

At the assembly held on 31 October 2007, pursuant to Article 19, paragraph 2 of the Law on the Government of the Federation of Bosnia and Herzegovina (Official Gazette of the Federation of BiH, number 1/94, 8/95, 58/02,19/03, 2/06 and 8/06), the Government of the Federation of Bosnia and Herzegovina issues

## **DECREE ON ORGANIZATION AND REGULATION OF THE GAS INDUSTRY SECTOR**

### **I GENERAL PROVISIONS**

Subject and application of the Decree

#### **Article 1**

With this Regulation shall be regulated the organization, rules and conditions for conducting energy activities in the natural gas sector, the rights and duties of the participants in the natural gas sector, the separation of the activities of the system operator, the third-party access to the system for the natural gas and market opening in natural gas (hereinafter: the gas).

#### **Article 2**

The Decree shall be determined by the existing commitments from the Treaty Establishing the Energy Community of the Southeast Europe and EU Directive for Gas 2003/55/EC. All provisions from the Regulation shall be undertaken from the documents from paragraph 1 of this Article in the form "Acquis communautaire" on energy.

#### **Article 3**

At the relations in the gas sector which are not regulated by this Decree shall be applied the provisions of the relevant laws in the area of energy, set of documents from the area of environment protection, laws on concessions, provisions of the Law on Spatial Planning and the Use of Land at the level of the Federation of Bosnia and Herzegovina (hereinafter: FBiH), Law on Companies as well as the accompanying bylaws. On the procedures prescribed by this Decree at the corresponding manner shall be applied the provisions of the Law on Administrative Procedure.

Definitions of the terms

#### **Article 4**

In the sense of this Regulation, certain terms shall have the following meaning:

- gas shall be the natural gas including also the liquefied natural gas (hereinafter: LNG) which is transported in the gas pipeline transport and distribution systems,
- biogas, gas from the biomass and other types of gases, if those types of gases may be technically and safely transported through the gas system,

- gas system shall include the transportation system, distribution system, gas storage system and LNG plant which is in the possession and/or managed by the system operator including operating accumulation and facilities for providing auxiliary services and those who belong to the connected entities and which are needed for the transport system insurance access, distribution system and gas storage system and LNG plant,
- gas storage system shall be the facility in possession and/or which is managed by the energy entity for gas, used for gas storage including also a part of the LNG plant used for storage but excluding the part which is used for the generating operations and facilities by which is exclusively used by the transport system operator,
- LNG plant shall be the facility in possession and/or managed by the energy entity for gas and which is used for gas liquefaction or reception, unloading and re-gasification of LNG including the plants for auxiliary services and temporary storage necessary for the process of re-gasification and further equipment in the transportation system,
- the gas production shall be the production, delivery and sale of gas from its own production,
- gas generation shall be a legal person that produces gas,
- gas supply shall mean a supply, sale and resale of the natural gas including also LNG,
- transport of gas shall be the transport of gas through high pressure transport system from the entry into the transport system to the transceiver metering and regulating stations with the aim of delivery of the gas to the customers, excluding the gas supply and including the transport of gas from the entry into the transport system to the gas storage systems and the gas transit,
- the gas transit shall be the transport of gas originating from the other country for the purpose of the third country over the Bosnia and Herzegovina territory or the transport of gas originating from the other country for the purpose of that country over the territory of Bosnia and Herzegovina,
- gas distribution shall be the transport of gas through the distribution system for gas delivery to the end customers including the gas supply,
- concession for the gas distribution shall be a concession defined by the laws on concession,
- gas supplier shall be the legal person that conducts the activity of gas supply,
- transport system operator shall be the legal person that conducts the activity of gas transport and the responsible person for work, maintenance and development of the transportation system at the certain area and where it is feasible its connecting with the other systems and for the long-term ability of the system to meet the reasonable necessities for transport of gas;
- distribution system operator shall be the legal person that conducts the activity of the gas distribution and which is responsible for the work, maintenance and development of the distribution system at the certain area and where it is feasible its connecting with the other systems and for the insurance of the long-term ability of the system to meet the reasonable necessities for gas distribution,
- long-term planning shall be the planning of the quantities of supply and transport capacities of the energy entity for gas on the long-term basis for meeting the demand of the natural gas sector, diversification of the source and ensuring the supply of the customers, excluding the part of the LNG plant which is used for LNG storage,
- gas storage systems operator shall be a legal person that conducts the activity of gas storage and shall be responsible for the work of the gas storage,
- LNG plant operator shall be a legal person that conducts the activity of management of the LNG terminal for the purpose of gas liquefaction or reception, unloading and re-gasification of LNG and that shall be responsible for the work of the LNG plant,
- energy entity for the gas shall be a legal person that conducts one of the following energy activities: research and gas generation, transport of gas, gas distribution, gas storage and management of LNG plant, gas supply and shall be responsible for the commercial and

- technical issues and the maintenance of the system related to those activities, excluding the systems of end customers of gas,
- integrated energy entities shall be the connected entities which may be vertically or horizontally integrated,
  - horizontally integrated entity shall be the energy entity for gas which except the energy activities in the gas sector conducts at least one activity outside the gas sector.
  - vertically integrated entity shall be the energy entity for gas or more connected energy entities for gas, that conduct at least one of the following activities: transport of gas, gas distribution, gas storage and management of the LNG plant and one of the following activities: gas generation, or gas supply,
  - the agency shall be the independent regulator of energy activities,
  - operating permit shall be the authorisation for conducting energy activity issued by the Agency,
  - the Ministry shall be the authority of the Federal Administration competent for energy (hereinafter: the Ministry),
  - The Minister shall be the Minister competent for energy (hereinafter: the Minister)
  - end customer shall be the customer that purchases gas for its his/her own consumption,
  - household shall be the customer that purchases gas for the consumption in its own household,
  - the customer shall be the end customer of gas or the energy entity for gas that purchases gas,
  - eligible customer shall be the customer that is entitled to free choice of the gas supplier,
  - tariff customer shall be the customer that is supplied with gas in the regulated manner and at the regulated price,
  - protected customer shall be the customer that is entitled on the supply in the sufficient amount of gas in the case of the partial disturbance in gas supply and extremely low medium daily air temperatures, but only in the case which does not have alternative solution of energy supply,
  - interstate connecting gas pipeline shall be the gas pipeline that transends or bridges the borders between the states exclusively for the purposes of connecting the transport systems of those states,
  - new infrastructure shall be the infrastructure which is not constructed until the day of entering into force of this Decree,
  - the public service commitment shall be the commitment of the energy entity for gas to conduct certain services as the regulated activity in the general economic interest or as the exclusive right,
  - operating accumulation shall be the quantity of gas which is by compressing stored into the transport and distribution system, including the technological capacities exclusively used by the transport system operator,
  - the safety shall be the safety of gas supply and technical safety,
  - type of the contract "take or pay" shall be the contract by which the gas supplier is obligated to deliver the agreed gas quantities and the gas customers to pay those quantities regardless whether he/she had taken it,
  - direct gas pipeline shall be the gas pipeline by which is realized a direct connection of the transport system with the gas system of the other state and which supplements the gas system,
  - parent entity shall be the basic legal person in the system of the complex companies.

