

Directive (EU) 2019/692 of the European Parliament and of the Council  
of 17 April 2019 amending Directive 2009/73/EC concerning common  
rules for the internal market in natural gas (Text with EEA relevance)

DIRECTIVE (EU) 2019/692 OF THE EUROPEAN  
PARLIAMENT AND OF THE COUNCIL

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amending Directive 2009/73/EC concerning  
common rules for the internal market in natural gas

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 194(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee<sup>(1)</sup>,

Having regard to the opinion of the Committee of the Regions<sup>(2)</sup>,

Acting in accordance with the ordinary legislative procedure<sup>(3)</sup>,

Whereas:

- (1) The internal market in natural gas, which has been progressively implemented throughout the Union since 1999, aims to deliver real choice for all final customers in the Union, be they citizens or businesses, new business opportunities, fair conditions of competition, competitive prices, efficient investment signals and a higher standard of service, and to contribute to security of supply and sustainability.
- (2) Directives 2003/55/EC<sup>(4)</sup> and 2009/73/EC<sup>(5)</sup> of the European Parliament and of the Council have made a significant contribution towards the creation of the internal market in natural gas.
- (3) This Directive seeks to address obstacles to the completion of the internal market in natural gas which result from the non-application of Union market rules to gas transmission lines to and from third countries. The amendments introduced by this Directive are intended to ensure that the rules applicable to gas transmission lines connecting two or more Member States are also applicable, within the Union, to gas transmission lines to and from third countries. This will establish consistency of the legal framework within the Union while avoiding distortion of competition in the internal energy market in the Union and negative impacts on the security of supply. It will also enhance transparency and provide legal certainty to market participants, in

particular investors in gas infrastructure and system users, as regards the applicable legal regime.

- (4) To take account of the lack of specific Union rules applicable to gas transmission lines to and from third countries before the date of entry into force of this Directive, Member States should be able to grant derogations from certain provisions of Directive 2009/73/EC to such gas transmission lines which are completed before the date of entry into force of this Directive. The relevant date for the application of unbundling models other than ownership unbundling should be adapted for gas transmission lines to and from third countries.
- (5) Pipelines connecting a third-country oil or gas production project to a processing plant or to a final coastal landing terminal within a Member State should be considered to be upstream pipeline networks. Pipelines connecting an oil or gas production project in a Member State to a processing plant or to a final coastal landing terminal within a third country should not be considered to be upstream pipeline networks for the purpose of this Directive, since such pipelines are unlikely to have a significant impact on the internal energy market.
- (6) Transmission system operators should be free to conclude technical agreements with transmission system operators or other entities in third countries on issues concerning the operation and interconnection of transmission systems, provided that the content of such agreements is compatible with Union law.
- (7) Technical agreements regarding the operation of transmission lines between transmission system operators or other entities should remain in force provided that they comply with Union law and the relevant decisions of the national regulatory authority.
- (8) When such technical agreements are in place, the conclusion of an international agreement between a Member State and a third country or of an agreement between the Union and a third country regarding the operation of the gas transmission line concerned is not required by this Directive.
- (9) The applicability of Directive 2009/73/EC to gas transmission lines to and from third countries remains confined to the territory of the Member States. As regards offshore gas transmission lines, Directive 2009/73/EC should be applicable in the territorial sea of the Member State where the first interconnection point with the Member States' network is located.
- (10) It should be possible for existing agreements concluded between a Member State and a third country on the operation of transmission lines to remain in force, in accordance with this Directive.
- (11) With regard to agreements or parts of agreements with third countries which may affect common rules of the Union, a coherent and transparent procedure should be established by which to authorise a Member State, upon its request, to amend, extend, adapt, renew or conclude an agreement with a third country on the operation of a transmission line or an upstream pipeline network between the Member State and a third country. The procedure should not delay the implementation of this Directive, should be without

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prejudice to the allocation of competence between the Union and the Member States, and should apply to existing and new agreements.

- (12) Where it is apparent that the subject matter of an agreement falls partly within the competence of the Union and partly within that of a Member State, it is essential to ensure close cooperation between that Member State and the Union institutions.
- (13) Commission Regulation (EU) 2015/703<sup>(6)</sup>, Commission Regulation (EU) 2017/459<sup>(7)</sup>, Commission Decision 2012/490/EU<sup>(8)</sup>, as well as Chapters III, V, VI and IX, and Article 28 of Commission Regulation (EU) 2017/460<sup>(9)</sup> apply to entry points from and exit points to third countries, subject to the relevant decisions of the relevant national regulatory authority, whereas Commission Regulation (EU) No 312/2014<sup>(10)</sup> applies exclusively to balancing zones within the borders of the Union.
- (14) In order to adopt decisions authorising or refusing to authorise a Member State to amend, extend, adapt, renew or conclude an agreement with a third country, 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<sup>(11)</sup>.
- (15) Since the objective of this Directive, namely to establish consistency of the legal framework within the Union while avoiding distortion of competition in the internal energy market in the Union, cannot be sufficiently achieved by the Member States, but can rather, by reasons 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 Directive does not go beyond what is necessary to achieve that objective.
- (16) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents<sup>(12)</sup>, 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.
- (17) Directive 2009/73/EC should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

