

Without prejudice, informal translation, Dutch Gas Act, sections possibly relevant to Gasstorage.

Section 1

1. The following definitions shall apply to this Act and the provisions based thereon:

- a. "Our Minister": Our Minister of Economic Affairs;
- b. "gas": a substance to be found in a gaseous state at a temperature of 15^o Celsius and a pressure of 1.01325 bars, consisting mainly of methane or another substance which is the equivalent of methane in respect of its properties;
- c. "gas production network": one or more pipelines which are a part of an oil or gas extraction project or are used for the transmission of gas directly from a gas extraction project to a processing facility, a storage facility or a landing terminal;
- d. "gas transmission network": interconnected pipelines or auxiliary facilities, intended or used for the transmission of gas, that are not part of a gas production network, including cross-border pipelines and auxiliary facilities and installations which are necessarily linked to the provision of transmission services, with the exception of a customer's pipelines, auxiliary facilities and installations, which are located on premises that are the property of the said customer;
- e. "gas transmission company": a company appointed under section 2 to manage a gas transmission network;
- f. "gas storage installation": an installation for storing gas, including the part of an LNG installation used for storage, but excluding the part used for producing gas and excluding installations intended solely for the purposes of the operator of the national gas transmission network in the performance of its duties;
- g. "gas storage company": a natural person or a legal person that manages a gas storage installation;
- h. "LNG installation": an installation used to liquidise gas, or to feed in, ship or regasify liquid gas, including supporting services and temporary storage necessary for the regasification process and the subsequent supply to the transmission system, except the installation parts used for storage;
- i. "LNG company": a natural person or a legal entity that manages an LNG installation;
- j. "gas company": a gas transmission company, a gas storage company, an LNG company or a natural person or legal entity that carries out the production, purchase or supply of gas, but that is not an end user of such gas;
- k. "an affiliated company": a related company in terms of section 41 of the Seventh Directive (No. 83/349/EEC) of the Council of 13 June 1983 based on section 54(3)(g) of the Treaty, relating to the consolidated annual accounts of an associated company in terms of section 33(1) thereof, or a company owned by the same shareholders;

- l.** "network user": the party for whom gas is transmitted by means of a gas transmission network;
 - m.** "connection": one or more connections between a gas transmission network and real estate, as referred to in sections 16(a) to 16(e) of the Property Valuation Act;
 - n.** "national gas transmission network": a gas transmission network, except for a gas transmission network within the meaning of [Section 18h, subsection \(1\)](#), intended or used solely or principally for nationwide gas transmission;
 - o.** "customer": a person with a connection to a gas transmission network;
 - p.** "licence holder": a holder of a supply licence, as referred to in section 43;
 - q.** "Directive": Directive No. 2003/55/EC of the European Parliament and the Council of the European Union of 26 June 2003, in respect of community rules for the internal market in natural gas and repealing Directive 98/30/EC (OJEC, L 176);
 - r.** "board of the competition authority": the board of the competition authority referred to in [Section 2 of the Competition Act](#);
 - s.** [repealed;]
 - t.** "supporting services": services necessary for access to or functioning of gas transmission networks, LNG installations or storage installations, including absorbing fluctuations in the load of the gas transmission network and mixing, but excluding installations intended solely for the purposes of the operator of the national gas transmission network in the performance of its duties;
 - u.** "economic ownership": lawful entitlement to all rights and powers concerning an asset, excluding the right to delivery, and the obligation to fulfil all commitments concerning such asset and thus bear the full risk of a change in value or destruction of the asset, without the asset having been delivered;
 - v.** "Regulation": Regulation (EC) No. 1775/2005 of the European Parliament and Council of the European Union of 28 September 2005 on conditions for access to natural gas transmission networks (OJ EU L 289).
- 2.** Under a General Decree in Council, this Act may be declared applicable, fully or partly, to gaseous substances other than the substance referred to in subsection (1) at (b).

Section 9a

1.

A party that possesses a gas storage installation or an LNG installation shall designate a operator of such installation for the purpose of performing the duties referred to in Section 10.

2.

The following provisions shall apply *mutatis mutandis* to the designation of a operator within the meaning of subsection (1):

a.

Section 2, subsection (3), with the proviso that the period of ten years shall start on the day on which Our Minister has been notified of the designation in accordance with Section 4, subsection (1),

b.

Section 4, subsection (1),

c.

Section 5, subsection (1), with the proviso that the operator does not need to be a public or private limited company, and

d.

Section 6, subsections (1), (2) and (3), with the proviso that the operator does not need to be a public or private limited company.