## II. THE ORGANIZATION OF THE GAS INDUSTRY

### Article 5

Due to the long-term insurance of the reliable, efficient and cost-effective gas supply, gas sector must be organized and regulated, according to the unique technological entirety that

includes energy entities for gas in which are conducted energy activities from Article 7 of this Decree and which are of public interest for the FBiH. This regulating shall have the purpose to achieve equal conditions and the right of access for all energy entities at the gas market in accordance with this Decree.

Gas market shall be opened gradually in the manner prescribed by this Decree.

#### **Article 6**

Energy entities for gas shall conduct its activities from Article 7 of this Decree as companies, established in accordance with the Law on Companies, provided that they obtain the permit for conducting the energy activity.

Gas systems, in the function of supply, transport, distribution, storage and LNG plants may be constructed and managed of the same only the energy entities according to paragraph 1 of this Article under the conditions prescribed by the Law on Construction - with the guarantee of technical safety and consisted application of technical regulations and legislation for design, construction, commissioning and maintenance of the gas systems and the application of the particular technical and safety conditions from the area of environment protection prescribed by the set of environmental laws and bylaws.

#### **Article 7**

Energy activities in the gas sector shall be conducted as:

- Gas supply,
- Transport of gas,
- Gas distribution,
- Gas storage,
- Management of the LNG plant.

#### **Article 8**

Participants in the gas sector shall be:

- Gas supplier,
- Transport system operator,
- Distribution system operator,
- Gas storage system operator,
- Operator of the LNG plant,
- Eligible customer,
- Tariff customer,
- Protected customer.

The safety of gas supply

#### **Article 9**

The participants in the gas sector shall be obligated to plan and undertake the measures for safe gas supply in accordance with the prescribed standards of gas supply and shall be responsible for the safety of gas supply in the frameowrk of their activity.

Canton shall be responsible for monitoring the relations between the offer and demand of gas of its area, making of the assessment of the future consumption and available offer, planning the construction of the additional capacities and the development of the distribution system of its area and proposing and taking measures in the framework of its competence in accordance with this Decree.

Cantonal Ministry competent for energy operations shall participate in the making of the documents of the spatial planning at the cantonal level adopted by the Cantonal Assemblies. The Ministry shall be responsible for issuing permits for conducting energy activity, monitoring the relations between the offer and demand at the gas market, making of the assessment of the future consumption and available offer, planning the construction and development of additional capacities of the gas system and proposing and taking measures in the case of declaration of the crisis situation and in accordance with the Regulation and bylaws.

The Ministry shall participate in the making of the documents of spatial planning issued by the Parliament of the Federation.

About the proposal of spatial planning documents from paragraphs 4 and 5 of this Article, the holder of the making of spatial planning documents shall be obligated to procure the opinion of the Ministry, that is, the Cantonal Ministry competent for energy operations.

In accordance with this Decree, by the decision on safety of natural gas supply passed by the Government of FBiH, at the proposal of the Minister shall be regulated measures for securing a reliable and efficient energy supply of the protected customers in the case of crisis situation caused by the interruption of the contracted gas supply through the existing contracted relations.

### III TRANSPORT SYSTEM OPERATOR

Determining the transport system operator

#### **Article 10**

For the gas transport system operator in the F BiH shall be determined the company "BH-Gas" d.o.o. Sarajevo

Transport system operator shall guarantee a reliable and quality delivery of gas from the entry into the gas transport system on the area of FBiH to the transceiver metering and regulating stations of the distribution systems operator and the end customers.

Duties of the transport system operator

#### **Article 11**

Transport system operator shall be obligated to:

- have a permit for conducting the energy activity of the natural gas transport,
- have the use permit for facilities of the existing transport system,
- manage, maintain and develop a safe, reliable and efficient transport system,
- ensure technical preconditions, under the economically optimal conditions, for the acceptance in the gas transport system imported from the different sources and directions and for the gas transit,
- connect at the transport system those legal persons that obtained energy consent of the transport system operator on the connection to the gas system, that is, that have achieved conditions from the bylaws of this Decree,
- establish and ensure the work of the dispatch centre for managing a transport system, systems of metering and systems for monitoring of the quality gas parameters and the parameters of the gas delivery,
- ensure objective, equal and open conditions of the access to the transport system, in accordance with this Decree and bylaws,
- make a plan for crisis situations and submit it to the Ministry for approval,

- manage the gas system in the case of declaration of the crisis situation on the basis of this Decree and bylaws,
- give prescribed information, sufficiently in advance, to the market participants, that are directly included in the transport system, on the scope and the day of interruption of the gas transport and the expected reduction of the transport capacities,
- make and pass development plans for development, construction and modernization of the gas transport system in accordance with the provisions of this Decree and the applicable legislation. Development plans shall be passed for the period of at least 3 years and they must be approved by the relevant Ministry,
- give prescribed information on the investment projects related with the transport system and on the planned exit from the drive of the certain facilities of the transport system,
- ensure the protection of the confidential data of the commercial character and which have the attribute of the trade secret.

Rights of the transport system operator

### **Article 12**

Transport system operator shall have the right to:

- refuse the access to the transport system under the conditions from Article 23 of this Regulation,
- purchase the gas for conducting its basic activity: its own consumption, compensation of the gas losses in the transportation system during the execution of works on the system and compensation of the gas losses above the allowed drive losses and for the balancing of the transport system,
- establish and ensure the work of its own telecommunication network for surveillance, metering and automatization of the transport system,
- to limit or interrupt the contracted gas transport.

Transport system operator shall have the right to limit or terminate the contracted transport of gas:

- in the case of the direct endangerment of lives and health of the people or property due to removing of such dangers,
- in the case of the crisis situation and for preventing the occurrence of the crisis situation,
- for the planned maintenance or reconstruction of the transport system,
- for removing of malfunctions at the transport system,
- when the user takes over the gas in the manner which could endanger lives and health of the people or property,
- in the case of the unauthorized gas consumption,
- in the cases when the user does not comply with its contracted obligations.

## **IV DISTRIBUTION SYSTEM OPERATOR**

Determining of the distribution system operator

### **Article 13**

The distribution system operator shall be the energy entity for gas that has the permit for conducting the activity of gas distribution and that has the concession for gas distribution or concession for the construction of the distribution system and gas distribution.

## Duties of the distribution system operator

### **Article 14**

Distribution system operator shall be obligated to:

- manage, maintain and develop a safe, reliable and efficient distribution system,
- connect on the distribution system all legal and natural persons that have in the previous proceedings ensured the energy consent and if they have a construction permit or it is considered according to the provisions of the special regulation that the construction was built according to the construction permit, that is, according to the provisions of this Decree and bylaws,
- establish and ensure the work of the dispatch centre for managing of the distribution system, metering system, systems for monitoring of the parameters of the gas quality and the quality of the gas delivery and the device for gas odorization,
- distribute the gas according to the concluded contracts,
- make a plan for crisis situations on the basis of the prescribed measures, update and submit it to the relevant Minister of the Government of the Canton for the approval once a year,
- maintain the parameters of the gas quality and the quality of gas delivery and to balance the distribution system,
- ensure objective, equal and open conditions of access to the distribution system, in accordance with this Decree and bylaws,
- ensure, at the level of the distribution system measurement of the gas consumption including also reading the measuring devices and to submit to the transport system operator data necessary for balancing the gas system, in accordance with the decree and bylaws,
- make and submit to the Ministry an annual report on reliability, safety and efficiency of the distribution system, on executing the plan of the development of the system, quality of meeting the needs of the users, maintenance of the system's equipment and fulfilling the rest of the duties and the use of the rights from this Decree,
- give prescribed information to the transport system operator and the operators of the connected distribution systems for the safe and efficient functioning and development of mutually connected systems,
- give prescribed information to the market participants directly connected on the distribution system, sufficiently in advance, on the scope and the day of interruption of work of the gas distribution and the expected reduction of the distribution capacities,
- ensure the protection of the confidential data of the commercial character which it ascertain in conducting the activity and which has the attribute of the trade secret.

The rights of the distribution system operator

### **Article 15**

The distribution system operator shall have the right:

- to refuse the access to the distribution system under the conditions from Article 23 of this Decree,
- to purchase gas for its own consumption and the compensation of gas losses in the distribution system,

- to establish and ensure the work of its own telecommunication network for surveillance, metering and automatization of the distribution system, to limit or terminate the contracted gas distribution.

Distribution system operator shall have the right to limit or terminate the contracted gas distribution:

- in the case of direct endangerment of the lives and health of the people and property and for removing of such dangers,
- in the case of crisis situations and for the preventing the occurrence of crisis situation,
- for the purpose of planned maintenance or reconstruction of the distribution system,
- for the purpose of removing the malfunctions on the distribution system,
- when the devices connected on the distribution system take the gas in the manner which could endanger the lives and health of the people or property,
- in the case of the unauthorized consumption and unauthorized gas distribution,
- in the cases when the user does not comply with its contracted obligations.

## V GAS STORAGE SYSTEM OPERATOR

Determining of the gas storage system operator

### **Article 16**

Gas storage system operator shall be a legal person that has the permit for conducting the activity of gas storage.

Duties of the gas storage system operator

### **Article 17**

Gas storage system operator shall be obligated:

- to manage, maintain and develop a safe, reliable and efficient system of gas storage,
- to have a use permit for facilities of gas storage system,
- to connect the gas storage system on the gas system in accordance with the rules on the usage of the gas storage system, rulebook on compensation for connection on the gas network and for increase of the connected power,
- to establish and ensure the work of the dispatch centre for the operational management of the gas storage system, the system of measuring the input and output quantities and the parameters of the gas quality ,
- to storage the gas on the basis of the concluded contracts,
- to ensure objective, equal and open conditions of the access to the gas storage system in accordance with this Decree and bylaws,
- to make a plan for crisis situations on the basis of the prescribed measures and to update and submit it to the Minister for approval, once a year,
- to ensure, at the level of the distribution system measurement of the gas consumption including also reading the measuring devices and to submit to the transport system operator data necessary for balancing the gas system, in accordance with the decree and bylaws,
- to make and submit to the Ministry an annual report on reliability, safety and efficiency of the gas storage system, on executing the plan of the development of the system, quality of



meeting the needs of the users, maintenance of the system's equipment and fulfilling the rest of the duties and the use of the rights from this Decree,

- to make and submit to the Minister for approval a three year plan of development of the gas storage system,
- to give prescribed information to the transport system operator and the operators of the connected distribution systems for the safe and efficient functioning and development of mutually connected systems,
- to give prescribed information to the market participants directly connected on the gas storage system, sufficiently in advance, on the scope and the day of interruption of work of the gas storage system and the expected reduction of the storage capacities,
- to ensure the protection of the confidential data of the commercial character which it ascertain in conducting the activity and which have the attribute of the trade secret.

Rights of the gas storage system operator

### **Article 18**

Gas storage system operator shall have the right:

- to refuse the access to the gas storage system under the conditions from Article 23 of this Decree,
- to purchase gas for its own consumption and the compensation of gas losses in the gas storage system and for the purpose of maintaining of the basic mass of gas in the storage,
- to limit or temporary terminate the contracted gas storage.

