - Total gross quantity of electricity generated.
 - Includes own consumption of power plants.
2. Imports
3. Exports
4. Gross electricity Supply
 - This is calculated as:
$$= \text{Total electricity production} + \text{Imports} - \text{Exports}$$

2.3. Units of measurement

Energy quantities must be expressed in GWh

2.4. Other applicable provisions

1. Reported period:
 - A calendar month.
2. Frequency
 - Monthly.
3. Deadline for transmission of data
 - Within one month following the reported month.
4. Transmission format and method
 - The transmission format shall conform to an appropriate interchange standard specified by Eurostat.
 - Data shall be transmitted or uploaded by electronic means to the single entry point for data at Eurostat.

2.5. Derogations and exemptions

Germany is exempted from this data collection.

3. OIL AND PETROLEUM PRODUCTS

This data collection is commonly known as the 'JODI Questionnaire'.

3.1. Applicable energy products

Unless otherwise specified, this data collection applies to all of the following energy products, for which the definitions in Chapter 4 of Annex B apply: crude oil, LPG, gasoline (which is the sum of motor gasoline and aviation gasoline), kerosene (which is the sum of kerosene type jet fuel and other kerosene), gas/diesel oil and fuel oil (both low and high sulphur content).

In addition, this data collection also applies to 'total oil', by which is meant the sum of all these products except crude oil, and must also include other petroleum products such as refinery gas, ethane, naphtha, petroleum coke, white spirit and SBP, paraffin waxes, bitumen, lubricants and others.

3.2. List of aggregates

The following list of aggregates shall be declared for all energy products listed in the previous paragraph unless otherwise specified.

3.2.1. Supply Sector

The following table applies only to crude oil:

1. Production
2. Imports
3. Exports
4. Closing Stock
5. Stock change

A stock build is shown as a positive number and a stock draw is shown as a negative number.

6. Refinery Intake

Observed refinery throughput.

The following table applies to crude oil, LPG, gasoline, kerosene, gas/ diesel oil, fuel oil and total oil:

1. Refinery Output
2. Imports
3. Exports
4. Closing Stock
5. Stock change

A stock build is shown as a positive number and a stock draw is shown as a negative number.

6. Demand

Deliveries or sales to the inland market (domestic consumption) plus Refinery Fuel plus International Marine and Aviation Bunkers. Demand for Total Oil includes Crude.

3.3. Units of measurement

Energy quantities: 10^3 tonnes

3.4. Other applicable provisions

1. Reported period:

A calendar month.

2. Frequency

Monthly.

3. Deadline for transmission of data

Within 25 days following the reported month.

4. Transmission format and method

The transmission format shall conform to an appropriate interchange standard specified by Eurostat.

Data shall be transmitted or uploaded by electronic means to the single entry point for data at Eurostat.

3.5. Derogations and exemptions

Not applicable.

REGULATION (EU) 2016/1952 of 26 October 2016 on European statistics on natural gas and electricity prices and repealing Directive 2008/92/EC

Incorporated and adapted by Ministerial Council Decision 2018/1/MC-EnC of 3 January 2018 on adopting Regulation (EU) 2016/1952 of 26 October 2016 on European statistics on natural gas and electricity prices and repealing Directive 2008/92/EC

*The adaptations made by Ministerial Council Decision 2018/1/MC-EnC are highlighted in **bold and blue***

Whereas:

- (1) Competitiveness, sustainability and energy security are the overarching goals of a resilient energy union with a forward-looking climate change policy.
- (2) High-quality, comparable, up-to-date, reliable and harmonised data on natural gas and electricity prices charged to final customers are needed in order to draft energy union policy and monitor the Member States' energy markets.
- (3) This Regulation aims to provide for a common framework for European statistics to underpin energy policies in particular towards the creation of a fully integrated internal energy market for customers. Greater transparency on energy costs and prices, as well as on the level of public support, should be made available to improve market integration. This Regulation does not entail any harmonisation of the structure of prices or charges across Member States.
- (4) To date, Directive 2008/92/EC of the European Parliament and of the Council has provided a common framework for producing, transmitting and disseminating comparable statistics on the natural gas and electricity prices charged to industrial customers in the Union.
- (5) The collection of data on natural gas and electricity prices charged to final customers in the household sector has so far been carried out on the basis of a voluntary agreement.
- (6) The growing complexity of the internal energy market makes it increasingly difficult to obtain reliable and up-to-date price data on natural gas and electricity in the absence of legally binding obligations to provide such data, in particular on the household sector.
- (7) In order to guarantee the reporting of high-quality price data for the household sector and for the non-household sector, the collection of both types of data should be covered by a legislative act.
- (8) In most Member States, data on transmission systems are available from energy regulators. However, a much larger number of data compilers are involved in distribution costs and the reporting of data is considered to be more difficult in some Member States. Given the significance of distribution costs and the need for transparency on this matter, the collection of data on natural gas and electricity prices should follow the established practices within the European Statistical System.
- (9) The system of consumption bands used by the Commission (Eurostat) in its price publications should ensure transparency of the market and broad dissemination of non-confidential price data, and should enable the calculation of European aggregates.
- (10) Regulation (EC) No 223/2009 of the European Parliament and of the Council is the reference framework for European statistics. That Regulation provides for statistics to be collected in accordance

with the principles of impartiality, transparency, reliability, objectivity, professional independence and cost-effectiveness, while protecting statistical confidentiality.

(11) Contracting Parties should compile the data on natural gas and electricity prices by using the most appropriate sources and methods to provide the required information.

(12) Data on prices charged to final customers of natural gas and electricity should enable comparisons with the prices of other energy commodities.

(13) Information on the collection of data on prices and on the quality of data should be provided as part of standard reporting procedure.

(14) Detailed data on the breakdown of consumption bands and their respective market shares are an essential part of natural gas and electricity price statistics.

(15) Price analysis can be carried out only if high-quality official statistics are available from Contracting Parties regarding the different components and sub-components of natural gas and electricity prices. A revised methodology for generating a detailed breakdown of the various components and sub-components of the prices of natural gas and electricity charged to final customers will make it possible to analyse the impact of different aspects on the final prices.

(16) The data provided to the Commission (Eurostat) on prices and conditions of sale to final customers, and the breakdown of the number of final customers by consumption in each consumption band, should contain all the information necessary to enable the Commission to decide on appropriate measures or proposals in relation to energy policy.

(17) A good understanding of the taxes, fees, levies and charges in each Member State is essential for ensuring price transparency. The importance of a breakdown of the data on network costs, taxes, fees, levies and charges has been identified.

(18) Contracting Parties in which there is low consumption of natural gas as a proportion of the final energy consumption of households should be exempt from the obligation to provide data on natural gas prices for final household customers.

(19) To improve data reliability, the Commission (Eurostat), together with the Member States, should assess and, if required, improve the methodology for collecting and processing data in a precise manner, in accordance with the governance framework for statistics. Therefore, quality reports should be prepared regularly and assessments of the quality of price data should be carried out regularly.

(20) Based on a reasoned request from a Member State, the Commission should be entitled to grant derogations to that Member State in relation to specific obligations for which the application of this Regulation to the national statistical system of that Member State requires major adaptations or is likely to lead to a significant additional burden on respondents.

(21) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission as regards the format of and arrangements for the transmission of data, technical quality assurance requirements regarding the content of standard quality reports, and the granting of derogations. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council.

(22) Since the objective of this Regulation, namely the establishment of a common legal framework for the systematic production of European statistics on natural gas and electricity prices, cannot be sufficiently achieved by the Contracting Parties but can rather, by reason of its scale and effects, be

better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary to achieve that objective.

(23) Directive 2008/92/EC should therefore be repealed.

(24) The European Statistical System Committee has been consulted,

Article 1

Subject matter

This Regulation establishes a common framework for the development, production and dissemination of comparable European statistics on natural gas and electricity prices for household and final non-household customers in the Union.

Article 2

Definitions

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

(1) 'autoproducers', 'final energy consumption' and 'household' have the same meaning as that attributed to those terms in Annex A to Regulation (EC) No 1099/2008 of the European Parliament and of the Council;

(2) 'transmission', 'distribution', 'customer', 'final customer', 'household customer', 'non-household customer' and 'supply' have the same meaning as that attributed to those terms in Article 2 of Directive 2009/72/EC of the European Parliament and of the Council, when used in relation to electricity;

(3) 'transmission', 'distribution', 'supply', 'customer', 'household customer', 'non-household customer' and 'final customer' have the same meaning as that attributed to those terms in Article 2 of Directive 2009/73/EC of the European Parliament and of the Council, when used in relation to natural gas;

(4) 'network component' means the combination of transmission and distribution network costs as set out in point 6 of Annex I and in point 5 of Annex II.

Article 3

Data sources

Contracting Parties shall compile data on natural gas and electricity prices, and their components and sub-components concerning network costs, taxes, fees, levies and charges, and on consumption volumes, in accordance with Annexes I and II. One or more of the following sources shall be used, after taking into account the principles of reducing burden on respondents and of administrative simplification:

- (a) statistical surveys;
- (b) administrative sources;
- (c) other sources applying statistical estimation methods.

Article 4

Coverage

1. **Contracting Parties** shall ensure that the data collection and compilation in accordance with Annexes I and II provide comprehensible and comparable high-quality data that are representative of their respective natural gas and electricity prices and consumption.
2. **Contracting Parties** shall not be obliged to transmit data on natural gas prices for household customers if the consumption of natural gas in the household sector accounts for less than 1,5% of national final energy consumption in the household sector.
3. At least every three years, **Energy Community Secretariat** shall review which Contracting Parties are not obliged to transmit data pursuant to paragraph 2.

Article 5

Data transmission

1. **Contracting Parties** shall provide to the Commission (Eurostat) the data as set out in Annexes I and II.
2. The Commission shall adopt implementing acts establishing the format and arrangements for the transmission of the data as set out in Annexes I and II. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 10(2).
3. **Contracting Parties** shall provide statistics to the Commission (Eurostat) within three months of the end of the relevant reference period.

Article 6

Reference periods and transmission frequency

1. The reference periods for the data specified in Annexes I and II shall be annual (January to December) or biannual (January to June and July to December). The first reference periods shall start in 2017.
2. The transmission frequency shall be:
 - (a) annual (for the period from January to December) for data referred to in points 6(a) and 7 of Annex I and points 5(a) and 6 of Annex II;
 - (b) biannual (for the periods from January to June and from July to December) for data referred to in point 6(b) of Annex I and point 5(b) of Annex II.

Article 7

Quality assurance

1. **Contracting Parties** shall ensure the quality of the data provided in accordance with this Regulation. To that end, the standard quality criteria laid down in Article 12(1) of Regulation (EC) No 223/2009 apply.
2. **Contracting Parties** shall inform the Commission (Eurostat), without delay, of any methodological or other changes that might have a significant impact on natural gas and electricity price statistics, and in any event no later than one month after that change occurs.
3. Every three years, **Contracting Parties** shall provide the Commission (Eurostat) with a standard quality report on the data in accordance with the quality criteria laid down in Article 12(1) of Regulation (EC) No 223/2009. Those reports shall include information on the scope and collection of the data, the calculation criteria, the methodology and data sources used, and any changes thereto.
4. The Commission (Eurostat) shall assess the quality of the data provided and shall use that assessment and an analysis of the quality reports referred to in paragraph 3 in order to prepare and publish a report on the quality of European statistics covered by this Regulation.
5. The Commission shall adopt implementing acts establishing technical quality assurance requirements regarding the content of the quality reports referred to in paragraph 3 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 10(2).

Article 8

Dissemination

The Commission (Eurostat) shall disseminate natural gas and electricity price statistics no later than five months after the end of each reference period.

Article 9

Derogations

1. Derogations may be granted by the **Energy Community Secretariat** by means of implementing acts in relation to specific obligations for which the application of this Regulation to the national statistical system of a **Contracting Party** requires major adaptations or is likely to lead to a significant additional burden on respondents. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 10(2).
2. For the purposes of paragraph 1, the **Contracting Party** concerned shall submit a duly reasoned request to the **Energy Community Secretariat** by 8 August 2017.
3. Derogations granted pursuant to paragraph 1 shall remain in force for the shortest period of time possible and in any event for no longer than three years.

4. A **Contracting Party** that has been granted a derogation pursuant to paragraph 1 shall apply the relevant provisions of Directive 2008/92/EC for the duration of the derogation.

Article 10

Committee procedure

1. The Commission shall be assisted by the European Statistical System Committee established by Regulation (EC) No 223/2009. That Committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Article 11

Repeal of Directive 2008/92/EC

1. Directive 2008/92/EC is repealed with effect from 1 March 2017.

2. Notwithstanding paragraph 1 of this Article, Directive 2008/92/EC shall continue to apply under the conditions provided for in Article 9 of this Regulation.

3. References to the repealed Directive shall be construed as references to this Regulation.

Article 12

Entry into force

This Decision enters into force on the day of its adoption and is addressed to the Contracting Parties.

Each Contracting Party shall, not later than 1 March 2018, bring into force the laws, regulations and administrative provisions necessary to comply with Regulation (EU) 2016/1952 of 26 October 2016 on European statistics on natural gas and electricity prices and repealing Directive 2008/92/EC.

Done by written procedure on 3 January 2018

For the Ministerial Council

(Presidency)

ANNEX I

NATURAL GAS PRICES

This Annex sets out the methodology for the collection and compilation of statistical data on natural gas prices for household and final non-household customers.

1. Prices

Prices shall be those charged to household and final non-household customers buying natural gas for their own use that is distributed through mains.

2. Natural gas

Natural gas shall include natural gas and other gaseous fuels blended with natural gas in the transmission and distribution network, such as biogas. Other gaseous fuels that are distributed through dedicated networks without being blended with natural gas (e.g. gas works gas, coke oven gas, blast furnace gas and biogas) shall be excluded.

3. Reporting units

The data shall include all household and final non-household customers of natural gas, but shall exclude customers who use natural gas only for:

- electricity generation in power plants or in combined heat and power (CHP) plants; or
- non-energy purposes (e.g. for use in the chemicals industry).

4. Units of measurement

Prices shall be the national average prices charged to household and final non-household customers.

Prices shall be expressed in national currency per gigajoule (GJ). The unit of energy used shall be measured on the basis of the gross calorific value (GCV).

Prices shall be weighted according to the market share of natural gas supply undertakings in each consumption band. If it is not possible to calculate weighted average prices, arithmetic average prices may be provided. In either case, the data shall cover a representative share of the national market.

5. Consumption bands

Prices shall be based on a system of standard annual natural gas consumption bands.

(a) For household customers, the following bands shall be applied:

Consumption band	Annual natural gas consumption (GJ)	
	Minimum	Maximum
Band D1		< 20
Band D2	≥ 20	< 200
Band D3	≥ 200	

(b) For final non-household customers, the following bands shall be applied:

Consumption band	Annual natural gas consumption (GJ)	
	Minimum	Maximum
Band I1		< 1 000
Band I2	≥ 1 000	< 10 000
Band I3	≥ 10 000	< 100 000
Band I4	≥ 100 000	< 1 000 000
Band I5	≥ 1 000 000	< 4 000 000
Band I6	≥ 4 000 000	

6. Level of detail

Prices shall include all charges payable: network charges plus energy consumed, minus any rebates or premiums, plus any other charges (e.g. meter rental, standing charges). Initial connection charges shall be excluded.

Detailed data shall be transmitted as specified below.

(a) Level of detail required for components and sub-components

Prices shall be subdivided into three main components and into separate sub-components.

The final customer price for natural gas by consumption band is the sum of the three main components: the energy and supply component, the network component (transmission and distribution) and the component comprising taxes, fees, levies and charges.

Component and sub-component	Description
Energy and supply	This component shall include the commodity price for natural gas paid by the supplier or the price of natural gas at the point of entry into the transmission system, including, if applicable, the following end-user costs: storage costs plus costs relating to the sale of natural gas to final customers.
Network	The network price shall include the following end-user costs: transmission and distribution tariffs, transmission and distribution losses, network costs, after-sale service costs, system service costs and meter rental and metering costs.
Sub-component	The network component shall be subdivided into end-user transmission and distribution network costs, as follows:
	1. Average relative share of transmission costs for household customers and average relative share of transmission costs for final non-household customers, expressed as a percentage of total network costs.
	2. Average relative share of distribution costs for household customers and average relative share of distribution costs for final non-household customers, expressed as a percentage of total network costs.

Taxes, fees, levies and charges	This component is the sum of all the sub-components (taxes, fees, levies and charges) listed below.
Sub-component	The following sub-components shall be transmitted as individual items for each consumption band defined in point 5.
	1. Value added tax as defined in Council Directive 2006/112/EC.
	2. Taxes, fees, levies or charges relating to the promotion of renewable energy sources, energy efficiency and CHP generation.
	3. Taxes, fees, levies or charges relating to strategic stockpiles, capacity payments and energy security; taxes on natural gas distribution; stranded costs and levies on financing energy regulatory authorities or market and system operators.
	4. Taxes, fees, levies or charges relating to air quality and for other environmental purposes; taxes on emissions of CO ₂ or other greenhouse gases.
	5. All other taxes, fees, levies or charges not covered by any of the previous four categories: support for district heating; local or regional fiscal charges; island compensation; concession fees relating to licences and fees for the occupation of land and public or private property by networks or other devices.

(b) Level of detail based on taxation

Prices shall be broken down into the following three levels:

Level	Description
Prices excluding all taxes, fees, levies and charges	This price level shall include only the energy and supply component and the network component.
Prices excluding value added tax (VAT) and other recoverable taxes	This price level shall include the energy and supply component, the network component and taxes, fees, levies and charges considered as non-recoverable for final non-household customers. For household customers this price level shall include the energy and network components and taxes, fees, levies and charges but excludes VAT.
Prices including all taxes	This price level shall include the energy and supply component, the network component, and all recoverable and non-recoverable taxes, fees, levies and charges, including VAT.

7. Consumption volumes

Contracting Parties shall transmit information on the relative share of natural gas in each consumption band based on the total volume to which the prices refer.

The annual consumption volumes for each consumption band shall be transmitted once per year, together with the price data for the second semester.

The data shall not be older than two years.

ANNEX II

ELECTRICITY PRICES

This Annex sets out the methodology for the collection and compilation of statistical data on electricity prices for household and final non-household customers.

1. Prices

Prices shall be those charged to household and final non-household customers buying electricity for their own use.

2. Reporting units

The data shall include all household and final non-household customers of electricity, but electricity generated and subsequently consumed by autoproducers shall be excluded from the reporting obligation.

3. Units of measurement

Prices shall be the national average prices charged to household and final non-household customers.

Prices shall be expressed in national currency per kilowatt-hour (kWh).

Prices shall be weighted according to the market share of electricity supply undertakings in each consumption band. If it is not possible to calculate weighted average prices, arithmetic average prices may be provided. In either case, the data shall cover a representative share of the national market.

4. Consumption bands

Prices shall be based on a system of standard annual electricity consumption bands.

(a) For household customers, the following bands shall be applied:

Consumption band	Annual electricity consumption (kWh)	
	Minimum	Maximum
Band DA		< 1 000
Band DB	≥ 1 000	< 2 500
Band DC	≥ 2 500	< 5 000
Band DD	≥ 5 000	< 15 000
Band DE	≥ 15 000	

(b) For final non-household customers, the following bands shall be applied:

Consumption band	Annual electricity consumption (MWh)	
	Minimum	Maximum
Band IA		< 20
Band IB	≥ 20	< 500
Band IC	≥ 500	< 2 000
Band ID	≥ 2 000	< 20 000
Band IE	≥ 20 000	< 70 000
Band IF	≥ 70 000	< 150 000
Band IG	≥ 150 000	

5. Level of detail

Prices shall include all charges payable: network charges plus energy consumed, minus any rebates or premiums, plus any other charges (e.g. meter rental, standing charges). Initial connection charges shall be excluded.

Detailed data shall be transmitted as specified below.

(a) Level of detail required for components and sub-components

Prices shall be subdivided into three main components and into separate sub-components.

The final customer price for electricity by consumption band is the sum of the three main components: the energy and supply component, the network component (transmission and distribution) and the component comprising taxes, fees, levies and charges.

Component and sub-component	Description
Energy and supply	This component shall include the following end-user costs: generation, aggregation, balancing energy, supplied energy costs, customer services, after-sales management and other supply costs.
Network	The network price shall include the following end-user costs: transmission and distribution tariffs, transmission and distribution losses, network costs, after-sale service costs, system service costs, and meter rental and metering costs.
Sub-component	The network component shall be subdivided into end-user transmission and distribution network costs, as follows:
	1. Average relative share of transmission costs for household customers and average relative share of transmission costs for final non-household customers, expressed as a percentage of total network costs.
	2. Average relative share of distribution costs for household customers and average relative share of distribution costs for final non-household customers, expressed as a percentage of total network costs.

Taxes, fees, levies and charges	This component is the sum of all the sub-components (taxes, fees, levies and charges) listed below.
Sub-component	The following sub-components shall be transmitted as individual items for each consumption band defined in point 4.
	1. Value added tax as defined in Directive 2006/112/EC.
	2. Taxes, fees, levies or charges relating to the promotion of renewable energy sources, energy efficiency and CHP generation.
	3. Taxes, fees, levies or charges relating to capacity payments, energy security and generation adequacy; taxes on coal industry restructuring; taxes on electricity distribution; stranded costs and levies on financing energy regulatory authorities or market and system operators.
	4. Taxes, fees, levies or charges relating to air quality and for other environmental purposes; taxes on emissions of CO ₂ or other greenhouse gases.
	5. Taxes, fees, levies or charges relating to the nuclear sector, including nuclear decommissioning, inspections and fees for nuclear installations.
	6. All other taxes, fees, levies or charges not covered by any of the previous five categories: support for district heating; local or regional fiscal charges; island compensation; concession fees relating to licences and fees for the occupation of land and public or private property by networks or other devices.

(b) Level of detail based on taxation

Prices shall be broken down into the following three levels:

Level	Description
Prices excluding all taxes, fees, levies and charges	This price level shall include only the energy and supply component and the network component.
Prices excluding value added tax (VAT) and other recoverable taxes	This price level shall include the energy and supply component, the network component and taxes, fees, levies and charges considered as non-recoverable for final non-household customers. For household customers this price level shall include the energy and the network components and taxes, fees, levies and charges but excludes VAT.
Prices including all taxes	This price level shall include the energy and supply component, the network component, and all recoverable and non-recoverable taxes, fees, levies and charges, including VAT.

6. Consumption volumes

Contracting Parties shall transmit information on the relative share of electricity in each consumption band based on the total volume to which the prices refer.

The annual consumption volumes for each consumption band shall be transmitted once per year,

together with the price data for the second semester.

The data shall not be older than two years.

PART III

MEASURES AND PROCEDURAL ACTS BY ENERGY COMMUNITY INSTITUTIONS





RULES OF PROCEDURE of 16 October 2015 of the Ministerial Council of the Energy Community

Procedural Act 2006/01/MC-EnC of 17 November 2006 on adoption of internal Rules of Procedures of Ministerial Council of Energy Community as amended by Procedural Acts 2013/01/MC-EnC of 24 October 2013 and 2015/02/MC-EnC of 15 October 2015 amending Procedural Act of the Ministerial Council 2006/01/MC-EnC of 17 November 2006

I. GENERAL

1. These rules establish the internal procedures for operation of the Ministerial Council (the “Council”) as an institution under the Treaty establishing Energy Community (the “Treaty”).
2. In case of any contradiction between these rules and the Treaty, the rules of the Treaty shall be applied.

II. MEMBERS, PARTICIPANTS, OBSERVERS

1. The Council shall consist of representatives of the Parties to the Treaty. Each Party to the Treaty, with the exception of the European Community, shall have one representative at the Council; the European Community shall have two representatives determined pursuant to its internal decision. Parties should in principle be represented in the Council at ministerial level or equivalent.
2. In accordance with Article 95 of the Treaty, one non-voting representative of each Participant may participate in the Council meetings.
3. In accordance with Article 96 of the Treaty, Observers may attend the meetings of the Council.
4. The Presidency and the Vice-Presidency may agree to invite representatives of other institutions to attend a relevant meeting on an *ad hoc* basis.
5. Where the Presidency and the Vice-Presidency agreed to invite other bodies, including representatives of Civil Society Organizations and participants in the meetings of the Parliamentary Plenum, the President shall inform the Parties at least three weeks before the meeting. The Parties decide on the invitation by simple majority by submitting their views to the Secretariat within five working days from receiving this information. Tacit agreement is assumed where no reaction is received by the Secretariat within this deadline.

III. PRESIDENCY

1. The Presidency of the Council shall be held in turn by each Contracting Party¹ in alphabetical order, following the names of the Parties as indicated in the Treaty, starting with the former Yugoslav Republic of Macedonia.
2. The Presidency shall chair the Ministerial Council. It will be assisted by one representative of the

¹ A Contracting Party is any Party, for which the Treaty is into force, excluding the European Community.

European Community and one representative of the incoming Presidency as Vice-Presidency.

3. Should the Presidency be not in a position to perform its duties for a particular meeting, the latter will be chaired by the Vice-President who represents the European Community.

IV. PREPARATION OF THE MEETINGS

1. The Council shall meet at least once per year. In urgent circumstances, agreed between the Presidency and the Vice-Presidents, the Presidency may convene the Council also outside the regular meetings.

2. The place of Council meetings shall be decided upon by the Presidency after consultations with the Vice-Presidency and the Energy Community Secretariat (the Secretariat). Normally, this decision shall be made at least two months prior to the relevant meeting.

3. The date of the meetings shall be agreed between the Presidency, the Vice-Presidency and the Energy Community Secretariat (the Secretariat). In principle, the dates shall be agreed at least two months prior to the relevant meeting.

4. The draft agenda of the meetings shall be agreed by the Presidency and the Vice-Presidency. It shall be distributed at least two weeks prior to the relevant meeting. Should there be documents related to any agenda item, these should be distributed to the representatives specified in section II paragraphs 1 to 3 together with the agenda.

5. Without prejudice to the decision making process under Title VI of the Energy Community Treaty, the Permanent High Level Group may identify Measures for adoption by the Ministerial Council without further discussion. The identified Measures shall be included in the draft agenda of the next Ministerial Council as "A" items. The draft Agenda shall specify the Title and Chapter of the Treaty under which the draft Measure identified as an "A" item will be presented for voting in the Ministerial Council. This does not exclude the possibility for any Party to have statements included in the conclusions.

6. The Secretariat is responsible for the preparation of the meetings. It will inform the Presidency and the Vice-Presidency periodically and upon request about the preparation process and follow their requests and guidance in this relation.

7. Should this be found necessary, the Presidency and the Vice-Presidency may propose that a particular committee/commission is established. The decision of the Council shall take the form of a Procedural Act and include concrete list of participants as well as the scope of work, which should be performed, together with relevant deadlines.

V. MEETINGS OF THE COUNCIL – PROCEDURAL RULES

1. The meetings of the Council shall not be public unless the Council decides otherwise.

2. Any member of the Council or any other attendee of the meeting may be accompanied by officials who assist them. The names and functions of those officials shall be notified in advance to the Secretariat. As a principle, these officials should not be more than three for any Party to the Treaty, and not more than two for any other participant in the meeting. However, the Presidency may further

advise on the maximum number of representatives per delegation.

3. The Council may take decisions only if two thirds of the Parties are represented. Abstentions in a vote from the Parties present shall not count as votes cast.

4. As provided in Article 80 of the Treaty, each Party shall have one vote.

5. The Agenda for the meeting shall be approved at its beginning. In urgent circumstances, new items may be included also during the meeting subject to the agreement of the President and Vice-Presidency.

6. Re-opening discussion on Measures included in the draft agenda of the next Ministerial Council as "A" items requires simple majority.

7. The Participants may participate in the discussions but they do not take part in voting.

8. The observers may make statements upon permission or invited by the Presidency. The Observers do not have voting rights.

9. Conclusions of each meeting shall be drawn up with the assistance of the Secretariat. These shall be signed by the Presidency and distributed to the members and the attendees. In case it is not possible to finalize the conclusions by the end of the relevant meeting, the Presidency shall assure that they are drafted and distributed within 7 days after its end². Further, any member of the Council might request corrections within 7 days upon receipt of the draft. The Presidency shall arrange that the final version is distributed within 7 days upon the expiry of the deadline for comments.

10. Any vote shall be explicitly described in the Conclusions.

11. The conclusions cannot in any way restrict the scope or effects of legal acts or the Treaty. No statements or conclusions which contradict binding legal provisions shall be made. Conclusions cannot form part of legal acts nor have any normative effect.

VI. ACTS OF THE COUNCIL – PROCEDURAL ASPECTS

1. To ensure that the objectives set out in the Treaty are attained, the Council provides general policy guidelines, takes Measures and adopt Procedural Acts.

1. General Policy Guidelines

2. The Council shall provide general policy guidelines, when requested or upon its own initiative.

3. The general policy guidelines shall reflect the political consensus of the Parties on strategic issues of mutual interest in line with the Treaty objectives.

4. The issue or amendment of general policy guidelines may be requested by any member of the Council. The request shall be in writing and shall contain sufficient information explaining the necessity of adoption of the proposed guidelines by the Council.

5. The written request shall be submitted by the requesting member of the Council to the Presidency with copy to the Vice-Presidency. The Presidency notifies all members of the Council within seven days after the request has been received.

² All days are calendar days.

6. The Presidency, in consultation with the Vice-Presidency, shall organize the preparation of a draft position of the Council, which shall be presented for discussion at the next Council meeting. The draft position shall be sent to the Members of the Council at least 30 days before the meeting.

7. General policy guidelines might be adopted *ad hoc* on the ground of consensus of all members of the Council.

2. Measures

8. Unless otherwise specified in these rules or in a separate decision of the Council, the adoption of Measures (Decisions and Recommendations) shall follow the same procedure.

9. Any proposal for a Measure from the European Commission, from the relevant Party or from the Secretariat shall be made in writing at least 60 days before the meeting of the Council at which it shall be discussed.

10. The proposal shall be sent to the Presidency with copy to all the members of the Council and to the Secretariat. It shall be accompanied by relevant explanatory notes. Where necessary, position of the Regulatory Board shall be requested by the Party or the institution, which makes the relevant proposal for a Measure.

11. During the meeting of the Council at which the proposal for a Measure shall be discussed, the Presidency shall identify the required quorum in accordance with the Treaty. The Presidency shall do so prior to the discussion of the proposal. The quorum availability will be respectively reflected in a protocol.

12. Measures under Title II of the Treaty – extension of the *acquis communautaire* – shall be taken by a majority of the votes cast only on the ground of a proposal from the European Commission, which may alter or withdraw its proposal at any time before the final adoption of the Measure.

13. Measures under Title III of the Treaty – Mechanism for operation of Network Energy Markets – shall be taken by a two third majority of the votes cast, including a positive vote of the European Community, upon a proposal from a Party or the Secretariat, which also shall take account of a position of the Regulatory Board.

14. Measures under Title IV – The Creation of a Single Energy Market – may be taken on a proposal from a Party only by unanimity. The European Commission on its own initiative or upon request of any party may request a position of the Regulatory Board.

3. Procedural Acts

15. The Council adopts Procedural Acts in cases envisaged in the Treaty and in accordance with the required majority. During the meeting of the Council at which the proposal for a Procedural Act shall be discussed, the Presidency shall identify the required quorum in accordance with the Treaty. The Presidency shall do so prior to the discussion of the proposal. The quorum availability will be respectively reflected in a protocol.

16. Unless otherwise envisaged by the Treaty, any member of the Council may propose adoption of a Procedural Act.

17. The preparation of draft Procedural Acts is coordinated by the Presidency in consultation with the Vice-Presidency. The Presidency may ask the Party, which has initiated the preparation of a Procedural Act, and/or the Secretariat to assist in the process of this preparation.

18. Draft Procedural Acts, related to organizational, budgetary and transparency issues, shall be distributed at least 30 days before the meeting at which they will be discussed.

19. Procedural Act related to the appointment of the Director of the Secretariat, provided for in Article 69 of the Treaty, shall be proposed by the European Commission. The draft shall be distributed at least 30 days before the meeting at which it will be discussed.

20. Procedural Act on budgetary matters, provided for in Article 73 and 74 of the Treaty, shall be proposed by the European Commission at least 30 days before the meeting at which it will be discussed.

21. Procedural Act conferring powers on the Regulatory Board, provided for in Article 47(c) of the Treaty, may be proposed by any member of the Council or by the Secretariat, at least 30 days before the meeting at which the relevant proposal shall be discussed. In case the opinion of the Regulatory Board is requested through the Presidency, it shall be part of explanatory documents to be submitted with the proposal for that act.

4. Work Programme

22. The Council shall adopt a work programme for the next two years. A proposal for the work programme is prepared by the Secretariat and sent to the Council Members upon agreement by the President and Vice-President.

5. Rules For Decision-Making by Correspondence

23. The Council may, in the intervals between the meetings of the Council, take decisions by correspondence. The Presidency, upon the proposal by a Party for a decision to be taken by correspondence or upon its own initiative shall decide, after consulting and in agreement with the Vice-Presidency, whether the matter warrants the taking of the decision by correspondence.

24. When it is decided that a decision should be taken by correspondence, the Presidency shall instruct the Secretariat to dispatch a letter or telefacsimile to each Party containing the proposed decision together with such information as the Presidency, after consultation and in agreement with the Vice-Presidency, considers necessary to an informed decision. The Presidency, after consultation and in agreement with the Vice-Presidency, shall also specify whether and, if so, under which conditions, amendments to the proposal may be made by the Parties.

25. Presidency, after consultation and in agreement with the Vice-Presidency, shall determine the date and hour by which responses must be received, which shall in no case be earlier than 10 calendar days from the date of transmission of the letter or facsimile referred to above. In exceptional circumstances, upon request or at its own discretion, may the Presidency, after consultation and in agreement with the Vice-Presidency, extend the time limit for the receipt of responses. Any Party who has not replied in writing (including telefacsimile) within the given time limit is regarded as abstaining from the vote.

26. The votes cast by correspondence shall be reviewed by at least three persons, including a representative of the Presidency, the European Commission and the Secretariat. Once a decision is adopted, it shall be promptly circulated by the Secretariat to all Parties and Participants, together with the information on the votes cast in favor of the decision. It shall be formally signed by the Presidency at the earliest meeting of the PHLG.

27. This procedure may be used for adoption of Measures or other decisions following agreement of the President and Vice-Presidents.

VII. RULINGS ON DISPUTE SETTLEMENT AND IMPLEMENTATION OF DECISIONS

1. Any Party to the Treaty, the Secretariat or the Regulatory Board may bring to the Council's attention circumstances which suggest that a Party failed to comply with a Treaty obligation or failed to implement a Decision addressed to it within the required period.

2. A Party's, Secretariat's or Regulatory Board's communication to the ministerial Council pursuant to the preceding paragraph shall take the form of a reasoned request. The request shall therefore be based on concrete factual findings and backed up by sufficient analysis. The request also shall contain a proposal for a Council's decision.

3. The request shall be made at least 30 days before the meeting of the Council.

4. The notification shall be sent to the Presidency and the Vice-Presidency. Prior to including the item on the Council's agenda, the Presidency, in consultation with the Vice-Presidency, may request additional information from the Party or the institution which has made the notification.

5. The Presidency shall inform the Party, which is subject to the claim, within 7 days after receiving it, by sending the relevant materials, and ask it to present its views in writing.

6. During the meeting of the Council at which the request or other issue under Title VII of the Treaty is discussed, the Presidency shall identify the required quorum in accordance with the Treaty. The Presidency shall do so prior to the discussion of the proposal. The quorum availability will be respectively reflected in a protocol.

VIII. INTERPRETATION OF THE TREATY

1. The Council may give guidance to the interpretation of the Treaty upon request by any Party or any of the institutions established by the Treaty.

2. The request for interpretation shall be submitted to the Presidency and copied to the Vice-Presidency.

3. The Presidency shall ask the European Commission and the Secretariat for a reasoned opinion regarding the interpretative issue specified in the request.

4. Unless otherwise decided, any guidance on interpretation of the Treaty, given by the Council, shall be immediately enforceable and is binding on the Parties and the institutions under the Treaty.

IX. DISCLOSURE OF DOCUMENTS

1. The draft agenda and the relevant materials shall be distributed to all the members of the Council, to the Participants and to the Observers. Material of interest to them will also be distributed to the representatives of any other institutions, which are invited to take part in the relevant meeting. Any of the Presidency and the Vice-Presidency may request that the draft agenda and the relevant materials are distributed to other institutions.
2. Unless otherwise decided, the finalized documents of the meetings (agenda, conclusions, etc.) shall be made public via the website of the Secretariat.

X. FINAL PROVISIONS

1. The Participants, Observers and other attendees are expected to follow any requirements for confidentiality, which are valid to the Parties. Such requirements are reflected in the conclusions of the relevant meeting.
2. All acts of the Ministerial Council shall be signed by the Presidency.
3. The Rules have been adopted by the Council on the ground of Article 49 of the Treaty. In accordance with that provision, any amendments to these Rules shall be adopted by a Procedural Act.
4. If application of these Rules to a specific situation is unclear or ambiguous, the Presidency in consultation and agreement with the Vice-Presidency shall interpret the Rules to resolve the situation.
5. The Council meetings shall be conducted in a businesslike manner.
6. At the latest one year from the entry of these Rules into force, based on the practical experience with their application, the Secretariat may propose eventual amendments to these Rules it deems useful or necessary. Where a Party wishes to propose such amendment, it is encouraged to consult it first with the Secretariat.

The Rules become effective on 16 October 2015, which is the day of their adoption by the Energy Community Ministerial Council.





RULES OF PROCEDURE of 16 October 2015 of the Permanent High Level Group of the Energy Community

Procedural Act 2006/01/PHLG-EnC of 17 October 2006 on adoption of internal Rules of Procedure of the Permanent High Level Group of Energy Community as amended by Procedural Acts 2013/01/PHLG-EnC of 23 October 2013 and 2015/01/PHLG-EnC of 16 October 2015 amending Procedural Act of the Permanent High Level Group of 17 October 2006

I. GENERAL

1. These rules establish the internal procedures for operation of the Permanent High Level Group (called "PHLG") as an institution under the Treaty establishing the Energy Community.
2. In case of any contradiction between these rules and the Treaty establishing the Energy Community (the "Treaty"), the rules of the Treaty shall be applied.

II. MEMBERS – PARTICIPANTS - OBSERVERS

1. (i) The PHLG shall consist of representatives of the Parties to the Treaty. Each Contracting Party to the Treaty shall have one representative at the PHLG; the European Community shall have two representatives upon its internal decision.
- (ii) The members of the PHLG shall be senior officials in the ministry in charge of energy. The act of appointment shall provide evidence that the member is mandated to express the position of the respective Party in a manner binding on that Party and has the obligation as well as all necessary powers to coordinate positions internally before expressing them at the meetings of the PHLG.
2. The members of the PHLG shall express the positions of the relevant Parties. In case a member of the PHLG cannot attend its meeting, he/she might be represented by another person at the appropriate level.
3. In accordance with Article 54 of the Treaty, one non-voting representative of each Participant may participate in the meetings.
4. In accordance with Article 96 of the Treaty, Observers may attend the meetings of the PHLG. Each Observer may have one representative.
5. The Presidency and the Vice-Presidency may agree to invite any other bodies to attend a relevant meeting on *ad hoc* basis.
6. Where the Presidency and the Vice-Presidency agreed to invite other bodies as observers, including representatives of Civil Society Organizations and participants in the meetings of the Parliamentary Plenum, the President shall inform the Parties at least three weeks before the meeting. The Parties decide on the invitation by simple majority by submitting their views to the Secretariat within five working days from receiving this information. Tacit agreement is assumed where no reaction is received by the Secretariat within this deadline.

III. PRESIDENCY

1. The Contracting Party holding the Presidency of the Ministerial Council shall also hold the Presidency of the PHLG.
2. The Presidency shall chair the PHLG meetings with the operational support of the European Commission.¹
3. The Presidency shall be assisted by one representative of the European Community and one representative of the incoming Presidency as Vice-Presidency.
4. Should the Presidency be not in a position to perform its duties for a particular meeting, the latter will be chaired by the Vice-Presidency who represents the European Community.