Section 10

1. A gas transmission company, a gas storage company or an LNG company is required to operate, maintain and develop its gas transmission network or, alternatively, its gas storage installation or its LNG installation subject to economic criteria, in a manner that ensures the safety, efficiency and reliability of the gas transmission network or the installation and the transmission of gas and spares the environment.
2. A gas transmission company, gas storage company or LNG company shall provide:
 - a. other gas transmission companies, gas storage companies and LNG companies with sufficient information to ensure that the transmission and storage of gas with the aid of its gas transmission network or, alternatively, its gas storage installation or its LNG installation and the gas transmission networks linked to these takes place safely and efficiently.
 - b. users of the gas transmission network or installation with all the data they need for efficient access to the network or installation.
3. Additional to the duties referred to in subsection (1), a gas transmission company shall further:
 - a. create interconnections with other gas transmission networks and perform repairs on its gas transmission network, and
 - b. publish in an appropriate way on its website, without prejudice to [Section 37](#), data about interconnections between gas transmission networks, the use of such networks and the allocation of transmission capacity;
 - c. take measures in the event of bankruptcy of a supplier of gas to customers within the meaning of [Section 43, subsection \(1\)](#).
4. Gas transmission companies within the meaning of subsection (1) shall apply the provisions of subsections (1), (2) and (3) without any form of discrimination between users of the gas transmission networks or installations.

Section 18

1.

Sections 18(a) to 18(f) shall apply *mutatis mutandis* to gas storage companies, in so far as these gas storage companies hold a position of economic power.

2.

Operators of gas storage installations officially granted a licence within the meaning of [Section 25, subsection \(1\) of the Mining Act](#) under [Section 149, subsection \(1\) of that Act](#) shall be considered gas storage companies within the meaning of subsection (1).

3.

It may be determined by General Administrative Decree that subsection (2) shall not apply. This General Administrative Decree shall be presented to both Houses of Parliament. The Decree shall take effect on a date to be determined by Royal Decree after four weeks have passed since the presentation thereof, unless within this period notice is given by or on behalf of one of the Houses of Parliament or by at least one fifth of the number of members, in accordance with the Constitution, of one of the Houses of Parliament of the wish to make the General Administrative Decree law by an Act of Parliament. A Bill to that effect will then be submitted as soon as possible. If the Bill is withdrawn, or if one of the Houses of Parliament decides not to approve the Bill, the General Administrative Decree shall be revoked.

Section 18a

1.

Rules may be determined by Ministerial Decree with regard to the application of sections 18(b) to 18(f). The importance of promoting trade and promoting efficient action by gas storage companies and users of installations shall be taken into account when laying down such ministerial Decree.

2.

The board of the competition authority may give a gas storage company binding instructions concerning approximate tariffs and conditions.

Section 18b

1.

A gas storage company publishes each year before 1 July an indication of the tariffs and conditions that the company intends to apply in the following calendar year for the storage of gas and the services necessarily related to this.

2.

A gas storage company shall enter into negotiations with organisations representing network users with regard to the indicative tariffs and conditions.

3.

A gas storage company shall send the information referred to in subsection (1) to the board of the competition authority.

Section 18c

1.

A gas storage company, where applicable together with an affiliated company, shall be obliged to enter into negotiations with whoever requests this with regard to the carrying out of gas storage and services necessarily related to this with the aid of its gas storage installation and one or more of the installations of the affiliated company, in so far as the use of such installations is necessary for such storage or services that support such storage.

2.

The storage of gas and the services necessarily related to this shall be carried out on the basis of the agreements reached in accordance with subsection (1).

3.

Subsections (1) and (2) shall be carried out subject to conditions that are reasonable, transparent and non-discriminatory.

4.

At the request of one or more of the parties involved in the negotiations, the board of the competition authority may set a period within which the negotiations must be concluded.

5.

If the negotiations do not result in an agreement within the period referred to in section (4), the gas storage company shall inform the board of the competition authority of the reasons for this within two weeks.

Section 18d

1. A gas storage company or, if applicable, an affiliated company may refuse to carry out the storage of gas or the services necessarily related to this if:

- a.** the capacity is not available within its gas storage installation or, alternatively, in the installations of the affiliated company, referred to in section 18(1)(c), for the storage of the quantity of gas in question or, alternatively, if it is not reasonable to require the gas storage installation to make all its capacity available;
- b.** carrying out the storage of the gas in question, or the services necessarily related to this, would obstruct the gas storage company or a gas transmission company for which it already carries

out the storage in the performance of its duties referred to in section 10; 10(a), 42 and 54(a) and chapter 2.