Gas storage system operator shall have the right to limit or temporary terminate the contracted gas storage:

- in the case of direct endangerment of the lives and health of the people or property and for removing of such dangers,
- in the case of crisis situations and for preventing the occurrence of crisis situation,
- for the purpose of planned maintenance or reconstruction of the gas storage system,
- for the purpose of removing malfunctions on the gas storage system,
- in the cases when the user does not comply with its contracted obligations.

## **VI LNG PLANT OPERATOR**

Determining the LNG plant operator

### **Article 19**

LNG plant operator shall be the legal person that has the permit for conducting activities of management of LNG plants.

Duties of the LNG plant operator

### **Article 20**

The LNG plant operator shall be obligated:

- to manage, maintain and develop a safe, reliable and efficient work of the LNG plant,
- to have a use permit for LNG plant facilities,

- to connect LNG plant on the gas system in accordance with the rules on the usage of the gas storage systems. Rulebook on the compensation for connection on the gas network and for the increase of the connected power and the rules for the use of LNG plants,
- to establish and ensure the work of the centre for the operational management of the LNG plant, the system of measuring the input and output flows and the parameters of the gas quality,
- to unload and regasificate the gas on the basis of contracted contracts,
- to ensure objective, equal and open conditions of access to LNG plant in accordance with this Decree and bylaws,
- to make a plan for crisis situations on the basis of the prescribed measures and to update and submit it to the Minister for approval, once a year,
- to make and submit to the Ministry an annual report on reliability, safety and efficiency of the LNG plant, on executing the plan of the development of the system, quality of meeting the needs of the users, maintenance of the system's equipment and fulfilling the rest of the duties and the use of the rights from this Decree,
- make and submit to the Minister for approval a three year plan of development of LNG plant,
- to give prescribed information to the transport system operator and the operators of the connected distribution systems for the safe and efficient functioning and development of mutually connected systems,
- to give prescribed information to the market participants directly connected to the gas storage system, sufficiently in advance, on the scope and the day of interruption of work of the LNG plant and the expected reduction of the LNG plant capacities,
- to ensure the protection of the confidential data of the commercial character which it ascertain in conducting the activity and which have the attribute of the trade secret.

Rights of the LNG plant operator

### **Article 21**

LNG plant operator shall have the right:

- to refuse the access to LNG plant under the conditions of Article 23 of this Decree,
- to purchase gas for its own consumption and the compensation of gas losses in the LNG plant,
- to limit or temporary terminate the contracted unloading and regasification of LNG.

LNG plant operator shall have the right to limit or temporary terminate the contracted unloading and regasification of LNG:

- in the case of the direct endangerment of the lives and health of the people and property and for removing of such dangers,
- in the case of crisis situations and for preventing the occurrence of crisis situation,
- for the purpose of planned maintenance or reconstruction of the LNG plant,
- for the purpose of removing malfunctions on the LNG plant,
- in the cases when the user does not comply with its contracted obligations.

## VII THE THIRD-PARTY ACCESS RIGHT

The third-party access

### **Article 22**

In accordance with this Decree, the transport system operator, distribution system operator, gas storage system operator and LNG plant operator shall be obligated to insure an efficient and non-discriminatory access to the network of the transport system, distribution system, gas storage system and LNG plant.

Transport system operator, distribution system operator, gas storage system operator and LNG plant operator may not use confidential data of the commercial character obtained from the third persons when selling or purchasing gas for its needs, that is, opposite from the purpose for which those data are obtained.

The access to the transport system, distribution system, gas storage system and LNG plant shall define the Agency and all in the meaning of regulated or negotiating access.

Regulated access shall be based on the published tariff system, that is, methodology and tariff items applied objectively and are equal for all participants at the gas market.

Negotiating third-party access shall be based on the commercial conditions of network access.

Denial of the third-party access

### **Article 23**

The transport system operator, distribution system operator, gas storage system operator and LNG plant operator shall have the right of denial of access to the system in the case of:

- shortage of the capacity,
- when the access to the system disabled it in performing public service,
- when the access to the system could provoke serious financial and economic difficulties to the energy entity considering the contracts of the type "take-or-pay" concluded before the submission of the request for access approval, under the conditions from Article 24 of this Decree.

In the case of denial of access to the transport system, the transport system operator, distribution system operator, gas storage system operator and LNG plant operator must notify the party in writing on the reasons of denial of access.

Party to which is denied access to the gas transport system or which has objections on the conditions of access to the system may submit an appeal to the Agency. The Decision of the Agency shall be final and against it may be initiated an administrative dispute.

Transport system operator, distribution system operator, gas storage system operator and LNG plant operator, which denies the access to the system for the shortage of capacity or absence of connector must in the reasonable amount of time make necessary modifications and interventions in the system in order to enable access, if they are economically viable or if the potential user is willing to finance them.

Exemption for "take-or-pay" contracts

## **Article 24**

Energy entity for gas that is faced or considers to be faced with the serious economic and financial difficulties, due to the obligations accepted in one or several contracts of the type "take-or-pay" may submit a request for temporary exemption from the application of rights of access to the gas system to the Agency, in accordance with this Decree. The request may be submitted, from case to case, before or immediately after the denial of access to the system. With the request it must be accompanied the documentation with all relevant information on the nature and the extent of the problem and efforts which the energy entity for gas has invested for the purpose of solving problems.

In the case that other solutions are not at disposal, the Agency may approve the exemption from the application of the right of the access to the gas system considering:

- the objective of achieving competitiveness of the gas market,
- the need of fulfilling the obligations of the public service and insurance of security of supply,
- the position of energy entity for gas at the market and the actual level of the market competition,
- the seriousness of the economic and financial difficulties faced by the energy entity for gas and eligible customer,
- the day of concluding the contract and the conditions of one or more contracts of the type "take-or-pay" in question, including also the scope in which they enable changes at the market,
- efforts invested for the purpose of finding the solution to the problem,
- measure to which the energy entity for gas could anticipate the possibility of appearance of serious economic and financial difficulties by accepting the conditions from the contract of the type "take-or-pay",
- the level of system connectivity with the other systems and possibility of interaction,
- the consequences which the approval of the exemption could have for the implementation of this Decree for the purpose of correct functioning of the gas market.

