

Appendix 2: Legal framework

National legal framework

According to Section 11(1) of the Danish Act on Natural Gas Supply, and as the gas transmission system operator (TSO) in Denmark, Energinet shall ensure a sufficient and an efficient transport of natural gas, including the task of preserving and maintaining of the physical balance in the gas network. As transmission system operator Energinet shall also provide the security of gas supply in Denmark, cf. Section 12(3).

According to Section 7(5) and Section 38(1) tariffs shall be based on an objective, transparent and non-discriminatory criteria.

Energinet can include necessary costs in the prices for its activities under Act on Energinet Section 2(2) and (3), including gas transmission activities, cf. Section 37 d of the Danish Act on Natural Gas Supply and Section 2 of Executive Order No 816 of 27 June 2016.

European legal framework

According to Article 3 (1) of regulation No 2017/1938 concerning measures to safeguard the security of gas supply the security of gas supply shall be the shared responsibility of natural gas undertakings, Member States, in particular through their competent authorities, and the Commission, within their respective areas of activity and competence.

Article 13 of regulation No 715/2009 on conditions for access to the natural gas transmission networks concerns tariffs for access to networks.

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.

Member States may decide that tariffs may also be determined through market-based arrangements, such as auctions, provided that such arrangements and the revenues arising therefrom 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, cf. article 13 (1).

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, cf. article 13 (2).

According to Regulation No 715/2009 and in particular Article 6(11) and Article 8(6)(k) thereof, the European Commission may adopt network codes regarding harmonised transmission tariff structures. On this basis, Regulation No 2017/460 is issued to establish the network code on harmonised transmission tariff structures for gas.

Article 13 concerns level of multipliers and seasonal factors. The level of multipliers shall fall within certain ranges. For quarterly standard capacity products and for monthly standard capacity products, the level of the respective multiplier shall be no less than 1 and no more than 1,5, and for daily standard capacity products and for within-day standard capacity products, the level of the respective multiplier shall be no less than 1 and no more than 3. In duly justified cases, the level of the respective multipliers may be less than 1, but higher than 0, or higher than 3, cf. Article 13(1)(a) and (b). Where seasonal factors are applied, the arithmetic mean over the gas year of the product of the multiplier applicable for the respective standard capacity product and the relevant seasonal factors shall be within the same range as for the level of the respective multipliers set out in paragraph, cf. Article 13(2).

Calculation of reserve prices for non-yearly standard capacity products for firm capacity in absence of seasonal factors is regulated in article 14.

Article 15 concerns the calculation of reserve prices for non-yearly standard capacity products for firm capacity with seasonal factors. Where seasonal factors are applied, it shall be calculated as set out in paragraphs 2 to 6, cf. Article 15.

According to article 29 certain information shall be published before the annual yearly capacity auction. Information on multipliers and seasonal factors applied to reserve prices for non-yearly standard capacity products is, among other things, covered by this obligation.

The deadline for the publication of the information set out in Article 29 is no later than thirty days before the annual yearly capacity auction, cf. Article 32.