IV. PREPARATION OF THE MEETINGS

1. The PHLG shall meet on regular basis at least once every six months. In urgent circumstances, agreed between the Presidency and the Vice –Presidency, the Presidency shall convene PHLG also outside the regular meetings.
2. The Presidency shall convene the PHLG in a place decided upon by the Presidency after consultation with the Vice-Presidency. In principle, following the requirements of most cost effective approach, the meetings of the PHLG shall take place in Vienna, Austria. Any proposal for a meeting in other place shall consider the relevant financial, administrative and organizational aspects.
3. The date of the meetings shall be agreed between the Presidency, the Vice-Presidency and the Energy Community Secretariat (“the Secretariat”). In principle, the dates shall be agreed at least two months prior to the relevant meeting.
4. The draft agenda of the meetings shall be agreed by the Presidency and the Vice-Presidency. It shall be distributed at least two weeks prior to the relevant meeting. Should there be documents, related to any agenda item, these should be distributed to the representatives specified in Section II, Paras. 1 to 4 together with the agenda.
5. The Secretariat is responsible for the preparation of the meetings. It will inform the Presidency and the Vice-Presidents periodically and upon request about the preparation process and follow their requests and guidance in this relation.
6. Should this be found necessary, the Presidency and the Vice-Presidents may propose that a committee/commission under the authority of the PHLG is established. The decision of the PHLG shall take a form of a Procedural Act and shall include concrete list of participants as well as the scope of work, which should be performed, together with relevant deadlines.

¹ See Article 4 of the Treaty, page 13.

V. MEETINGS OF THE PHLG – PROCEDURAL RULES

1. The PHLG meetings shall be conducted in a business-like manner.
2. The meetings of the PHLG shall not be public unless the PHLG decides otherwise.
3. Any member of the PHLG or any other attendee of the meeting may be accompanied by experts who assist them. The names and functions of those experts shall be notified in advance to the Secretariat. As a principle, these experts should not be more than three for any Party to the Treaty, and not more than two for any other participant in the meeting. However, the Presidency may further advise on the maximum number of representatives per delegation.
4. PHLG may act only, if two third of the Parties are represented. Abstentions in a vote from the Parties present shall not count as votes cast.
5. The PHLG shall act in accordance with the voting rules required by the Treaty, depending on the agenda item. The Presidency shall identify the necessary majority before the vote on the ground of the substance of the agenda item.
6. As provided in Article 80 of the Treaty, each Party shall have one vote.
7. The Agenda for the meeting shall be approved in its beginning. In urgent circumstances, new items may be included also during the meeting subject to the agreement of the Presidency and Vice-Presidency.
8. The Participants may participate in the discussions, but they do not take part in voting (cf II.3).
9. The Observers may make statements upon permission or when invited by the Presidency. The Observers do not have voting rights.
10. At the end of each meeting, conclusions shall be drafted and discussed. They shall be distributed to the members and attendees by the Secretariat. The conclusions are final if, within five working days from their distribution, no change requests are submitted to the Secretariat. If a member or attendee requests amendments to a particular item in the conclusions, the items concerned shall be put on the agenda of and discussed at the next meeting. Items of the conclusions for which no changes have been requested within five working days shall be considered adopted. They are to be made publicly available by the Secretariat.
11. The Secretariat shall distribute draft conclusions for each Permanent High Level Group meeting one week ahead of the meeting to the Parties, Participants and Observers on the basis of the draft agenda and the documents received.
12. Any vote shall be explicitly described in the Conclusions.
13. The conclusions cannot in any way restrict the scope or effects of legal acts or the Treaty. No statements or conclusions which contradict binding legal provisions shall be made. Conclusions cannot form part of legal acts nor have any normative effect. Without prejudice to the decision making process under Title VI of the Energy Community Treaty, the Permanent High Level Group may identify Measures for adoption by the Ministerial Council without further discussion. This does not exclude the possibility for any Party to have statements included in the conclusions of the PHLG.

VI. ACTS OF THE PHLG – PROCEDURAL ASPECTS

1. General

1. The PHLG may take Measures (Decisions and Recommendations), if so empowered by the Ministerial Council, and adopt Procedural Acts.
2. The PHLG adopts Procedural Acts, not involving the conferral of tasks, powers or obligations on other institutions of the Energy Community, upon proposal of the Parties or the Secretariat.

2. Measures

3. Unless otherwise specified in these rules or in a separate decision of the PHLG or the Ministerial Council, the adoption of Decisions and Recommendations shall follow the same procedure.
4. Any proposal for a Measure from the European Commission, from the relevant Party or from the Secretariat shall be made in writing at least 30 days before the meeting of the PHLG when it shall be discussed.
5. The proposal shall be sent to the Presidency with copy to all the members of the PHLG and the Secretariat. It shall be accompanied by relevant explanatory notes. Where necessary in accordance with its competences, position of the Regulatory Board shall be requested by the Party or the institution, which makes the relevant proposal for a measure.
6. Measures under Title II of the Treaty – extension of the *acquis communautaire* – shall be taken by a majority of the votes cast only on the ground of a proposal from the European Commission, which may alter or withdraw its proposal at any time before the final adoption of the measure.
7. Measures under Title III of the Treaty – Mechanism for operation of Network Energy Markets – shall be taken by a two third majority of the votes cast, including a positive vote of the European Community, upon a proposal from a Party or the Secretariat, which shall also take account of a position of the Regulatory Board.
8. Measures under Title IV – The Creation of a Single Energy Market – may be taken on a proposal from a Party only by unanimity. The European Commission on its own request or upon request of any Party, might request a position of the Regulatory Board.

3. Rules for Decision-Making by Correspondence

9. The PHLG may, in the intervals between the meetings of the PHLG, take decisions by correspondence. The Presidency, upon the proposal by a Party for a decision to be taken by correspondence or upon its own initiative shall decide, after consulting and in agreement with the Vice-Presidents, whether the matter warrants the taking of the decision by correspondence.
10. When it is decided that a decision should be taken by correspondence, the Presidency shall instruct the Secretariat to dispatch a letter or telefacsimile to each Party containing the proposed decision together with such information as the Presidency, after consultation and in agreement with the

Vice-Presidency, considers necessary to an informed decision. The Presidency, after consultation and in agreement with the Vice-Presidency, shall also specify whether and, if so, under which conditions, amendments to the proposal may be made by the Parties.

11. Presidency, after consultation and in agreement with the Vice-Presidents, shall determine the date and hour by which responses must be received, which shall in no case be earlier than 10 calendar days from the date of transmission of the letter or facsimile referred to above. In exceptional circumstances, upon request or at its own discretion, may the Presidency, after consultation and in agreement with the Vice-Presidency, extend the time limit for the receipt of responses. Any Party, that has not replied in writing (including telefacsimile) within the given time limit, is regarded as abstaining from the vote.

12. The votes cast by correspondence shall be reviewed by at least three persons, including a representative of the Presidency, the European Commission and the Secretariat. Once a decision is adopted, it shall be promptly circulated by the Secretariat to all Parties and Participants, together with the information on the votes cast in favor of the decision. It shall be formally signed by the Presidency at the earliest meeting of the PHLG.

13. This procedure may be used for adoption of Measures or other decisions following agreement of the President and Vice-Presidency.

4. Procedural Acts

14. Procedural Acts shall regulate organizational and other issues, envisaged in the Treaty and also referred to in these Rules. They shall be binding.

15. Any member of the PHLG may propose adoption of a Procedural Act and submit the draft of the act itself.

16. When the PHLG has agreed on the necessity for a Procedural Act, it may ask the Presidency to organize its preparation in consultation with the Vice-Presidency.

17. The Presidency may ask the Party, which has initiated the preparation of a procedural act, and/or the Secretariat to assist in the process of this preparation.

18. The drafts of Procedural Acts with the relevant materials shall be distributed at least 30 days before the meeting at which they will be discussed.

VII. DISCLOSURE OF DOCUMENTS

1. The draft agenda and the relevant materials shall be distributed to all the members of the PHLG, to the Participants and to the Observers. Material of interest to them will also be distributed to the representatives of any other institutions, which are invited to take part in the relevant meeting. Any of the Presidency and the Vice-Presidency may request that the draft agenda and the relevant materials are distributed to other institutions.

2. Unless otherwise decided, the finalized documents of the meetings (agenda, conclusions) shall be made public via the website of the Secretariat.

VIII. FINAL PROVISIONS

1. All acts of the PHLG shall be signed by the Presidency.
2. The Rules have been adopted by the PHLG on the ground of Article 55 of the Treaty.
3. If application of these Rules to a specific situation is unclear or ambiguous, the Presidency in consultation and agreement with the Vice-Presidency shall interpret the Rules to resolve the situation.
4. At the latest one year from the entry of these Rules into force, based on the practical experience with their application, the Secretariat may propose eventual amendments to these Rules it deems useful or necessary. Where a Party wishes to propose such amendment, it is encouraged to consult it first with the Secretariat.
5. In accordance with Article 55 of the Treaty, any amendments to these Rules shall be adopted by a Procedural Act.

The Rules become effective on 15 October 2015, which is the day of their adoption by the PHLG.

RULES OF PROCEDURE of 21 December 2017 of the Energy Community Regulatory Board

Procedural Act 2007/01/ECRB-EnC of 1 March 2007 on adoption of internal Rules of Procedure of the Energy Community Regulatory Board as amended by Procedural Acts 2009/01/ECRB-EnC of 25 February 2009, 2011/01/ECRB-EnC of 15 December 2011, 2012/01/ECRB-EnC of 28 March 2012, 2013/02/ECRB-EnC of 11 December 2013, 2015/01/ECRB-EnC of 8 April 2015 and 2017/01 ECRB-EnC of 21 December 2017 on the amendment of the internal Rules of Procedure of the Energy Community Regulatory Board.

Article 1

Purpose

1.1 The Rules regulate the organization of the Energy Community Regulatory Board and establish the procedures of its meetings.

1.2 The Energy Community Regulatory Board (hereinafter: “ECRB” or “Board”) shall discharge the tasks entrusted to it by Article 58 of the Energy Community Treaty.

1.3 The ECRB, upon request of the Ministerial Council, the PHLG and the European Commission, or on its own initiative and in accordance with the objectives of the Energy Community Treaty, shall undertake the function of advising on statutory, technical and regulatory rules in the region to the Energy Community Treaty Institutions.

1.4 The ECRB shall provide advice to the Ministerial Council and the PHLG with regard to monitoring and assessing the operation of the regional energy networks and network energy market and issue recommendations to the Parties when so entrusted by the Treaty or the Ministerial Council.

1.5 The ECRB shall facilitate consultation, co-operation and co-ordination amongst regulatory authorities towards a consistent application of the *acquis communautaire*. The ECRB makes recommendations and reports with respect to the functioning of the energy markets.

1.6 The ECRB may decide, in accordance with the procedure laid down in 4.7 hereunder, to issue a request to the Ministerial Council pursuant to the provisions of Articles 90 and 92 of the Treaty.

Article 2

Members

2.1 In accordance with Article 59 of the Treaty, the ECRB is composed of one representative of the energy regulator of each Contracting Party and a representative of the European Commission representing the European Union (hereinafter: “Members” of the ECRB). The representative of the Regulatory Authority of the Contracting Parties shall be at the level of Head of the Energy Regulatory Authority or his nominated representative.

2.2 The European Commission is assisted by one regulator of each Energy Community Participant

country (hereinafter: "Participants" of the ECRB) and one representative of the Agency for the Cooperation of Energy Regulators (hereinafter: "ACER"). The representative of the Regulatory Authority of the Participants shall be at the level of the Head of the Energy Regulatory Authority or his nominated representative. The representative of ACER shall be at the level of the Director or his nominated representative.

2.3 Members of the ECRB shall abide by a Code of Ethics, which shall be adopted by the ECRB as a Procedural Act. The Code of Ethics shall set forth the criteria by which a representative to the ECRB, including the President of the ECRB may be removed or recalled.

2.4 The Members of the ECRB shall act in good faith and resolve to adhere to these Internal Rules of procedure.

Article 3

President and Vice President

Duties

3.1 The President of the ECRB carries out the tasks entrusted to her/him by the provisions below. The President shall fulfill a unifying role and ensure by his/her authority that all Members and Participants work with a common purpose towards the discharge of the tasks entrusted to the ECRB under the Treaty.

3.2 The President shall not represent his/her Institution but this task shall be undertaken by a suitable representative of the Contracting Party Regulatory Authority and this representative will exercise the Contracting Party Regulatory Authority vote.

3.3 In addition to exercising the powers conferred upon him/her elsewhere in these rules, the President, after consulting the Vice-President, shall declare the opening and closing of each ECRB meeting, shall direct the discussion, shall ensure the observance of these Rules, shall accord the right to speak and announce decisions. The President may also call a speaker to order if his or her remarks are not relevant to the subject under discussion.

3.4 The European Commission shall act as Vice-President. The Vice-President shall also fulfill a unifying role and ensure, by his/her authority that all the Members and Participants work with a common purpose towards the discharge of the tasks entrusted to the ECRB under the Treaty.

3.5 The Vice-President assists the President in accordance with the provisions set out below. In the event of absence, impediment or incapacity of the President, the Vice-President is empowered to replace and exercise the responsibilities of the President.

Election

3.6 The President is elected by the ECRB members by secret ballot and by a two third majority of the votes cast, provided presence of at minimum two thirds of its Members. In case no candidate reaches a two third majority, a second election round shall be organized immediately. In the second round the President is elected by the ECRB members by secret ballot and by a simple majority of the votes cast.

3.7 The nomination procedure shall be initiated by a Vice Presidency's written call for applications

addressed to the ECRB member, entailing a nomination period of at least two weeks.

3.7.1 The Head and / or Commissioners of Contracting Parties Regulatory Authorities are eligible for the ECRB Presidency.

3.7.2 In case no nominees from the Contracting Parties Regulatory Authorities' candidate or are proposed, the Vice-presidency shall open a second application round entailing a nomination period of at least two weeks. In this case, also the Head and / or Commissioners of Energy Community Participant countries are eligible for the ECRB Presidency.

