

## **REGULATION (EC) 715/2009 as amended by Regulation of the European Parliament and of the Council (EU) 2022/1032 with regard to gas storage**

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 and by the Ministerial Council Decision 2022/01/MC-EnC adapting and implementing the Regulation (EU) 2022/1032 with regards to gas storage.

*The adaptations made by Permanent High Level Group Decision 2018/01/PHLG-EnC of 12 January 2018, Ministerial Council Decisions 2021/14/MC-EnC, 2011/02/MC-EnC and 2022/01/MC-EnC, the latter incorporating amendments included in Regulation (EU) 2022/1032 with regards to gas storage, are highlighted in **bold and blue**.*

### **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 3a***

#### **Certification of storage system operators**

1. **Contracting Parties** shall ensure that each storage system operator, including any storage system operator controlled by a transmission system operator, is certified in accordance with the procedure laid down in this Article, either by the national regulatory authority or by another competent authority designated by the Contracting Party concerned pursuant to Article 3(2) of Regulation (EU) 2017/1938 of the European Parliament and of the Council, **as adapted and adopted by the Ministerial Council Decision 2021/15/MC-EnC** (in either case, "certifying authority").

2. This Article also applies to storage system operators controlled by transmission system operators which have already been certified under the unbundling rules laid down in Articles 9, 10 and 11 of Directive 2009/73/EC, **as adapted and adopted by the Ministerial Council Decision 2011/02/MC-EnC**.

3. The certifying authority shall issue a draft certification decision in respect of storage system operators that operate underground gas storage facilities with a capacity of over 3,5 TWh where, regardless of the number of storage system operators, total storage facilities were filled on 31 March 2021 and on 31 March 2022 at a level which, on average, was less than 30% of their maximum capacity by 27 February 2023 or within 150 working days of the date of receipt of a notification pursuant to paragraph 9.

4. In respect of storage system operators as referred to in the first subparagraph, the certifying authority shall make its best efforts to issue a draft certification decision by **1 January 2023**.

5. In respect of all other storage system operators, the certifying authority shall issue a draft certification decision by 31 March 2024 or within 18 months of the date of receipt of a notification pursuant to paragraph 8 or 9.

4. In considering the risk to the security of energy supply, the certifying authority shall take into account any security of gas supply risk at national, or **Energy Community** level as well as any mitigation of such risk, resulting, inter alia, from:

- (a) ownership, supply or other commercial relationships that could negatively affect the incentives and the ability of the storage system operator to fill the underground gas storage facility;
- (b) the rights and obligations of the **Energy Community** with respect to a third country arising under international law;
- (c) the rights and obligations of the **Contracting Parties** concerned with respect to a third country arising under agreements concluded by the **Contracting Parties** concerned with one or more third countries, in so far as those agreements comply with **Energy Community** law; or
- (d) any other specific facts and circumstances of the case.

5. If the certifying authority concludes that a person directly or indirectly controls, or exercises any right over, the storage system operator within the meaning of Article 9 of Directive 2009/73/EC **as adapted and adopted by the Ministerial Council Decision 2011/02/MC-EnC** could endanger the security of energy supply or the essential security interests of the **Energy Community** or of any **Contracting Party**, the certifying authority shall refuse the certification. Alternatively, the certifying authority may issue a certification decision subject to conditions to ensure the sufficient mitigation of the risks which could negatively influence the filling of the underground gas storage facilities, provided that the practicability of the conditions can be fully ensured by effective implementation and monitoring. Such conditions may include, in particular, a requirement that the storage system owner or storage system operator transfer management of the storage system.

6. Where the certifying authority concludes that the gas supply risks cannot be mitigated by conditions pursuant to paragraph 4, including by requiring the storage system owner or storage system operator to transfer management of the storage system, and therefore refuses the certification, it shall:

- (a) require the storage system owner or storage system operator or any person that it considers could endanger the security of energy supply or the essential security interests of the **Energy Community** or of any **Contracting Party** to dispose of the shareholding or rights they have over the storage system ownership or storage system operator ownership, and set a time limit for such disposal;
- (b) order, where appropriate, interim measures, to ensure that such a person is not able to exercise any control or right over that storage system owner or storage system operator until the disposal of the shareholding or rights; and
- (c) provide for appropriate compensatory measures in accordance with national law.

6. The certifying authority shall notify its draft certification decision to the **Energy Community Secretariat** without delay, together with all relevant information.

The **Energy Community Secretariat** shall deliver **binding** opinion on the draft certification decision to the certifying authority within 25 working days of such notification. The certifying authority shall **comply with the Energy Community Secretariat's** opinion.

7. The certifying authority shall issue the certification decision within 25 working days of receipt of the **Energy Community Secretariat's** opinion.

8. Before a newly built underground gas storage facility is put into operation, the storage system operator shall be certified in accordance with paragraphs 1 to 7. The storage system operator shall notify the certifying authority of its intention to put the storage facility into operation.

9. Storage system operators shall notify relevant certifying authority of any planned transaction which would require a reassessment of their compliance with the certification requirements set out in paragraphs 1 to 4.