2. A refusal, as referred to in subsection (1), shall be accompanied with the reasons for this.

Section 18e

1. Disputes concerning the way a gas storage company applies the provisions of [Section 18\(c\)](#) and [Section 18\(d\)](#) shall be settled by the board of the competition authority, subject to this Act, in accordance with the procedure laid down in [Sections 59, 60 and 61 of the Competition Act](#).
2. Rules may be determined by General Administrative Decree in relation to the data to be submitted by the parties to the dispute, as well as in relation to the periods in which data must be submitted.
3. If a dispute relates to a condition or a tariff for the storage of gas or for a service necessarily related to this, the board of the competition authority may determine the said condition and the said tariff for a period to be decided by it.

Section 18f

Sections 72 and 73 shall apply *mutatis mutandis*.

Section 18g

1.
If technically or economically necessary for efficient access to gas storage or services that support such storage, gas storage companies other than those referred to in Section 18, subsection (1) shall negotiate with a party that so requests, as and when necessary together with an associated company, on the tariffs and conditions for performing gas storage and services that support such storage by means of their installations and one or more installations of the associated company, insofar as use of such installations is necessary for the storage.
2.
Gas storage and services that support such storage shall be performed based on the tariffs and conditions agreed under the provisions of subsection (1).
3.
The gas storage company shall apply objective, transparent and non-discriminatory tariffs and conditions for gas storage and for services that support such storage.
- 4.

Each year before 1 October, the gas storage company shall publish in an appropriate way an indication of the tariffs and conditions the company intends to apply in the next calendar year for performance of gas storage and services that support such storage.

Section 18h

1. On request Our Minister may grant exemptions from [paragraphs 2.2, 2.3, 2.4](#) and [2.5](#) in the case of large, new cross-border gas transmission networks, LNG installations and storage installations, provided that the following conditions are met:
 - a. installation of the network or the installation must strengthen gas supply competition and security of supply;
 - b. the risk of the investment necessary to construct the network or the installation must be so great that without exemption construction would not take place;
 - c. the network or the installation must be owned by a party other than the operator of the network or the installation to which the new network or new installation will be connected;
 - d. the users of the network or the installation will be charged a tariff; and
 - e. exemption must not obstruct competition or the efficient functioning of the internal gas market or the efficient functioning of the network or the installation to which the new network or new installation will be connected.
2. The provisions of subsection (1) shall apply *mutatis mutandis* to significant expansions of the capacity of existing networks or installations and to modifications of existing networks or installations that promote development of new gas supply sources.
3. The exemption may concern an entire new network or entire new installation or, as the case may be, a significant expansion or modification of an existing network or existing installation or parts thereof.
4. The board of the competition authority shall submit a recommendation before Our Minister decides on a request for exemption. The recommendation shall be made known not later than at the same time as the announcement of the decision on the request.
5. Our Minister shall consult with the competent authorities in the other member state(s) of the European Union in the case of construction of a cross-border network.
6. Our Minister may attach to the exemption conditions concerning the term of validity of the exemption and the non-discriminatory access to the network or the installation. Our Minister shall in all instances take into account the duration of agreements, the size of the new capacity or the modification of existing capacity, the duration of the project and the national circumstances.

7. Our Minister may attach to the exemption requirements concerning the management and allocation of capacity, with the proviso that such requirements may not obstruct the performance of agreements for a prolonged period of time.
8. Our Minister shall take a decision on the application as soon as possible, but at the latest within four months after receiving the application.
9. If Our Minister has granted an exemption, as referred to in subsection (1), he shall notify the Commission of the European Community of this without delay, and shall submit any data of importance in this regard.
This data shall include in all instances the data referred to in Article 22 (4), (a) to (e) inclusive of the Directive.
10. If a definitive decision of the Commission, as referred to in section 30(2) of the Directive, requires an amendment or the revocation of the exemption, Our Minister is obliged to implement this without delay.
11. A decision within the meaning of subsection (1) shall not take effect before expiry of the term referred to in Article 22 (4) of the Directive within which the Commission of the European Communities may request modification or revocation. If the Commission of the European Communities has made a request for modification or revocation within the term referred to in the previous sentence, the decision shall not take effect before the Commission of the European Communities has taken a final decision within the meaning of Article 30 (2) of the Directive.
12. A decision as referred to in subsection (1) shall be announced in the *Netherlands Government Gazette*. A decision as referred to in subsection (10) shall be announced in the *Netherlands Government Gazette*.

Section 60

1. Activities under [Section 19, subsections \(1\) and \(2\)](#) shall be performed by persons uninvolved in activities under [Chapter 2, paragraphs 2.2 and 2.3](#).
2. The board of the competition authority may issue binding instructions for compliance with provisions made under or pursuant to this Act and the Regulation. Such a decision shall be published in the Netherlands Government Gazette. Data that may not be disclosed under [Section 10 of the Government Information \(Public Access\) Act](#) shall not be made available for inspection.