3.7.3 In case an ECRB President cannot be elected based on 3.7.1 and 3.7.2, the term of the existing President can be prolonged for up to six month. In this case the Vice Presidency shall initiate another nomination procedure in line with 3.7.

3.8 Any candidature or any proposal for candidature shall be put forward to the Vice President of the ECRB.

3.9 The Vice President brings the candidacies to the attention of the members of the ECRB.

3.10 The President's term of office is two years and may be terminated upon decision of the ECRB or resignation. A President of the ECRB may not assume the Presidency more than two terms consecutively.

3.11 In the event of resignation, incapacity or recall of the President during his or her term of office, a new President shall be appointed in accordance with the above mentioned procedure, as soon as possible.

3.12 A decision of the ECRB as referred to in 3.10 requires presence of at minimum two thirds of its Members and two third majority of the votes cast. The decision of the ECRB must be duly justified and published.

Article 4

Decision making process

4.1 The Board acts within the mandate set forth in Article 58 of the Energy Community Treaty and takes Measures if so empowered by the Ministerial Council.

4.2 Each Member shall have one vote. Abstentions to voting from Members present shall not count as votes cast.

4.3 The Board may act in accordance with the provisions of Articles 4.4, 4.5 and 4.6 only if two thirds of Members are present.

4.4 Under Title II of the Energy Community Treaty, the Board shall act on a proposal from the European Commission, and each Contracting party shall have one vote.

4.4.1 The European Commission may alter or withdraw its proposal at any time during the procedure leading to its adoption.

4.4.2 The Board shall act by a majority of the votes cast.

4.5 Under Title III of the Energy Community Treaty the Board shall act on a proposal from a Party or the Secretariat. The Parties and the Secretariat are encouraged to consult their proposal with the European

Commission four weeks before the meeting upon which the proposal shall be presented. The Board shall act by a two third majority of the votes cast, including a positive vote of the European Union.

4.6 Under Title IV of the Energy Community Treaty the Board shall act on a proposal from a Party. The Party or Parties interested in putting forward a proposal are encouraged to consult with the European Commission three weeks before the proposal is tabled to the Board for consideration. The Board shall act with unanimity.

4.7 The ECRB may decide by unanimity excluding any Party concerned, to issue the request pursuant to paragraph 4.1.

4.8 Proposals are submitted to the President and the Vice President of the ECRB.

4.9 The vote(s) against a proposal for a Measure that was adopted by the Board shall be, upon request by the outvoted Member, recorded in the minutes and the conclusions of ECRB, together with the proposal as adopted, according to Article 58 of the Energy Community Treaty.

4.10 The outcome of any votes has to be recorded in the minutes of the ECRB meetings.

4.11 The communication of opinions of Members and Participants is possible by electronic correspondence in case of urgent matters but excluding Measures and Procedural Acts. The President may seek agreement to a position or opinion by electronic procedure. In such cases, the President shall ensure that each Member is aware that an agreement or opinion is sought by electronic procedure and shall set out a clear deadline for comments.

Article 5

Meetings

5.1 If a Contracting Party, Participant or Observer has established one regulator for gas and one regulator for electricity, presence shall be determined taking into account the agenda.

5.2 The ECRB Section shall establish a register of Members and Participants and shall record attendance at all official meetings. These registers shall form a part of the management report.

5.3 Notwithstanding Article 71 of the Treaty, the Energy Community Secretariat shall be represented by the Head of the ECRB Section of the Secretariat unless excused by the President.

5.4 The Observers' regulatory authorities may attend ECRB meetings without participating in the discussions and without voting rights, in accordance with the Energy Community Treaty, Title IX, Article 96. The President in agreement with the Vice-President may invite an Observer to make a statement. The President in agreement with the Vice President may also decide that Observers be absent for specific points of the agenda due to confidentiality concerns. This will be specified as far as possible when the agenda is circulated.

5.5 The ECRB will be convened in principle four times a year and, extraordinarily when appropriate.

5.6 At its last meeting of a calendar year, the ECRB decides the dates of its meetings in the next calendar year. These are published on the Energy Community website.

5.7 The ECRB meetings shall be convened by either the President or the Vice President.

5.8 An extraordinary meeting of the ECRB may be convened by the President or Vice-President. An

extraordinary meeting shall also be called at the request of at least one fifth of the Members, within one month of the receipt of the request by the ECRB Section.

5.9 Upon endorsement of the draft agenda by the President and Vice-President, the ECRB Section circulates the proposed agenda to those entitled to attend the respective meeting of the ECRB. The draft agenda shall indicate the subjects to be considered clearly, so as to allow the national regulators to determine which regulator should attend the meeting pursuant to Article 59 of the Energy Community Treaty.

5.10 The agenda shall be circulated to those entitled to attend the respective meeting of the ECRB at least two weeks ahead of the meeting. In case of urgency the President may deviate from this rule.

5.11 All meeting related documents shall be made available in the Energy Community website's ECRB members' area at least two weeks ahead of the meeting. In case of urgency the President may deviate from this rule. In any case, documents related to agenda items scheduled for ECRB approval shall be submitted to the ECRB 10 (ten) days before the ECRB the latest.

5.12 With the President's permission, Members may be accompanied by experts.

Article 6

Organization of work

6.1 The ECRB shall adopt an annual work program in accordance with the procedure laid down in article 11.2. The work program shall be published on the Energy Community web site.

6.2 At the beginning of every calendar year, the ECRB shall adopt an annual report of summarizing its activities over the preceding year, prepared by the ECRB Section.

6.3 Both documents referred to in 6.1 and 6.2 will be transmitted to the Ministerial Council.

Article 7

Working Groups

Organisation

7.1 The ECRB may set up working groups composed of Members, Participants and ACER and chaired by a Member, a Participant, or ACER, and mandates them to study specific subjects. The mandate may provide that the composition of the working groups will be flexible in order to involve other relevant authorities when necessary. The mandate shall be time limited and shall further specify in which way the working group will report back to the Board and how it will be assisted by the ECRB Section. The Members, Participants and ACER representatives involved in the working groups shall nominate their representatives and notify the Chair in a timely fashion prior to the start of the relevant working group.

7.2 The decision to establish a group and its terms of reference is taken by simple majority of the votes cast, including a positive vote of the Vice-President.

7.3 Unless decided otherwise by the ECRB for a specific working group, Observers' representatives shall be allowed to participate in the working groups and be invited by the chairmen of the working groups.

Chairwomen / -men

7.4 Meetings of the Working Groups shall be convened by their Chairs. In addition to exercising the powers conferred upon him/her elsewhere in these rules, the Chair shall declare the opening and closing of each Working Group meeting, shall direct the discussion, shall ensure the observance of these Rules, shall accord the right to speak and announce decisions. The Chair may also call a speaker to order if his or her remarks are not relevant to the subject under discussion.

7.5 The Working Group Chairs are elected by the ECRB for a period of two years, which may be extended. Proposals for candidature shall be put forward to the President and Vice President of the ECRB including proof of support by the Head of the candidate's authority. The nomination procedure shall be initiated by a President's and Vice President's written call for applications addressed to the ECRB member, entailing a nomination period of at least two weeks. The President brings the candidacies to the attention of the members of the ECRB in agreement with the Vice President.

7.6 The Working Group Chairs' term can be terminated upon a decision of the ECRB pursuant to Article 7.7. In the case of resignation of the Chairperson during its term, a new Chairperson will be appointed under the same terms for a period of up to two years, which may be extended.

7.7 The election of Working Group Chairs by the ECRB requires the presence of two thirds of Members and simple majority of the votes cast.

Deputy Chairwomen / -men

7.9 Each Working Group shall designate a deputy to the Chair. In the event of absence, impediment or incapacity of the Working Group Chair, the Deputy Chair shall be empowered to replace and exercise the responsibilities of the Working Group Chair. The Deputy Chair shall coordinate with the relevant Working Group Chair before executing her/his tasks.

7.10 The Deputy Chair is appointed by the Working Group members.

7.11 The term of the Deputy Chair is limited to the term of the relevant Working Group Chair and may be extended.

7.12 Articles 7.6 and 7.7 apply to the Working Group Deputy Chairs.

7.13 Working Groups can refrain from designating a Deputy Chair in case co- Working Group Chairpersons are appointed.

Article 8**Communications and Exchange of Information**

8.1 Every Member, ACER representative, Participant and Observer shall appoint a communications officer. His/her task will consist of facilitating the relevant information exchange between his/her organisation and the other Members and the ECRB Section. This information is related to the work carried out by the ECRB or its working groups.

8.2 Members and Participants shall endeavour to keep the other national and regional energy regulators of their States informed about activities of the ECRB and, where necessary, make all appropriate arrangements to be in a position to speak as the competent energy regulator in the event that other

national or regional regulators have an interest in the matter discussed.

Article 9

Conclusions and Minutes

9.1 Conclusions that record decisions taken shall be adopted at the following meeting by consensus.

9.2 The minutes of each meeting shall be drawn up by the ECRB Section. Opinions may be recorded in the minutes, when requested. The draft minutes shall be sent to Members, Participants and ACER representatives within 15 working days after the meeting and shall be submitted to the next meeting of the ECRB or the working group for approval. Any comments on meetings' draft conclusions shall be submitted by the (ECRB or the relevant working group) members prior to the next meeting in writing to the ECRB President and Vice President, respectively the Chairman in case of working groups, and the ECRB Section.

9.3 The minutes shall include

The scope of the agenda item (for discussion/information/approval);

The related document(s);

A brief reference to the core discussion points raised by members;

The decision(s) taken and action points following including responsibilities and the timeline for completion;

A summary table of the main conclusion(s).

The final minutes shall normally not exceed a maximum number of 5 (five) pages excluding annexes. External annexes, such as presentations, may be separately attached to the minutes.

9.4 The minutes of the ECRB and its working groups shall be treated confidentially and not be published. A summary table of the main conclusion(s) of the Board meetings shall be published on the Energy Community website.

9.5 The agenda of the ECRB meeting and its working groups established by ECRB shall not be considered confidential unless a specific decision is made and shall be published on the Energy Community web- site as soon as possible after a meeting.

9.6 Where the European Commission or a Contracting Party informs the ECRB that the advice requested or the question raised is of a confidential nature, Members, Participants, ACER representatives, Observers and any other person involved shall not disclose that information unless allowed by the Party raising the issue. The President may decide in such cases that only Members, Participants and ACER representatives may be present at meetings.

9.7 The ECRB can adopt its rules on confidentiality.

Article 10

Public Consultation and Transparency

10.1 The ECRB will use appropriate processes to consult consumers, market participants, system operators, market operators and interested parties which may include, inter alia: public hearings and roundtables, industry and the Energy Community Fora, the European Fora (including the European Electricity Regulatory Forum - “Florence Forum”, the European Gas Regulatory Forum - “Madrid Forum” and the European Citizen Forum

“London Forum”) and written and internet consultations.

10.2 The ECRB may publish on the ECRB web site consultative documents, statements of agreed principles, press releases, consultation procedures, summaries of responses to consultations and other documents which assist interested parties to understand the work of the ECRB. Comments shall be invited either individually or jointly to be addressed to the ECRB in written form, preferably by email. Comments received in response to consultation documents shall be published on the ECRB web site, unless a respondent explicitly requests that their submission is not made available to others on confidentiality grounds.

10.3 The ECRB may decide to meet interested parties to discuss matters of common interests. As appropriate, the President or the Vice-President may represent the ECRB at such a meeting or Members may be nominated to do so. The President or the Vice-President, where appropriate, will communicate the official position of the ECRB. The President may, on his own initiative, describe the work or explain the views of the ECRB to the press or other interested parties, in response to enquiries or otherwise in cases of urgency. Where a Member refers in public to the views or position of the ECRB it must do so in an accurate manner.

10.4 Presentations made on behalf of the ECRB at public events (conferences, workshops et al) shall only present formally approved and publically available positions of the ECRB in ECRB documents, conclusions or similar.

Article 11

ECRB Section of the Secretariat

11.1 There shall be specific staff of the Energy Community Secretariat devoted to the support of the ECRB (“ECRB Section”). The ECRB Section shall report to the Energy Community Secretariat Director with regard to management and employment issues. The Head of the ECRB Section shall direct the staff as to their substantive activities, in line with the ECRB work program.

11.2 The ECRB Section shall prepare the minutes of the meetings, assist the ECRB and the working groups in their functions and execute all other functions assigned to it by the Board, inter alia:

Drawing up the ECRB annual work program for consideration and adoption by the ECRB upon agreement by the President and Vice-President;

Preparing and presenting to the ECRB for adoption an annual review of the progress achieved;

Preparing the agenda for the ECRB meetings to be submitted for agreement to the President and

Vice President;

11.3 The ECRB Section acts as coordinator for consultations required to take forward the work of the ECRB or its working groups and assist the President and Vice-President in their public relations activities and representation functions.

11.4 The permanent or seconded staff of the ECRB Section is appointed by the Energy Community Secretariat Director pursuant to paragraph 22 of the procedural act of the Energy Community Ministerial Council on the Rules of Recruitment and working conditions of the staff of the Secretariat of the Energy Community. Specifically, the staff of the ECRB Section will operate as much time as needed in Athens in order to ensure the smooth and effective operation of the meetings of the Regulatory Board, which take place in Athens according to the Treaty establishing the Energy Community (Article 62).

Article 12

Accountability and links

12.1 The ECRB shall submit an Annual Report to the Ministerial Council.

12.2 The ECRB may participate or designate its representative in other European or international committees or groups when that is necessary for the work of ECRB.

Article 13

Publication and modification of the Rules of Procedure

13.1 The Regulatory Board Internal Rules of Procedures shall be made available on the ECRB website.

13.2 When necessary the ECRB shall agree on interpretation of the Rules of Procedure. These decisions require two thirds majority of Members voting, including a positive vote of the European Union.

13.3 Based on practical experience with these Rules, the President or Vice-President or any Member of the ECRB may propose to the Board any useful and necessary amendments to these Rules. In accordance with Article 60 of the Treaty, any amendments to these Rules are adopted by a Procedural Act of the ECRB, which shall act by two-third majority of the votes cast, including a positive vote of the European Union.

Article 14

Transitional and final provisions

14.1 These Internal Rules for Procedure come into force immediately upon adoption.

14.2 To the extent possible, the work agreed and done with the Council of European Energy Regulators South East Europe Working Group shall be continued by the Energy Community Regulatory Board.

14.3 Rules of procedures on the implementation of the tasks in Article 58 (b) of the Treaty shall be adopted by the ECRB.





RULES OF PROCEDURE of 16 October 2015 on dispute settlement under the Treaty

Procedural Act 2008/01/MC-EnC on Rules of Procedure for dispute settlement under Treaty as amended by Procedural Act 2015/04/MC-EnC of 16 October 2015 on amending Procedural Act 2008/01/MC-EnC of 27 June 2008 on Rules of Procedure for dispute settlement under the Treaty

The Ministerial Council of the Energy Community,

Having regard to the Treaty Establishing the Energy Community, and in particular Articles 90 to 94 as well as Articles 47(c), 86, 87, 82 and 83 thereof,

Having regard to the proposal by the Secretariat,

Whereas it is of crucial importance that the provisions of the Treaty, including the Decisions adopted thereunder, are properly implemented in the national legal orders of the Parties and correctly applied by their authorities,

Whereas each Party to the Treaty is responsible for the timely implementation and correct application of Energy Community law within its own legal system,

Whereas the Treaty establishes a system of dispute settlement within the Energy Community by decision of the Ministerial Council,

Whereas the procedure leading up to such a decision may be initiated by a Party, the Secretariat or the Regulatory Board,

Whereas the Treaty gives private bodies the right to approach the Secretariat with complaints,

Whereas a Party concerned has the right to make observations in response to the request or complaint,

Whereas the Ministerial Council may decide on the existence of a breach by a Party of its obligations,

Whereas the Ministerial Council may further decide on the existence of a serious and persistent breach and on possible sanctions resulting therefrom,

Whereas the Treaty provisions establish a framework which requires more detailed procedural rules for practical implementation,

Whereas the institutions of the Energy Community shall interpret any term or other concept used in the Energy Community Treaty that is derived from European Community law in conformity with the case-law of the Court of Justice of the European Union, including its General Court,

Upon review as envisaged by Article 47 of this Procedural Act,

Whereas the Ministerial Council already on 29 June 2007 concluded that a formal process at a level below the Ministerial would have to be considered for the issue of non-implementation of Treaty commitments by Parties to the Treaty,

Whereas the European Commission in 2011 demanded “more effective implementation and enforcement” in the Energy Community¹; the European Parliament in 2013 requested “adapting [the Energy Community’s] decision-making to future challenges, including by setting up legal control

¹ Commission Communication: The EU Energy Policy: Engaging with Partners beyond Our Borders, 7.9.2011, COM(2011) 539 final.

mechanisms to deal with deficient *acquis* implementation”²; and the European Council in 2014 called for the Energy Community to “be reinforced so as to ensure the application of the *acquis* in those countries”³,

Whereas the High Level Reflection Group mandated by the Ministerial Council concluded that “Weak enforcement mechanism constitute one of the major obstacles to implementation of the *acquis communautaire* in the Contracting Parties”⁴ and considered that “a refurbishment of the institutional architecture is necessary, in particular to enable the enforcement of the far-reaching commitments the Parties accepted under the Treaty”⁵,

Whereas the Permanent High Level Group, at its meetings on 15 October 2015 endorsed the present Procedural Act, as amended,

HAS ADOPTED THIS PROCEDURAL ACT:

Article 1

Purpose

These rules specify the procedure to be followed in cases of failure by a Party (hereinafter “the Party concerned”) to comply with a Treaty obligation or to implement a Decision or Procedural Act addressed to it within the required period (hereinafter “Energy Community law”) as established by Articles 90 to 93 of the Treaty (hereinafter “dispute settlement procedure”, Titles II-IV), as well as a cooperation mechanism between national authorities or courts and the Secretariat in cases concerning the interpretation or application of Energy Community law without prejudice to Article 94 of the Treaty (Title I).

Title I

COOPERATION BETWEEN NATIONAL AUTHORITIES OF THE CONTRACTING PARTIES AND THE SECRETARIAT

Article 2

Cooperation between national authorities of the Contracting Parties and the Secretariat

(1) Where a question concerning the interpretation or application of Energy Community law is raised in proceedings before a national authority of a Contracting Party, such authority, upon request of a party to the procedure before it or on its own motion, notifies the Secretariat in writing at the earliest stage possible in the procedure. The Secretariat shall ensure the confidentiality of all information received.

² European Parliament Resolution of 23 October 2013 on the European Neighborhood Policy: towards a strengthening of the partnership, (2013/2621(RSP).

³ European Council Conclusions of 27 June 2014, EUCO 79/14.

⁴ An Energy Community for the Future, p. 19.

⁵ An Energy Community for the Future, p. 19.

(2) Contracting Parties shall ensure that, where a question concerning the interpretation or application of Energy Community law is raised in proceedings before a national court, such court, upon request of a party to the procedure before it or on its own motion, may notify the Secretariat in writing at the earliest stage possible in the procedure. The Secretariat shall ensure the confidentiality of all information received.

(3) Where the coherent interpretation or application of Energy Community law so requires, the Secretariat shall submit its opinion to the national authority or court of the Contracting Party in writing within the timelines set by national procedural rules, but not later than within four weeks. It may consult the Advisory Committee before submitting an opinion. The Secretariat's opinion must be in conformity with the case-law of the Court of Justice of the European Union.

(4) In its final decision or judgment, the national authority or court of the Contracting Party takes into account of the opinion submitted by the Secretariat.

(5) The Secretariat shall submit to the Ministerial Council an annual report on the application and interpretation of Energy Community law by national authorities of the Contracting Parties.

Title II

PROCEDURES UNDER ARTICLES 90 TO 93

Article 3

Failure to comply

(1) A Party fails to comply with its obligations under the Treaty if any of its measures (actions or omissions) are incompatible with a provision or a principle of Energy Community law.

(2) Failure by a Party to comply with Energy Community law may consist of any measure by the public authorities of the Party (central, regional or local as well as legislative, administrative or judicative), including undertakings within the meaning of Article 19 of the Treaty, to which the measure is attributable.

Article 4

Burden of proof

The burden of proving the allegation of non-compliance by a Party with Energy Community law and to place before the Ministerial Council the information needed to enable it to determine whether the obligation has not been fulfilled shall rest on the initiator of the proceedings. Where, however, the Party invokes an exemption to a rule or general principle of Energy Community law, it is incumbent upon the Party concerned to prove that the requirements for such exemption are fulfilled.

Article 5

Dispute settlement procedures and private disputes

Dispute settlement procedures must relate to a violation by a Party of Energy Community law and may not concern disputes between private parties.

Article 6

Case register

- (1) The Secretariat keeps a case register at its premises under the control of the Legal Counsel.
- (2) Each dispute settlement procedure case shall be assigned an official case number. Incoming and outgoing documents shall be registered under this number in the case file. If several pending cases concern the same subject matter, they may be consolidated and processed under the same case number.
- (3) The representatives of the Energy Community institutions and their staff shall not disclose information acquired or exchanged by them pursuant to this Procedural Act and of the kind covered by Energy Community Staff Regulation 3.5. a), unless the present Rules permit such disclosure.

Article 7

Access to the case file

- (1) At their request, Parties, Participants and Observers to the Treaty, the complainant as well as private or public bodies with a legitimate interest (hereinafter “interested parties”) shall have access to the case file, subject to an eventual request by complainants to confidential treatment.
- (2) In cases of doubt, the Director of the Secretariat shall take a decision on the existence of a legitimate interest of private or public bodies requesting access to the case file.
- (3) The Secretariat shall adopt a Procedural Act laying down specific rules on access to the case file.

Article 8

Procedural documents

- (1) The language of the procedure is English. Any procedural documents expressed in another language shall be accompanied by a translation into English.
- (2) All procedural documents shall bear a date, the case number and the name and the address of the sender.
- (3) The original of every procedural document shall be signed by a person authorised to represent the sender by law, by its constitution or by authorisation.
- (4) If a procedural document does not comply with the requirements set out in paragraphs 1 to 3, the Secretariat shall prescribe a reasonable period within which the sender is to comply with them.

Article 9**Costs**

Costs incurred by all parties to or persons participating in the procedure are not recoverable.

Article 10**Time-limits**

(1) Unless otherwise indicated, time-limits established by these Rules and time-limits prescribed by the competent institutions shall be binding.

(2) Time-limits shall be prescribed so as to specify the precise date on which the required action is to take place rather than expressing periods in days, weeks, months etc. Where that day is a Saturday, Sunday or an official holiday, the deadline shall be extended until the end of the first following working day.

(3) Time-limits may be extended by the institution that prescribed it upon a reasoned application.

(4) Communication by telefax and email shall be deemed sufficient for the purposes of compliance with the time-limits.

Title III**THE COURSE OF DISPUTE SETTLEMENT PROCEEDINGS****Chapter I - Preliminary Procedure****Article 11****Scope and purpose**

(1) When initiating a dispute settlement procedure within the meaning of Article 11, the Secretariat shall carry out the preliminary procedure set out in this Title. A Party or the Regulatory Board shall initiate dispute settlement procedures either by notification to the Secretariat or directly by submitting a reasoned request to the Ministerial Council in accordance with Article 29 below.

(2) The purpose of the preliminary procedure is to establish the factual and legal background of cases of alleged non-compliance, and to give the Party concerned ample opportunity to be heard. In this respect, the preliminary procedure shall enable the Party concerned to comply of its own accord with the requirements of the Treaty or, if appropriate, to justify its position.

(3) Where the Secretariat initiates a dispute settlement procedure on the grounds that a Party has failed to fulfil its obligation to notify measures transposing a Decision addressed to it within the deadline specified in that Decision, the Secretariat shall submit a reasoned request to the Ministerial Council without preliminary procedure.

Article 12

Initiation of a dispute settlement procedure by the Secretariat

(1) A dispute settlement procedure may be initiated by the Secretariat by way of an opening letter in accordance with Article 13 below.

(2) The Secretariat initiates procedures in response to alleged non-compliance arising from either a complaint by a private body, a notification by a Party or by the Regulatory Board or by its own initiative. Within the Secretariat, the Legal Counsel shall coordinate the procedure.

(3) The decision to initiate a dispute settlement procedure shall be made publicly available on the Energy Community website, stating the date of sending out the opening letter, the Party concerned and a brief summary of the subject matter.

Article 13

Opening letter

(1) If the Secretariat considers that a possible non-compliance of which it has become aware or issues raised in a complaint warrant the opening of a dispute settlement procedure, it addresses an opening letter to the Party concerned, requesting it to submit its observations within a specified time period. This period shall normally be two months.

(2) The Party concerned is requested to adopt a position on the points of fact and of law raised in the opening letter.

Article 14

Reasoned opinion

(1) In the light of the reply or absence of a reply from the Party concerned, the Secretariat may address a reasoned opinion to that Party. The reasoned opinion must contain a coherent and detailed statement of the reasons which led the Secretariat to conclude that the Party concerned failed to fulfil its obligations under the Treaty.

(2) The reasoned opinion shall call on the Party concerned to comply with the law within a specified time period. This period shall normally be two months.

Article 15

Submission to the Ministerial Council

In the light of the reply or absence of a reply from the Party concerned, the Secretariat may bring the matter to the attention of the Ministerial Council by way of a reasoned request in accordance with Article 29 below.

Article 16

Request for information

- (1) The Secretariat may, by simple request, require any authority of the Party concerned to provide all necessary information at any stage of the preliminary procedure.
- (2) The Secretariat may also request information from other natural or legal persons.
- (3) The Secretariat may ask national authorities of Contracting Parties to conduct inspections of undertakings and associations of undertakings in line with the respective authorities' competences under national law.

Article 17

Interested parties

- (1) Interested parties may submit written observations to the Secretariat at any stage of the preliminary procedure.
- (2) Private and public bodies other than Parties, Participants and Observers shall substantiate the required legitimate interest.
- (3) Any written observations received shall be immediately forwarded to the Party concerned and shall be attached to the reasoned request referred to the Ministerial Council.

Article 18

Urgency

- (1) In cases of urgency due to the risk of serious and irreparable damage to an objective of the Treaty, the Secretariat may, on the basis of a *prima facie* finding of non-compliance, refer a reasoned request directly to the next possible meeting of the Permanent High Level Group.
- (2) The Permanent High Level Group may take appropriate and proportionate interim measures upon request by the Secretariat. The Permanent High Level Group shall review the existence of urgency.
- (3) For the application of this article, the Permanent High Level Group shall adopt guidelines determining the criteria for urgency, the procedure for adoption as well as the scope and limits of interim measures.

Article 19

Suspension and discontinuance of the procedure

- (1) The Secretariat may, at any point of the preliminary procedure, decide to suspend or discontinue the procedure, in particular where the Party brings the state of non-compliance with Energy Community law to an end or where it makes credible commitments as to its intention to amend its legislation, administrative or judicial practice. Such decision may also be taken where the Party con-

cerned successfully refutes factual assumptions or convincingly counters the legal arguments made by the initiator.