### *Article 1*

#### **Amendments to Directive 2009/73/EC**

Directive 2009/73/EC is amended as follows:

- (1) in Article 2, point (17) is replaced by the following:
  - (17) “interconnector” means a transmission line which crosses or spans a border between Member States for the purpose of connecting the national

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transmission system of those Member States or a transmission line between a Member State and a third country up to the territory of the Member States or the territorial sea of that Member State;;

(2) Article 9 is amended as follows:

(a) in paragraph 8, the first subparagraph is replaced by the following:

8. Where on 3 September 2009 the transmission system belonged to a vertically integrated undertaking, a Member State may decide not to apply paragraph 1. As regards the part of the transmission system connecting a Member State with a third country between the border of that Member State and the first connection point with that Member State's network, where on 23 May 2019 the transmission system belongs to a vertically integrated undertaking, a Member State may decide not to apply paragraph 1.;

(b) paragraph 9 is replaced by the following:

9. Where on 3 September 2009 the transmission system belonged to a vertically integrated undertaking and arrangements are in place which guarantee more effective independence of the transmission system operator than the provisions of Chapter IV, a Member State may decide not to apply paragraph 1 of this Article.

As regards the part of the transmission system connecting a Member State with a third country between the border of that Member State and the first connection point with that Member State's network, where on 23 May 2019 the transmission system belongs to a vertically integrated undertaking and arrangements are in place which guarantee more effective independence of the transmission system operator than the provisions of Chapter IV, that Member State may decide not to apply paragraph 1 of this Article.;

(3) in Article 14, paragraph 1 is replaced by the following:

1. Where on 3 September 2009 the transmission system belonged to a vertically integrated undertaking, a Member State may decide not to apply Article 9(1) and to designate an independent system operator upon a proposal from the transmission system owner.

As regards the part of the transmission system connecting a Member State with a third country between the border of that Member State and the first connection point with that Member State's network, where on 23 May 2019 the transmission system belongs to a vertically integrated undertaking, that Member State may decide not to apply Article 9(1) and to designate an independent system operator upon a proposal from the transmission system owner.

The designation of an independent system operator shall be subject to approval by the Commission.;

(4) in Article 34, paragraph 4 is replaced by the following:

4. In the event of cross-border disputes, the dispute-settlement arrangements for the Member State having jurisdiction over the upstream pipeline network which refuses access shall be applied. Where, in cross-border disputes, more than one Member State covers the network concerned, the Member States concerned shall consult each other with a view to ensuring that the provisions of this Directive are applied consistently. Where the upstream pipeline network originates from a third

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country and connects to at least one Member State, the Member States concerned shall consult each other and the Member State where the first entry point to the Member States' network is located shall consult the third country concerned where the upstream pipeline network originates, with a view to ensuring, as regards the network concerned, that this Directive is applied consistently in the territory of the Member States.;

(5) Article 36 is amended as follows:

(a) in paragraph 1, point (e) is replaced by the following:

(e) the exemption must not be detrimental to competition in the relevant markets which are likely to be affected by the investment, to the effective functioning of the internal market in natural gas, the efficient functioning of the regulated systems concerned, or to security of supply of natural gas in the Union.;

(b) paragraph 3 is replaced by the following:

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.

Before the adoption of the decision on the exemption, the national regulatory authority, or where appropriate another competent authority of that Member State, shall consult:

- a the national regulatory authorities of the Member States the markets of which are likely to be affected by the new infrastructure; and
- b the relevant authorities of the third countries, where the infrastructure in question is connected with the Union network under the jurisdiction of a Member State, and originates from or ends in one or more third countries.

Where the third-country authorities consulted do not respond to the consultation within a reasonable time frame or within a set deadline not exceeding three months, the national regulatory authority concerned may adopt the necessary decision.;

(c) in paragraph 4, the second subparagraph is replaced by the following:

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 Agency of their decision. Where the infrastructure concerned is a transmission line between a Member State and a third country, before the adoption of the decision on the exemption, the national regulatory authority, or where appropriate another competent authority of the Member State where the first interconnection point with the Member States' network is located, may consult the relevant authority of that third country with a view to ensuring, as regards the infrastructure concerned, that this Directive is applied consistently in the territory and, where applicable, in the territorial sea of that Member State. Where the third country authority consulted does not respond to the consultation within a reasonable time or within a set deadline not exceeding three months, the national regulatory authority concerned may adopt the necessary decision.;

(6) in Article 41(1), point (c) is replaced by the following: