

When comes to energy policies, currently dominated by concerns for security of supply and increasingly decarbonisation goals, gas plays an important role. It is abundant, flexible and described as a transitional source for a carbon-neutral economy. Increasing the LNG capacity and shale boom, seeking their place in the global market, further strengthens the positive outlook for gas in the future.

As part of the creation of an internal market for natural gas, the European Union has introduced comprehensive energy regulations. The last of these is the Gas Directive, stipulating common rules for the internal market and the Gas Regulation, laying down conditions for access to natural gas transmission networks, as part of the so-called Third Energy Package.

EU member states and Energy Community contracting parties had to align their legislation with these energy market regulations. The extent to which this has been done is under discussion, but Balkan countries can expect more influence from this legislation than in the past, thanks to the increasing role of gas. In anticipation of the broader implementation of the Gas Directive and the rules of the Gas Regulation, this paper analyses one of their main principles - network access, which Member States and contracting parties are obliged to regulate. An exception is access to gas storage facilities, which, in addition to regulated access, can also be ensured through negotiation.

Gas belongs to network-based industries. This network has the characteristics of a natural monopoly; however, the final services it delivers are competitive. In order to maintain proper network functionality and ensure uninterrupted supply security, it is necessary to expand existing networks or build new infrastructure. The investment is taken over by the network owner, who eventually transfers the costs to end users through tariffs. In this sense, when the concepts of gas market and competition liberalization emerged in the EU, a series of challenges came to light.

As it makes no economic sense to build new gas infrastructure every time a new entrant wants to take the field, which supports the notion of competition and market opening, this means that network owners should allow access to their infrastructure. This stems from the basic facilities doctrine, which implies that a company in a dominant position that provides basic services (such as energy services) that refuses (or allows under adverse conditions) other companies to access facilities (e.g. the network), abuses its dominant position.

On the other hand, providing access at every opportunity creates little or no incentive for owners of existing networks to invest in maintaining infrastructure or investing in building new networks. In order to balance the interests of businesses involved in gas networks and at the same time create the capacity for competition, the EU has adopted the concept of Third Party Access (TPA).

Essentially, it is an enforceable right for companies in the energy industry that allows such companies to access and use an existing or new network or, more broadly, systems

(transmission and distribution systems, LNG facilities, lines, storages and other ancillary services) owned by others. It is interesting that the entire Chapter VII of the Gas Directive deals with the system access organization, but that there are no third party or access definitions. Instead, it was stated that the access was applicable to all eligible customers, including supply companies.

Access is allowed on the basis of published tariffs, approved by the national regulatory authority (NRA), and applied objectively, without discrimination between users of the system. It follows that third parties are qualified customers, supply companies and system users, as defined by the Gas Directive. An interpretation of the access was given in one of the first European Court of Justice judgments concerning the TPA, when the court decided that access included the right to use electricity (or, analogously, gas), and should be distinguished from the term connection, which indicates the technical context of access. It is clear that third party access is not an absolute right but a right to seek access, and such a requirement does not have to be fulfilled. Access to the network system may be denied due to lack of capacity, public service obligation assigned to the natural gas companies operating the system, or financial difficulties with the offtake or payment contracts. Either way, the party refusing access must give reasons for such refusal.