Serious economic and financial difficulties from paragraph 1 of this Article shall not be considered if the gas supply does not fall down below the minimum guaranteed quantities of the taken gas defined in the contracts of the type "take-or-pay" or until the contracts of the type "take-or-pay" may be adapted or until the energy entity for gas is in the state to find other solution.

Direct gas pipeline

## **Article 25**

Energy entity for gas that wants to contract gas supply but for the technical or some other reasons may not insure the right to the access of the distribution or the transport system, may construct a direct pipeline.

According to the provision of paragraph 1 of this Article, the construction of the direct gas pipeline may be accessed only on the basis of approval of the Ministry.

Exemption for the new infrastructure

## **Article 26**

Large new infrastructural facilities of the gas system like interstate connecting gas pipelines, gas storage system and LNG plant may be exempt, at the request, from the application of the third party access right from Article 22 of this Decree under the following conditions:

- investment must enhance market competition in gas supply and increase the safety of supply,
- the risk level connected with the investment is such that the investment would not be realized, except if the exemption is approved,
- the infrastructure must be owned by a legal person in the independent legal entity separate from the system operator in the framework of which the new infrastructure will be constructed,
- new infrastructure users must pay compensation for the use of the new infrastructure,
- the exemption shall not be harmful for market competition or efficient functioning of the market.

Paragraph 1 of this Article shall be applied also on the significant capacity increase of the existing infrastructures and upgrade of these infrastructures by which is enabled the development of the new sources of gas supply.

The Decision on the exemption from paragraphs 1 and 2 of this Article shall pass the Ministry.

In the case of the interstate connected gas pipeline, each decision on the exemption may be passed only after the consultation with the other states or regulatory authorities concerned.

## VIII CONCESSIONS

The area covered by the concession

### **Article 27**

Concession for the gas distribution at the area where there already exists the distribution system or the concession for the construction of the distribution system and the gas distribution shall be given for the canton's area or the part of the canton's area.

Assemblies of the two or several cantons may decide to give mutual concession for gas distribution or concession for the construction of the distribution system and gas distribution for the canton's area or the part of the canton's area.

Concession for the construction of the distribution system and the gas distribution shall be given for the two entities' area or the part of the two entities' area if that area belongs to the entities' edge area.

Granting the concession

### **Article 28**

Concession for the construction of the distribution system and the gas distribution at the area where there is no distribution system shall be given on the basis of the public call under the condition that the construction of the distribution system will enable the delivery to the customers at least 7 millions m<sup>3</sup> gas per year.

Exceptionally from the provision of paragraph 1 of this Article, the concession for the construction of the distribution system and the gas distribution may be given, with the previous approval of the Ministry, in the case if the construction of the new network shall disable the delivery to the end customers at least 7 million m<sup>3</sup> gas per year, if that is justified by the reasons from the aspect of the geographical area on which the system is constructed,

the environment protection and the nature and/or the policy of the economic development of that area and if there is an economic justification for the same.

The Ministry shall give the approval for this exemption on the basis of the request of the canton that grants the concession and the documentation that justifies the request for the exemption.

The concession for gas distribution in the area where there is a distribution system shall be granted at the request of the energy entity for gas which conducted the activity of gas distribution at the certain area on the basis of the concession which has expired or other legal basis which has ceased. The concession for the distribution shall include also the right on the construction for the purpose of capacity increase of the distribution system within the area for which the concession is granted.

Public call for granting the concession from the provision of paragraphs 1,2 and 3 of this Article may not be published without the previous opinion of the Ministry and which is issued on the basis of the security and fulfillment of the following conditions:

- adopted spatial plan of the long-term development of the canton,
- study is carried out of the gasification of the cantons/cantons with the decision of connection on the existing transport system or the distribution system,
- study is carried out of the economic feasibility,
- situation assessment is carried out related to the environment and nature protection,
- obtained energy consent of the transport system operator,
- obtained energy consent of the distribution system operator.

The procedure of granting the concession from Article 27, paragraph 3 of this Decree shall be determined in accordance with the Law on Concessions of Bosnia and Herzegovina (Official Gazette of the BiH, number 32/02), the Law on Concessions of the Federation of Bosnia and Herzegovina (Official Gazette of the Federation of BiH, number 40/02), Rulebook on the Procedure of Granting the Concession of the Federation of Bosnia and Herzegovina (Official Gazette of the Federation of BiH, number 17/06) and the cantonal laws on concession.

## IX SUPPLIER

The selection of the gas supplier of the eligible customer

### **Article 29**

The eligible buyer has the right on the free selection of the gas supplier, which also includes the right on the change of the gas supplier, in accordance with this Decree and bylaws.

Determining the gas supplier of the tariff customers

### **Article 30**

For the gas supplier of the tariff customers in the FBiH, the Ministry shall determine that company which fulfills the condition from Article 32, paragraph 1 of this Decree.

The permit for conducting energy consent for natural gas supply, the Ministry shall issue to the legal person which is registered for conducting that activity and fulfills the conditions of technical qualifications, professional qualification and financial qualifications prescribed by the Rulebook on Conditions for Conducting Energy Activity passed by the Ministry.

Regulating the price of the gas supplier

### **Article 31**

At the proposal of the Federal Ministry of Trade, with the previous procured opinion of the Ministry, the Government of FBiH shall regulate the price of gas supply to the gas supplier of the tariff customers that conduct the public service in FBiH.

The company "BH-Gas" d.o.o. Sarajevo shall regulate the price of gas supply for tariff customers which are not included in paragraph 1 of this Article. "BH-Gas" d.o.o. Sarajevo shall be obligated to notify the Ministry on each change of the price in the written form. Regulating the price of the natural gas for the tariff customers from paragraphs 1 and 2 of this Article shall be established on the basis of the price of petroleum and petroleum products at the world market as the initial basis for calculation, defined periods of delivery, relations of the planned quantities and realized gas quantities, seasonal or daily dynamics of the delivery to the tariff customers, the relations of the contracted and the delivered gas quality as the other calculating elements of the price of the delivered gas.