(2) To achieve the results described in paragraph 1, the Secretariat may enter into informal bilateral discussions with the Party concerned. A short report on the results achieved shall be submitted by the initiator to the Ministerial Council upon closure of the file and be included to the case file.

(3) The Secretariat may reopen the procedure where there has been a material change in any of the facts on which the decision was based, where the Party concerned acts contrary to its commitments or where the decision was based on incomplete, incorrect or misleading information provided by that Party.

Chapter II - The role of private bodies

Article 20

Right to approach the Secretariat

(1) Private bodies may lodge a complaint with the Secretariat against a Party arising from any measure the complainant considers incompatible with Energy Community law.

(2) The notion of private body encompasses all natural and legal persons as well as companies, firms or associations having no legal personality.

Article 21

Subject matter

(1) A complaint has to relate to a failure to comply with Energy Community law by a Party as defined above in Article 3.

(2) A complaint against an EU Member State will be passed on to the European Commission. The Secretariat will inform the complainant and the Permanent High Level Group of the transfer to the European Commission. Such transfer shall be without prejudice to the obligations arising from Title III and IV of the Treaty.

Article 22

Form of the complaint

(1) A complaint shall be made to the Secretariat in writing, by letter, fax or e-mail.

(2) Complainants should send supporting documentary evidence, if available, and copies of relevant correspondence with the national authorities of the Party.

Article 23**Acknowledgment of receipt**

- (1) Following registration by the Secretariat and assignment of a case number, an acknowledgement will immediately be sent to the complainant.
- (2) The complainant shall be asked to indicate whether he/she wishes their complaint to be treated in a confidential or non-confidential manner. The Secretariat will abide by the choice a complainant has made regarding confidentiality, i.e. disclosure of his/her identity, in its communication with the authorities of the Party concerned, other interested parties or the general public. Where a complainant has not indicated his/her choice, the Secretariat shall presume that the complainant has opted for non-confidential treatment.
- (3) The Secretariat will keep the complainant informed of the course of the procedure.

Article 24**Information of the Party concerned**

In its opening letter, the Secretariat shall inform the Party concerned that it is acting on the complaint.

Article 25**Request for information**

The Secretariat may, by simple request, require the complainant to provide all necessary information at any stage of the preliminary procedure.

Article 26**Reaction by the Secretariat**

- (1) If the Secretariat takes the view that the subject matter of the complaint gives rise to a breach of Energy Community law, it shall initiate a preliminary procedure by way of an opening letter within six months upon registration of the complaint, with the aim to either resolve the dispute or to submit a reasoned request to the Ministerial Council.
- (2) If the Secretariat takes the view that the subject matter of the complaint does not give rise to a breach of Energy Community law, it shall notify the complainant the reasons for not pursuing the case further. The complainant may bring its case to the Permanent High Level Group. The latter may request the Secretariat to initiate a preliminary procedure.

Article 27

Withdrawal of the complaint

Withdrawal of the complaint shall not affect the right of the Secretariat to pursue the procedure further.

Article 28

Notification by a Party or by the Regulatory Board

Articles 22 to 27 shall apply by analogy to cases where the Secretariat initiates a preliminary procedure upon notification by a Party or the Regulatory Board.

Title IV

PROCEDURE BEFORE THE MINISTERIAL COUNCIL

Chapter I - Breaches by a Party of its obligations (Article 91 of the Treaty)

Article 29

Reasoned request

(1) A reasoned request for a decision of the Ministerial Council pursuant to Article 90 of the Treaty may be submitted by the Secretariat either upon complaint, upon notification by a Party or the Regulatory Board, or on its own initiative. In these cases, the reasoned request shall be preceded by a preliminary procedure in accordance with the provisions laid down in Title III, save as otherwise provided for in these Rules of Procedure.

(2) A reasoned request may also be submitted by a Party or the Regulatory Board directly. In that case, the Party or the Regulatory Board may ask the Secretariat for factual information and legal advice before submitting the reasoned request.

(3) The reasoned request shall be based on concrete factual findings and backed up by sufficient legal analysis. The reasoned request including annexes shall be sent to the Party concerned, to the Presidency and the Vice-Presidency as well as to the President of the Advisory Committee. A copy of the reasoned request shall be sent to the Secretariat in case the latter is not the initiator.

(4) The reasoned request shall contain a proposal for the decision to be taken by the Ministerial Council pursuant to Article 91 of the Treaty.

(5) The reasoned request shall be published on the Energy Community's website providing for confidentiality of the complainant, where applicable.

Article 30

Scope of the decision

- (1) The Ministerial Council decides on the proposal made in the submitted reasoned request. It applies Energy Community law including these Rules.
- (2) In its decision, the Ministerial Council shall either establish the existence of a breach by a Party of its obligations arising from Energy Community law according to the proposal or dismiss the request entirely or partially.

Article 31

Reply by the Party concerned

- (1) Within two months following receipt of a copy of the reasoned request, the Party concerned may reply in writing to the Secretariat.
- (2) The Secretariat shall notify all Parties and Participants, the Regulatory Board, the Advisory Committee as well as persons and bodies participating in the preliminary procedure of the reasoned request as well as any reply to it. Within two months of this notification, they shall be entitled to submit written observations to the Secretariat. The Regulatory Board and the Secretariat may submit written observations where they are not the initiator of the case.

Article 32

Advisory Committee

- (1) Before taking the decision pursuant to Article 91 of the Treaty, the Presidency and the Vice-Presidency shall ask an Advisory Committee for its opinion on the reasoned request, taking into account any reply by the Party concerned. The Ministerial Council shall not be bound by the opinion of the Advisory Committee.
- (2) The Advisory Committee shall be independent from the authorities of the Parties and the institutions established under the Treaty. It shall be bound by Energy Community law, including these Rules, and in particular Article 94 of the Treaty.
- (3) The Advisory Committee shall be composed of five members appointed by the Ministerial Council by unanimity for a renewable term of four years, including one member representing the European Union. Members shall be chosen from persons whose independence is beyond doubt and who possess the qualifications required for appointment to the highest judicial offices in the respective Party.
- (4) The procedure before the Advisory Committee shall not last longer than five months upon being tasked in accordance with paragraph 1 of this Article. Based on the reasoned request and taking into account a reply by the Party concerned as well as the written observations received and after having conducted a public hearing, the Advisory Committee of the Energy Community shall adopt an opinion on the reasoned request.
- (5) The Advisory Committee shall adopt its opinion by majority of its members. The opinion shall

propose to uphold or dismiss the reasoned requests entirely or partially. The President of the Advisory Committee shall forward it to the President of the Permanent High Level Group the Party concerned and the Secretariat within five working days upon its adoption.

(6) The Advisory Committee shall adopt its internal rules of procedure. The members of the Advisory Committee shall elect among themselves a President for the period of two years.

Article 33

Proceedings of the Permanent High Level Group

(1) The President of the Permanent High Level Group shall circulate the opinion of the Advisory Committee to the members of the Permanent High Level Group. The opinion of the Advisory Committee shall be made publicly available on the Energy Community website not later than three days upon its adoption.

(2) At the next meeting after the adoption of the Advisory Committee's opinion, the Permanent High Level Group shall hear both parties to the dispute as well as the President of the Advisory Committee. The Permanent High Level Group shall include the reasoned request on the agenda of the next meeting of the Ministerial Council. If it agrees with the reasoned request, it may include it as an "A" item on the agenda of the Ministerial Council in line with its Rules of Procedure.

Article 34

Decision by the Ministerial Council

(1) At its meeting, or, as the case may be, by correspondence, the Ministerial Council takes its decision in accordance with Article 30(2).

(2) The decision by the Ministerial Council shall be taken in accordance with the rules laid down in Article 91(1) of the Treaty.

(3) The decision shall be signed by the Presidency. It shall be sent to the Party concerned, the submitted of the reasoned request and the Secretariat. The Advisory Committee's opinion shall be appended to the Ministerial Council's decision.

Article 35

Decision in the absence of a reply

Where the Party concerned, after having been duly informed, fails to reply in its defence on time, a decision shall be taken based on the facts submitted in the reasoned request alone.

Article 36**Publication of the decision**

The decision taken by the Ministerial Council shall be made publicly available on the website of the Secretariat.

Article 37**Binding nature of the decision**

The decision by the Ministerial Council shall be binding on the Parties concerned from the date of its adoption.

Article 38**Consequences of a decision establishing failure to comply**

(1) Where the Ministerial Council establishes the existence of a breach of a Party's obligation pursuant to Article 91 of the Treaty the Party concerned shall take all appropriate measures to rectify the breach and ensure compliance with Energy Community law.

(2) The Secretariat, in accordance with Article 67(b) of the Treaty, shall review the proper implementation by the Party concerned of the decision, and may bring the matter directly before the Ministerial Council on the grounds of a failure to take the necessary measures to comply with the decision.

Chapter II - Serious and persistent breaches (Article 92 of the Treaty)**Article 39****Serious and persistent breach**

The Ministerial Council shall establish the existence of a serious and persistent breach by a Party of its obligations under the Treaty taking into account the particularities of each individual case.

Article 40**Request**

(1) A Party, the Secretariat or the Regulatory Board may request the Ministerial Council to determine the existence of a serious and persistent breach without a preliminary procedure.

(2) The request may follow up on a prior decision taken by the Ministerial Council under Article 91 of the Treaty or raise a new issue.

(3) The request shall set out the allegations against the Party concerned in factual and legal terms. It shall also contain a proposal as to concrete sanctions to be taken in accordance with Article 92(1)

of the Treaty.

(4) The request shall be submitted to the Presidency and the Vice-Presidency at least 60 days before the respective meeting. A copy shall be submitted to the Secretariat for registration. The request shall not be made public.

Article 41

Decision-making procedure

(1) The Presidency shall, within seven days after receiving it, forward the request to the Party concerned and ask it for a reply to the allegations made in the request.

(2) The Presidency and the Vice-Presidency may ask the Advisory Committee for its written opinion.

(3) The decision by the Ministerial Council on the existence of a serious and persistent breach shall be taken in accordance with Articles 92(1) and 93 of the Treaty.

(4) The decision taken by the Ministerial Council shall be made publicly available on the Secretariat's website.

Article 42

Measures under Article 92

(1) In the decision establishing the existence of a serious and persistent breach, the Ministerial Council shall determine measures in accordance with Article 92(1) of the Treaty and specify a time-limit.

(2) The obligations of the Party concerned under the Treaty shall in any case continue to be binding on that Party.

(3) The Ministerial Council shall at each subsequent meeting verify that the grounds continue to apply on which the decision establishing the existence of a serious and persistent breach was made and sanctions were imposed.

Chapter III - Revocation of decisions

Article 43

Procedural aspects

(1) The Ministerial Council, in accordance with Articles 91(2) and 92(2), may decide by simple majority to revoke decisions taken under Articles 91(1) and 92(1) respectively. Revocation of a decision may be proposed by any Party.

(2) Before taking the decision to revoke decisions taken under Articles 91(1) or 92(1) of the Treaty, the Ministerial Council shall ask the Secretariat and the Party concerned for their reports on the factual circumstances, as well as a legal opinion by the Advisory Committee based on the two reports.

(3) The Ministerial Council shall give reasons for its decision to revoke a previous decision and shall

make the revocation decision publicly available on the Energy Community website.

(4) A revocation shall not affect decisions taken within the domestic legal orders following up the initial decision by the Ministerial Council.

Title V

FINAL PROVISIONS

Article 44

Amendments to Rules of Procedure of the Ministerial Council

(1) In Item VII.5. of Procedural Act 2006/01 on Internal Rules of Procedure of the Ministerial Council of the Energy Community, the text after the semicolon is deleted. The semicolon is replaced by a full stop.

(2) In Item VII.6. of Procedural Act 2006/01 on Internal Rules of Procedure of the Ministerial Council of the Energy Community, the last sentence is deleted.

Article 45

Addressees

This Procedural Act is addressed to and shall be binding on all Parties to the Treaty and institutions set up under the Treaty.

Article 46

Entry into force

(1) This Procedural Act shall enter into force upon adoption.

(2) Cases initiated already before 16 October 2015 shall be dealt with in accordance with the Procedural Act applicable before the amendments adopted on that date.

Article 47

Review

The Rules of Procedure in this Procedural Act shall be reviewed in the light of experience upon proposal by the Secretariat in 2016. The review shall include the approach towards measures under Article 92 of the Treaty and the institutional set up for dispute resolution.

Article 48
Publication

The Director of the Energy Community Secretariat shall make this Procedural Act available to all Parties and institutions under the Treaty within 7 days of its adoption and to the public on the website of the Energy Community.

Done in Tirana on 16 October 2015





RULES on strengthening the role of civil society

Procedural Act 2015/03/MC-EnC of 16 October 2015 on strengthening the role of civil society.

The Ministerial Council of the Energy Community,

Having regard to the Treaty establishing the Energy Community (hereinafter referred to as the Treaty), and in particular Articles 86, 87, 82 and 83 thereof,

Having regard to the report of the High Level Reflection Group, which concluded that the role of civil society in the Energy Community institutions should be strengthened,

Whereas enhancing the role of civil society organisations will render the Energy Community's institutions and bodies more transparent,

Whereas strengthening the role of civil society organisations will make the Energy Community better equipped to meet its objectives, notably by increasing its transparency, public acceptance as well as providing additional expertise to the implementation of the *acquis* if necessary,

HAS ADOPTED THIS PROCEDURAL ACT:

Article 1

1. Representatives of Civil Society Organisations may attend the meetings of Working Groups and Task Forces upon invitation of the chairman of a Working Group or a Task Force.

Article 2

1. Representatives of Civil Society Organizations may be invited to attend specific agenda items of meetings of the Ministerial Council or the Permanent High Level Group as observers.
2. Such invitations may be issued in particular to seek information from the Civil Society Organizations, for instance as regards new legislative initiatives planned in the Energy Community.
3. The procedure to issue such an invitation shall be determined in the Rules of Procedure of the Ministerial Council and the Permanent High Level Group respectively.

Article 3

1. A Civil Society Day shall be convened once a year to increase the transparency of the activities of the Ministerial Council and the Permanent High Level Group towards Civil Society Organizations. The meeting shall be prepared by the Secretariat.

Article 4

This Procedural Act enters into force upon the day of its adoption.

Done in Tirana on 16 October 2015.



RULES on establishment of Energy Community parliamentary plenum meetings

Procedural Act 2015/05/MC-EnC of 16 October 2015 on establishment of Energy Community parliamentary plenum meetings.

The Ministerial Council of the Energy Community,

Having regard to the Treaty establishing the Energy Community and in particular Articles 90 to 93 as well as Articles 86, 87, 82 and 83 thereof,

Whereas participation of representatives of parliaments would make the Energy Community better equipped to meet its objectives, notably by increasing political support for the implementation of the Energy Community *acquis* and the sense of ownership of the organisation,

Whereas it is fitting to increase transparency of the organisation and improve knowledge of the parliaments regarding the Energy Community processes,

Whereas it shall improve through dialogue, better acceptance of the Energy Community and its objectives in the Parties to the Treaty,

Whereas bringing together elected representatives of the national parliaments of the Contracting Parties and the European Parliament would help to address shared challenges, and support to build a fully functioning pan-European energy market which works to the benefit of citizens,

HAS ADOPTED THIS PROCEDURAL ACT:

Article 1

1. The Parliamentary Plenum meetings shall be organized up to two times a year.

Parliaments of Contracting Parties may appoint two representatives from each national parliament, preferably from the governing political spectrum and opposition. The European Parliament may send up to 16 representatives.

2. The meetings take place under the chairmanship of the Member of the Parliament of the Contracting Party holding the Presidency of the Ministerial Council.

3. The meetings of the Parliamentary Plenum shall be administered by the Secretariat.

Article 2

1. The participants in the Parliamentary Plenum meetings may express views and opinions on all matters falling within the scope of the Treaty in the form of reports or resolutions, as appropriate, with the exception of dispute settlement under Articles 90-93 of the Treaty. They are invited to prepare a report on the annual progress report prepared by the Secretariat in accordance with Article 67(b) of the Treaty, to be submitted to the Ministerial Council.

2. The participants in the Parliamentary Plenum meetings may pose questions to the institutions of the Energy Community.
3. The chairperson of the Parliamentary Plenum meetings is invited before the Ministerial Council.
4. Representative of the Contracting Party holding the Presidency of the Energy Community or the Director of the Energy Community Secretariat may be invited to take part in the meetings of the Parliamentary Plenum.
5. The Secretariat is invited to propose organizational rules and procedures of the Parliamentary Plenum meetings for adoption by the Ministerial Council upon the consultation with the Parliamentary Plenum meeting.

Article 3

This Procedural Act enters into force upon the day of its adoption.

Done in Tirana on 16 October 2015.

RULES on the establishment of a security of supply coordination group

Procedural Act 2008/02/MC-EnC of 11 December 2008 on establishment of a security of supply coordination group.

The Ministerial Council of the Energy Community,

Having regard to the Treaty Establishing the Energy Community ("the Treaty"), and in particular Articles 46 and 87 thereof,

Having regard to Directives 2004/67/EC and 2005/89/EC as implemented by Ministerial Council Decision No. 2007/06/MC-EnC of 18 December 2007,

Having regard to the deliberations at the Permanent High Level Group and the input from the Contracting Parties,

Having regard to the proposal by the Secretariat,

Whereas securing energy supply through solidarity constitutes one of the main objectives of the Energy Community;

Whereas the implementation of Directives 2004/67/EC and 2005/89/EC requires the setting-up of a coordination mechanism in the Energy Community;

Whereas this objective requires a group of experts to advise Energy Community and national institutions as well as to coordinate crisis management measures;

Whereas such a group should be composed of all relevant stakeholders and should cover both electricity and gas so as to ensure utmost efficiency,

HAS ADOPTED THIS PROCEDURAL ACT:

Article 1

Security of Supply Coordination Group

A Security of Supply Coordination Group is hereby established.

Article 2

Composition

(1) The Security of Supply Coordination Group shall be composed of representatives of the Parties and representative bodies of the industry concerned and of relevant consumers. The composition of the Group may differ for gas and electricity respectively.

(2) Participant and Observer countries may be represented in accordance with Articles 95 and 96 of the Treaty.

(3) The Security of Supply Coordination Group shall be chaired by the member representing the European Community.

(4) Each Party shall nominate its representatives and inform the Secretariat. The list of representative bodies of the industry concerned and of relevant consumers shall be established and updated by the Permanent High Level Group upon pro-posal by the Chair of the Security of Supply Coordination Group.

(5) The Security of Supply Coordination Group and its Chair shall be assisted by the Secretariat.

Article 3

Tasks

(1) The Security of Supply Coordination Group shall facilitate the coordination of security of supply measures and advise the Energy Community institutions on issues relating to gas and electricity security of supply.

(2) The Security of Supply Coordination Group shall regularly monitor the state of security of supply of network energy within the Energy Community share experience on security of supply mechanisms and develop comprehensive risk analysis. The conclusions of the Group's annual meetings shall be submitted to the Ministerial Council, the Permanent High Level Group and the Regulatory Board.

(3) The tasks of the Security of Supply Coordination Group are without prejudice to the obligations of the Parties to adopt and update security of supply statements in accordance with Article 29 of the Treaty. The Security of Supply Coordination Group shall support the Parties in the preparation and updating of national emergency measures.

(4) In the event of an existing or imminent threat to security of supply or in the event of a supply disruption affecting a Party and involving another Party or a third country, the Security of Supply Coordination Group shall, where appropriate, coordinate measures taken at national levels. In doing so, it shall follow the principles established by Article 9 of Directive 2004/67/EC in both the gas and electricity sectors.

(5) In the cases mentioned in paragraph 4, the Chair of the Security of Supply Coordination Group or any Party directly affected may request an ad-hoc meeting of the Ministerial Council to take measures in response to the existing or imminent threat to security of supply.

(6) The activities of the Security of Supply Coordination Group may relate to, but are not restricted to, all issues falling within the scope of Directives 2004/67/EC and 2005/89/EC as well as mutual assistance within the meaning of Chapter IV in Title IV of the Treaty and the handling of unilateral safeguard measures in accordance with Article 39 of the Treaty.

Article 4

Meetings

(1) The Security of Supply Coordination Group shall meet regularly once per year. Normally this meeting shall take place in connection with the second Permanent High Level Group meeting in the second half of the year. The meeting may be split in two parts for gas and electricity respectively.

(2) Ad hoc meetings of the Security of Supply Coordination Group shall be convened by the Chair in case of existing or imminent threat to security of supply on its own initiative or upon request of a

Party to the Treaty.

(3) Upon initiative of the Chair, the Security of Supply Coordination Group may hold additional ad hoc joint sessions with the European Community Gas Coordination Group to discuss issues of common interest.

Article 5

Review

Within three years of the date of its entry into force, this Procedural Act shall be reviewed in order to assess the functioning of the cooperation mechanisms it establishes. This review may provide for the conferral of powers to take interim measures to the Permanent High Level Group, as foreseen in Article 46 of the Treaty.

Article 6

Addressees

This Procedural Act shall enter into force on the day of its adoption and is addressed to the Parties.

Done in Tirana on 11 December 2008.





RULES governing the adoption of guidelines and network codes in the Energy Community

Procedural Act 2012/01/PHLG-EnC of 21 June 2012 laying down the rules governing the adoption of guidelines and network codes in the Energy Community.

The Permanent High Level Group of the Energy Community,

Having regard to the Treaty establishing the Energy Community ("the Treaty"), and in particular Articles 87 and 82 thereof,

Having regard to Articles 27 and 28 of Decision 2011/02/MC-EnC on the implementation of Directive 2009/72/EC, Directive 2009/73/EC, Regulation (EC) No 714/2009 and Regulation (EC) No 715/2009 and amending Articles 11 and 59 of the Energy Community Treaty ("Decision 2011/02/MC-EnC"), providing for the adoption of Guidelines and Network Codes by the Permanent High Level Group upon proposal from the European Commission based on Article 79 of the Treaty,

Following up on the task assigned to the Permanent High Level Group in Articles 27(3) and 28(3) of Decision 2011/02/MC-EnC to prepare a Procedural Act laying down the procedure for the incorporation of Guidelines and Network Codes adopted within the European Union,

Recognizing the importance of a synchronous evolution of the Energy Community *acquis communautaire* for the creation of an interconnected internal market throughout the Energy Community,

Acknowledging the necessity to transpose Guidelines and Network Codes into domestic legal orders as timely and truly to the original as possible, and to implement and enforce them vigorously,

Having regard to the Secretariat's proposal,

Taking into account the discussions at the meetings of 14 December 2011, 23 March 2012 and 21 June 2012,

HAS ADOPTED THIS PROCEDURAL ACT:

Article 1

Subject-Matter

These rules lay down the procedures for the adoption of Guidelines and Network Codes by Decision of the Permanent High Level Group of the Energy Community upon proposal of the European Commission, as required by Articles 27 and 28 of Decision 2011/02/MC-EnC.

Article 2

Definitions

For the purpose of this Procedural Act

- The term "Guidelines" means Guidelines adopted and/or amended by the European Commission

under Directive 2009/72/EC, Directive 2009/73/EC, Regulation 714/2009, and Regulation 715/2009, - The term "Network Code" means the codes adopted and/or amended under Regulation 714/2009 or Regulation 715/2009.

Article 3

Procedure

(1) The Presidency and the Vice-Presidencies shall include the European Commission's proposal on the adoption of Guidelines or Network Codes in the agenda of the next possible meeting of the Permanent High Level Group. The text of the proposal shall be circulated by the Secretariat to all members at least 30 days before the relevant meeting.

(2) If the next possible meeting of the Permanent High Level Group is to take place later than two months following the receipt of the above-mentioned proposal of the European Commission by the Secretariat, or later than three months, where it concerns the adoption of Network Codes, the Presidency, after consultation and in agreement with the Vice-Presidencies, may opt for decision-making by correspondence in line with the Rules of Procedure of the Permanent High Level Group.

(3) Where the European Commission's proposal concerns the adoption of Network Codes, the Secretariat shall forward it to the President of the Regulatory Board and request the opinion of this institution within an appropriate timeframe not exceeding 30 days. The President of the Regulatory Board shall transmit its opinion officially to the Secretariat, who shall notify it to the members of the Permanent High Level Group without delay. Where the Regulatory Board fails to submit an opinion within the specified timeframe, the Permanent High Level Group shall proceed without such opinion.

(4) The Permanent High Level Group shall take its Decisions under this Procedural Act in accordance with Articles 78 to 81 of the Treaty.

(5) Decisions of the Permanent High Level Group shall:

a. Specify the period within which the Contracting Parties shall transpose Guidelines and Network Codes, as adopted by the Permanent High Level Group's Decision, into their domestic legislation and require that the Guidelines and Network Codes be transposed without changes to their text or their structure of the Decision, other than translation.

b. Require the Contracting Parties to ensure that the Guidelines and Network Codes, as adopted by the Permanent High Level Group's Decision, are binding on market participants, and task the national regulatory authorities with monitoring and enforcing compliance.

c. Require the Contracting Parties to notify the Secretariat of the measures transposing the Permanent High Level Group's Decision, and of any subsequent changes made to those measures, within two weeks of the adoption of such measures.

(6) The Secretariat shall make Decisions available to all Parties within seven days of their adoption.

Article 4

Addressees and entry into force

This Procedural Act is addressed to the Parties and institutions of the Treaty. It shall enter into force upon adoption.

Article 5

Availability of these rules

The Secretariat shall make this Procedural Act available to all Parties within seven days of its adoption.

Done in Vienna on 21 June 2012.

ENERGY COMMUNITY NETWORK CODE REGULATIONS¹

Regulation (EU) 838/2010 of 23 September 2010 on laying down guidelines relating to the inter-transmission system operator compensation mechanism and a common regulatory approach to transmission charging.

Regulation (EU) 543/2013 of 14 June 2013 on submission and publication of data in electricity markets and amending Annex I to Regulation (EC) No 714/2009.

Annex I to Regulation (EC) No 715/2009 on conditions for access to the natural gas transmission networks, as amended at EU level by Commission Decision (EU) 2012/490 of 24 August 2012 and Commission Decision (EU) 2015/715 of 30 April 2015.

Regulation (EU) 2015/703 of 30 April 2015 establishing a network code on interoperability and data exchange rules.

Commission Regulation (EU) 2016/631 of 14 April 2016 establishing a network code on requirements for grid connection of generators in the Energy Community.

Commission Regulation (EU) 2016/1447 of 26 August 2016 establishing a network code on requirements for grid connection of high voltage direct current systems and direct current-connected power park modules in the Energy Community.

Commission Regulation (EU) 2016/1388 of 17 August 2016 establishing a network code on demand connection in the Energy Community.

¹ By its Decisions 2013/01/PHLG-EnC of 23 October 2013, 2015/01/PHLG-EnC of 24 June 2015, 2018/01/PHLG-EnC of 12 January 2018, 2018/02/PHLG-EnC of 12 January 2018, 2018/03/PHLG-EnC of 12 January 2018, 2018/04/PHLG-EnC of 12 January 2018 and 2018/05/PHLG-EnC of 12 January 2018, the Permanent High Level Group incorporated and adapted the Network Regulations, which are not displayed here due to space restrictions.

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