10. Certifying authorities shall continuously monitor storage system operators as regards compliance with the certification requirements set out in paragraphs 1 to 4. They shall open a certification procedure to reassess compliance in any of the following circumstances:

- (a) upon receipt of a notification by the storage system operator pursuant to paragraph 8 or 9;
- (b) on their own initiative where they have knowledge that a planned change in rights or in influence over a storage system operator could lead to non-compliance with the requirements of paragraphs 1, 2 and 3;
- (c) upon a reasoned request from the **Energy Community Secretariat**.

11. **The Contracting Parties** shall take all necessary measures to ensure the continuous operation of the underground gas storage facilities on their respective territories. Those underground gas storage facilities may cease operations only where technical and safety requirements are not met or where the certifying authority concludes, after having conducted an assessment and having taken into account the opinion of **the Energy Community Secretariat** that such a cessation would not weaken the security of gas supply at **Energy Community** or national level.

Appropriate compensatory measures shall be taken, where appropriate, if cessation of operations is not allowed.

12. The **Energy Community Secretariat** may issue guidance on the application of this Article.

13. This Article shall not apply to parts of LNG facilities that are used for storage.

#### **Article 4**

### **European network of transmission system operators for gas**



#### **Article 5**

### **Establishment of the ENTSO for Gas**





## **Article 6**

### **Establishment of network codes<sup>1</sup>**

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<sup>2</sup>.

## **Article 7**

### **Amendments of network codes**

<...>

## **Article 8**

### **Tasks of the ENTSO for Gas**

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## **Article 9**

### **Monitoring by the Agency**

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

<sup>2</sup> 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

### ***Article 10***

#### **Consultations**

<...>

### ***Article 11***

#### **Costs**

<...>

### ***Article 12<sup>3</sup>***

#### **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.

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<sup>3</sup> In accordance with Article 7(3) of Decision 2011/02/MC-EnC

**Contracting Parties** may decide that tariffs may also be determined through market-based arrangements, 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.

3. The national regulatory authority may apply a discount of up to 100 % to capacity-based transmission and distribution tariffs at entry points from, and exit points to, underground gas storage facilities and LNG facilities, unless and to the extent that such a facility which is connected to more than one transmission or distribution network is used to compete with an interconnection point.

This paragraph shall apply until 31 December 2025.

#### ***Article 14***

##### **Third-party access services concerning transmission system operators**

1. Transmission system operators shall:

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

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

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

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

### ***Article 15***

#### **Third-party access services concerning storage and LNG facilities**

1. LNG and storage system operators shall:

(a) offer services on a non-discriminatory basis to all network users that accommodate market demand; in particular, where an LNG or storage system operator offers the same service to different customers, it shall do so under equivalent contractual terms and conditions;

(b) offer services that are compatible with the use of the interconnected gas transport systems and facilitate access through cooperation with the transmission system operator; and

(c) make relevant information public, in particular data on the use and availability of services, in a time-frame compatible with the LNG or storage facility users' reasonable commercial needs, subject to the monitoring of such publication by the national regulatory authority.

2. Each storage system operator shall:

(a) provide both firm and interruptible third-party access services; the price of interruptible capacity shall reflect the probability of interruption;

(b) offer to storage facility users both long and short-term services; and

(c) offer to storage facility users both bundled and unbundled services of storage space, injectability and deliverability.

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

(a) outside a natural gas year with non-standard start dates; or

(b) with a shorter duration than a standard LNG and storage facility contract on an annual basis.

4. 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.
5. 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-subsidisation between network users and shall not hamper the entry of new market entrants.

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

4. **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***

### **Guidelines<sup>4</sup>**

**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.**

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<sup>4</sup> The text displayed here corresponds to Article 27 of Decision 2011/02/MC-EnC

**3. The Permanent High Level Group shall adopt a Procedural Act on application of this article.<sup>5</sup>**

#### ***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<sup>6</sup>.

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 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<sup>7</sup>.

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<sup>8</sup>.

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<sup>5</sup> 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

<sup>6</sup> As adopted by the Permanent High Level Group under Procedural Act 01/2012/PHLG-EnC

<sup>7</sup> As adopted by the Permanent High Level Group under Procedural Act 01/2012/PHLG-EnC

<sup>8</sup> As adopted by the Permanent High Level Group under Procedural Act 01/2012/PHLG-EnC

## **Article 27**

### **Penalties<sup>9</sup>**

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**

<...>

## **Article 29**

### **Secretariat report<sup>10</sup>**

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,

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<sup>9</sup> As adopted by Article 19 of Decision 2011/02/MC-EnC

<sup>10</sup> The text displayed here corresponds to Article 31 of Decision 2011/02/MC-EnC

- 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 30***

#### **Derogations and exemptions**

This Regulation shall not apply to:

(a) <...><sup>11</sup>

(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

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<sup>11</sup> Not applicable in accordance with Article 24(4) of Decision 2011/02/MC-EnC

(c) natural gas transmission systems which have been granted derogations under Article 48 of Directive 2009/73/EC.

<...><sup>12</sup>

**Article 31**

**Repeal**

<...>

**Article 32**

**Entry into force**

**The Decision [2022/01/MC-EnC] enters into force upon its adoption and is addressed to the Contracting Parties.**

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<sup>12</sup> Not applicable in accordance with Article 24(4) of Decision 2011/02/MC-EnC