Duties of the gas supplier

### **Article 32**

Gas supplier shall be obligated :

- to have the permit for conducting energy activity of natural gas supply,
- to conduct the activity of gas supply in the safe, reliable and efficient manner in accordance with this Decree,
- to give prescribed information to the transport system operator for the purpose of reliable, safe and efficient functioning of the transport system,
- in the time of declaration of the crisis situation and for the purpose of preventing the occurrence of the crisis situation, to follow the instructions of the dispatch, that is, the management centre of the corresponding operator,
- to ensure the compliance of the taken and delivered gas quantities, in accordance with this Decree,
- to maintain the contracted parameters of the quality supply of the gas customers, in accordance with the conditions from the contract for the natural gas supply,
- in its business books, according to the rules of the internal accounting, to keep separately the data which relate to the supply of the eligible customers and the supply of the tariff customers,
- to submit to the transport system operator prescribed data on all concluded contracts on gas supply,
- to deliver to the Ministry the report on the achievement of the safety of supply in the previous calendar year.

If it supplies the protected customer from Article 40 of the Decree, the gas supplier shall be obligated to supply it with the sufficient amount of gas in accordance with the Decree and bylaws in the case of:

- partial disturbance in the gas supply that causes the decrease of gas import in the FBiH,
- extremely low medium daily air temperatures in the five day period.

Rights of the gas supplier

### **Article 33**

Gas supplier shall have the right:

- to purchase and sell gas,namely, supply with gas the other participants at the gas market, on gas supply, but at the regulated prices, if it supplies the tariff customers on the basis of the contract or this Decree,
- on the access to the network of the transport system, distribution system, gas storage system and LNG plant in accordance with the Article 22, paragraph 3 of the Decree,
- to abort or terminate the delivery in the case of the unauthorized gas consumption in the case when the customer does not comply with the conditions from the contract.

## X CUSTOMER

Determining the eligible customer

### **Article 34**

Eligible customer shall be:

- the customer that spends gas for the electricity generation, independently on the amount of the annual consumption and in the limits of the gas quantity intended to such use,
  - the end customer that spent more than 150 million m<sup>3</sup> of gas in the previous calendar year.
- The contracts on gas supply with the eligible customer in the system of other state are allowed under the conditions that the customer is privileged in F BiH and in that other state. Contracts on gas supply with the gas supplier in the composition of the other state shall be allowed under the conditions that the illegible customer is privileged in F BiH and in that other state.
- Provisions of paragraphs 2 and 3 of this Article shall be also applied accordingly on the relations between the two entities.

Duties of the eligible customer

### **Article 35**

Eligible customer shall be obligated :

- to connect its devices for gas reception at the transport system or appropriate distribution system, in accordance with this Decree and obligations which derive from the bylaws,
- to enable the operator of the transport or distribution system on which the eligible customer is connected, the installation of the measuring device,
- to ensure the system operator on which the eligible customer is connected the access to the measuring device,
- to follow the instructions of the dispatch or management centres,
- to maintain the device for gas reception in such state that it does not present threat to the life and health of the people or property and in the case of malfunction to remove such malfunction without delay,
- to comply with the rules in accordance with this Decree and bylaws,
- to give necessary information on the transport system operator, distribution system operator, in the case it contracts the use of their services,
- in the case that it contracts the use of the transport or distribution system, to insure the compliance of gas quantities which it takes from the gas system with the quantities which it submitted into the gas system.



## Rights of the eligible customer

### **Article 36**

Eligible customer shall have the right:

- to free selection and the change of the gas supplier, in accordance with this Decree and bylaws,
- to connect its devices for the reception of the gas on the transport system or distribution system, in accordance with the concluded contracts and bylaws,
- to use the services of the transport system operator, distribution system operator, gas storage system operator and the services of the LNG plant operator on the basis of concluded contracts,
- to construct direct gas pipeline under the conditions prescribed by this Decree,
- to the access on the transport system, distribution system, gas storage system in accordance with this Decree and bylaws.

## Determining the tariff customer

### **Article 37**

Tariff customer shall be the customer that does not have the status of the eligible customer. Tariff customer shall acquire the status of the eligible customer in accordance with this Decree.

## Duties of the tariff customer

### **Article 38**

Tariff customer shall be obligated:

- to connect its devices for the reception of gas on the transport system or the appropriate distribution system, in accordance with this Decree and bylaws,
- to enable the operator of the transport or the distribution system, on which the tariff customer is connected, the installation of the measuring device,
- to insure the system operator, on which the the tariff customer is connected, the access to the measuring device
- to follow the instructions of the dispatch centre,
- to maintain the device for reception of gas in such state that it does not represent threat for the life and health of people or property and in the case of malfunction, such malfunction to remove without delay,
- to comply with the Rulebook defined with the establishment of the Agency.

## Rights of the tariff customer

### **Article 39**

Tariff customer shall have the right:

- to gas supply by the regulated prices,
- to connect its devices for the reception of gas on the transport system or distribution system, in accordance with this Decree and bylaws.

## Protected customer

### **Article 40**

Protected customer shall be the customer that has the right to supply with the sufficient quantity of gas in the case of partial disturbance in the gas supply and extremely low medium daily air temperatures but only in the case which does not have alternative solution of energy supply and it belongs to the following category:

- household,
- customer which conducts healthcare activity (including rehabilitation and care of the sick), educational activities and the activities in the area of social care and the customer that purchases the gas for heating the premises intended for the accommodation of the people (student dormitories, hotels and other facilities used for overnight stay),
- the customer that purchases the gas for the purpose of generation of the heat energy for heating premises of the customers from indents 1 and 2 of this Article and that in the scope necessary for the generation of that heat energy,
- system operator that purchases the gas for its own consumption, that is, for the drive of the gas system.

## XI SEPARATION OF THE ACTIVITIES

Separation of the activities of the transport system operator, distribution system, gas storage system and LNG plant.

### **Article 41**

Transport system operator that belongs to the vertically integrated energy entity must be independent from other activities which are not related with the transport in the sense of the legal status, organization and making decisions, which does not create the obligation to separate the ownership over the property of the transport network from the vertically integrated company.

Paragraph 1 of this Article shall be applied also on the activity of the operator of the distribution system, gas storage system and LNG plant.

The activity of the distribution system operator which is the part of the horizontally integrated entity must be organized in the independent legal entity and independently from the activity outside the gas sector.

#### **Article 42**

In accordance with the Article 41, paragraphs 1 and 2, the independence of the transport system operator, distribution system operator, gas storage system operator and LNG plant operator shall be insured by fulfilling the following criteria:

- persons who are responsible for the management of the mentioned system operators may not participate in managing other activities in the gas sector (generation and supply),
- taking measures which will guarantee that the persons responsible for the management of the operators of the mentioned systems act professionally,
- that the operator autonomously decides on the means necessary for the drive, maintenance and development of the system which it manages, independently from the other activities performed by the vertically integrated entity.

With the paragraph 1 of this Article shall not be changed the right of the parent entity in the system of the vertically integrated energy entity to approve to the operator the annual financial plan and set boundaries of its indebtedness.

The parent entity shall not have the right to give to the system operator the instructions related to its daily business nor for the individual decisions which relate to the construction or modernization of the parts of the system managed by the operator, if such a decision derives from the approved annual financial plan.

#### **Article 43**

In accordance with the Article 41, paragraph 3, the independence of the distribution system operator shall be insured by fulfilling the following criteria:

- persons who are responsible for the management of the mentioned system operators may not participate in managing other activities in the gas sector (generation and supply),
- taking measures which will guarantee that the persons responsible for the management of the mixed operator of the mentioned systems act professionally,
- that the operator autonomously decides on the means necessary for the drive, maintenance and development of the system which it manages, independently from the other activities performed by the horizontally integrated entity.

With the paragraph 1 of this Article shall not be changed the right of the parent entity in the system of the horizontally integrated energy entity to approve to the operator the annual financial plan and set boundaries of its indebtedness.

The parent entity shall not have the right to give to the system operator the instructions related to its daily business nor for the individual decisions which relate to the construction or modernization of the parts of the system managed by the operator, if such a decision derives from the approved annual financial plan.

#### **Article 44**

The transport system operator, distribution system operator, gas storage system operator and LNG plant system operator shall be obligated to issue the programme of measures for the purpose of the insurance of the application of the impartial conditions of the access to the system which it manages, including also the special obligations of the employees and deliver it for the opinion of the Ministry.

From the paragraph 1 of this Article, the transport system operator shall be obligated to submit to the Ministry until 1 March of the current year, the annual report on the implementation of the programme of measures for the previous year.

Transport system operator shall be obligated to publish on its Websites the programme of measures and the report on the realized programme of measures for the previous year.

Mixed operator

#### **Article 45**

Exceptionally from the provision of Article 41, paragraphs 1 and 2 of this Decree, the activity of the transport system operator, the distribution system operator, gas storage system operator and LNG plant operator may be organized together, in the framework of the mixed operator activity, but which is independent regarding its legal status, organization and decision making from the activities of gas supply, what does not create the obligation to separate the ownership over the property of the transport network from the vertically integrated company. Provisions of this Decree on the duties and rights of the transport system operator including the provisions on the duties and rights of the distribution system operator, gas storage system operator and LNG plant operator shall be appropriately applied on the duties and rights of the mixed operator.

Mixed operator, which is the part of the vertically integrated energy entity must organize its activities in the autonomous legal person independently from the production and gas supply.

#### **Article 46**

In accordance with Article 45, paragraph 3, the independence of the mixed operator shall be insured by fulfilling the following criteria:

- members of the administration of the mixed operator, that is the part of the integrated energy entity may not participate in managing the activities of gas supply,
- to take into consideration the professional interests of the members of the administration of the mixed operator,
- that the mixed operator autonomously decides on the means necessary for the drive, maintenance and development of the system which it manages, independently from the gas production and gas supply.

With the paragraph 1 of this Article shall not be changed the right of the parent entity in the system of the integrated energy entity to approve to the mixed operator the annual financial plan and set boundaries of its indebtedness.

The parent entity shall not have the right to give to the mixed system operator the instructions related to its daily business nor for the individual decisions which relate to the construction or modernization of the parts of the system managed by the operator, if such a decision derives from the approved annual financial plan.

#### **Article 47**

Mixed operator shall be obligated to issue programme of measures for the purpose of insurance of application of the impartial conditions of the access to the system, which it manages, including also the special obligations of the employees, and submit it for the opinion of the Ministry.

From the paragraph 1 of this Article, the mixed operator shall be obligated to submit to the Ministry until 1 March of the current year, the annual report on the implementation of the programme of measures for the previous year.

Mixed operator shall be obligated to publish on its Websites the programme of measures and the report on the realized programme of measures for the previous year.

Accounting separation of the activity

#### **Article 48**

Energy entities for gas shall be obligated to make, publish and audit the annual financial reports in accordance with the applicable legislation.

Energy entities for gas which do not have legal obligation of publishing the annual reports must provide insight into its financial reports in the place of its headquarters.

The audit of the annual financial report must confirm that the principle of non-discrimination of the users of the gas system and also avoiding of the mutual subsidisation of the regulated and market activities in the gas sector was respected. The annual financial reports must contain all data on the transactions related to the energy entities.

#### **Article 49**

Energy entities for the gas shall be obligated that in their business records, according to the rules of the internal accounting keep the data separately which relate on the gas transport activity, gas distribution and gas storage and management of LNG plant for the purpose of application of the principles of non-discrimination of the users of the gas system, avoiding the mutual subsidisation of the regulated and market activities and distortion of the market competition. For the other activities in the gas sector, the energy entities for gas shall be obligated to keep data separately, which may be consolidated.

#### **Article 50**

Energy entities for gas shall be obligated that in their business records, according to the rules of internal accounting to keep the data separately which relate to the activity of supply of the eligible customers and activity of supply of the tariff customers.

After the opening of the gas market, the energy entity shall be obligated that in their accounting books, according to the rules of internal accounting to keep the data separately which relate to the activity of gas supply of the eligible customers from the household category and the rest of the eligible customers.

In the framework of the rules of the internal accounting, the energy entities for gas shall be obligated to establish the rules for allocating of the property, obligations, incomes, costs and amortization at the activity of transport, distribution, gas storage, management of the LNG plant and for the rest of the activities in the gas sector.

The right of the access to the business records

#### **Article 51**

Energy entity for gas shall be obligated to enable the Ministry access to the business records, which include the right of the Ministry to request all necessary notifications, submission of the relevant data, direct insight into the business records, accounting documents, financial reports and other documentation of the energy entity and undertaking other actions necessary for performing operations from the competence of the Ministry.

## XII TECHNICAL REGULATIONS

### **Article 52**

Gas pipelines, gas plants and gas installations must be reliable in the operation and safe for the people, animals and environment and they must be designed, constructed, exploited, maintained and removed in accordance with the technical regulations and other rules of the profession.

### **Article 53**

For the purpose of achievement of the technical safety, it is necessary to adopt and publish technical regulations with the minimum requirements for the necessities of the design, commissioning, work and maintenance of the system of transport, distribution, gas storage, LNG plant and direct gas pipelines.

Regulations from paragraph 1 of this Article should ensure the compatibility of the interstate connecting gas pipelines and also they should be objective and non-discriminatory.

For meeting of requests from paragraphs 1 and 2 of this Article for the necessities of the FBiH shall be given the support to the project "Harmonization and technical regulations in the gas sector of the countries of Southeast Europe" which is done in coordination with "DVGW" - German gas and water association and "IGT" as the operational executor before the Gas Association of Bosnia and Herzegovina.

Project holders from paragraph 3 of this Article shall be competent and responsible in the area of interpreting of technical regulations and passing the rules of the profession.

The Minister shall pass the implementing regulation for the part of the technical regulation passed and verified by the Coordinated Committee of the project from paragraph 3 of this Article.

The Minister shall successively after the nomination pass appropriate implementing regulation for all other technical regulation passed and verified by the Coordinated Committee until the final completion of the project from paragraph 3 of this Article.

### **Article 54**

The liability for the implementation of the regulations shall bear the designers, manufacturers and equipment importers, contractors, users, companies for maintenance and servicing as well as the third parties for the possible effects which may endanger the reliability and safety of any of the facility, in the function of the natural gas.

## XIII SUPERVISION

### **Article 55**

Administrative supervision over the implementation of this Decree shall implement the Ministry.

The Ministry shall perform supervision over the legality of the administrative and other acts which according to this decree pass the legal persons.

Inspection supervision over the implementation of this Decree shall perform the Federal Administration for Inspection Affairs and other competent inspectors in accordance with the applicable legislation in the territory of FBiH.

#### XIV PENAL PROVISIONS

##### **Article 56**

A fine amounting from BAM 2 500 to BAM 12 500 shall be imposed for the offence by the energy entity which does not perform its activity in accordance with the provisions of this Decree and bylaws for gas passed according to this Decree.

A fine amounting from BAM 1 000 to BAM 3 000 shall be imposed for the nonperformance of the obligations provided for by paragraph 1 of this Article on the liable person in the energy entity.

In addition to the penalty for the offence, the energy entity which has committed several offences or within a year the energy entity repeats the offence from paragraph 1 of this Article, shall be imposed a protective measure of prohibition of conducting the activity up to a year and the liable person from paragraph 2 of this Article shall be imposed a protective measure of prohibition of conducting the same operations up to a year.

#### XV TRANSITIONAL AND FINAL PROVISIONS

##### Competence

##### **Article 57**

The agency shall be an independent regulator of the energy activities which will be established by the relevant regulations of FBiH/BIH (hereinafter: the Agency).

Until the establishment of the Agency, the function of the gas system regulator shall perform the Ministry.

##### Market opening

##### **Article 58**

Gas market shall be opened gradually, in the manner that the provisions of the Articles 34 and 37 will be applied after the establishment of the Agency.

Due to the characteristics of the market of the natural gas sector in Bosnia and Herzegovina/FBiH in the sense of the limited number of the end customers, undeveloped gas transport system, gas import only from one transport direction to Bosnia and Herzegovina, it is necessary to create the initiative for postponement of the application of market opening from Article 23, that is, the application of Article 28 EU2003/55/EC of the Directive dated on 26 June 2003 which is about the natural gas market in emerging and isolation.

With the initiative for postponement of the application of market opening it is possible to achieve postponement of the requests specified in the Treaty Establishing the Energy Community of the Countries of the Southeast Europe signed by Bosnia and Herzegovina.

The procedure of the selection of the gas supplier for the process of market opening, determining the bearer of the obligation of public service of gas supply shall be defined by the establishment of the Agency and passing the appropriate regulations.

Separation of the activities

### **Article 59**

Until the fulfillment of the conditions from Article 30, paragraphs 1 and 2 for conducting operations related to gas supply of the consumers in FBiH shall be determined the company "Energoinvest" d.d. Sarajevo and "BH-Gas" d.o.o. Sarajevo.

The Ministry may determine the entity which will conduct the operations related to the consumers' supply, if functional changes occur in the organization of the present state related for gas supply of the consumers from the paragraph 1 of this Article.

Exceptionally from the Article 41, paragraph 1 and Article 45, paragraph 1 in the sense of the legal separation and Articles 48,49 and 50 in the sense of the accounting separation of the vertically integrated entity, the company "BH-Gas" d.o.o. Sarajevo shall fulfill its obligations in the transitional period not longer than five years.

Bylaws in the gas sector

### **Article 60**

The Government of the FBiH shall pass the Decree on the safety of natural gas supply within 18 months from entering into force of this Decree and also the general conditions for natural gas supply after the establishment of the Agency.

The Agency shall pass tariff systems for the regulated prices in the gas sector, network rules of the transport system, network rules of the distribution system, rulebook on the compensation for the connection on the gas network as well as for the increase of the connected power.

The Minister shall pass the rulebook on conditions for conducting energy activity within 12 months from the day of entering into force of this Decree.

The Minister shall pass the rulebook on taking technical regulations for the area of natural gas within 12 months from the day of entering into force of this Decree.

At the proposal of the Ministry, liquefied petroleum gas (LPG) sector will be regulated by the special implementing regulation which shall pass the Government of FBiH within 12 months from the day of entering into force of this Decree.

Entry into force

### **Article 61**

This Decree shall enter into force on the day following its publication in Official Gazette of the Federation of BiH and it shall be effective until the adoption of the relevant legal decisions at the level of FBiH/BiH.



V number 778/07  
31 October 2007  
Sarajevo

Prime Minister  
dr. Nedžad Branković, handwritten signature