

PROTOCOL
on Common Regulation Principles and Rules for Activities of
Natural Monopoly Entities

I. General Provisions

1. This Protocol has been developed pursuant to Article 78 of the Treaty on the Eurasian Economic Union (hereinafter "the Treaty") and aims to create a legal framework for the application of common principles and general rules for the regulation of activities of natural monopoly entities of the Member States in the spheres specified in Annex 1 to this Protocol.

2. The terms used in this Protocol shall have the following meanings:

"domestic market" means the market of a Member State used for circulation of services of natural monopoly entities;

"access to services of natural monopoly entities" means provision by natural monopoly entities of one Member State of services related to natural monopolies to consumers of another Member State on terms no less favourable than those provided for similar services to consumers of the first Member State, when technically feasible;

"natural monopoly" means a situation of the services market when the creation of a competitive environment to meet the demand for a particular type of services is not possible or is economically infeasible due to the specific technological features of production processes and provision of these services;

"legislation of the Member States" means the national legislation of each Member State relating to spheres of natural monopolies;

"national authorities of the Member States" means authorities of the Member States carrying out regulation and/or control over natural monopoly entities;

"provision of services" means provision of services and manufacture (sale) of goods representing an object of civil turnover;

"consumer" means a subject of civil rights (a natural or juridical person) using or intending to use any services provided by natural monopoly entities;

"natural monopoly entity" means an economic entity providing services in the spheres of natural monopolies determined by the legislation of the Member States;

"sphere of natural monopolies" means a sphere of circulation of a service legally regarded as a natural monopoly, where a consumer may purchase services of natural monopoly entities.

II. General Principles for Regulation of Activities of Natural Monopoly Entities

3. In regulation and/or control over activities of natural monopoly entities in the spheres of natural monopolies specified in Annexes 1 and 2 to this Protocol, the Member States shall be guided by the following principles:

1) maintenance of a balance of interests of consumers and natural monopoly entities of the Member States, ensuring availability of services and their appropriate quality for consumers, efficient functioning and developing natural monopoly entities;

2) improving the efficiency of regulation aimed at reduction in the number of spheres of natural monopolies henceforth by creating conditions for development of competition in these spheres;

3) use of flexible tariff (price) regulation of natural monopoly entities taking into account the industry specifics, scope of their activities, market conditions, medium-term (long-term) macroeconomic and industry forecasts, as well as tariff (price) regulation measures in respect of these entities, including the possible application of a differentiated tariff that may not be set on the basis of affiliation of a consumer (consumer groups) to any of Member State;

4) introduction of regulation when an analysis of the respective domestic market detects that the market is in a state of natural monopoly;

5) reduction of barriers to entry to domestic markets, including by ensuring access to services of natural monopoly entities;

6) applying procedures for regulation of activities of natural monopoly entities, ensuring independence of decisions, continuity, openness, objectivity and transparency;

7) mandatory conclusion by natural monopoly entities of service contracts with consumers for the provision of regulated services, if technically feasible, which shall be determined in accordance with the legislation of the Member States, unless otherwise provided for by the provisions of Sections XX and XXI of the Treaty;

8) ensuring compliance of natural monopoly entities with the rules of access to services of natural monopoly entities;

9) focus of regulation on a specific natural monopoly entities;

10) ensuring compliance of set tariffs (prices) with the quality of services in the spheres of natural monopolies subject to regulation;

11) protection of interests of consumers, including with respect to various violations of natural monopoly entities associated with the use of tariffs (prices) for regulated services;

12) creation of economic conditions making it beneficial for natural monopoly entities to reduce costs, introduce new technologies and to improve the efficiency of use of investments.

III. Types and Methods of Regulation of Natural Monopoly Entities

4. The Member States shall apply the types (forms, ways, methods, instruments) of regulation of natural monopoly entities of the Member States based on the common principles and rules for the regulation of natural monopolies determined by this Protocol.

5. In the regulation of activities of natural monopoly entities, the following types (forms, ways, methods, instruments) of regulation shall be applied:

- 1) tariff (price) regulation;
- 2) types of regulation determined by this Protocol;
- 3) other types of regulation determined by the legislation of the Member States.

6. Tariff (price) regulation of services rendered by natural monopoly entities, including determining the cost of connection (joining) to services of natural monopoly entities, may be ensured through the following:

- 1) setting (approval) by the national authority tariffs (prices) for regulated services of natural monopoly entities, including their limit levels

based on the methodology (formula) and rules of application thereof approved by the national authority, as well as respective control over compliance with the fixed tariffs (prices) by a national authority;

2) determining (approval) by the national authority the methodology and rules of application thereof to be used by natural monopoly entity to set and apply the tariffs (prices), as well as control over setting and application of tariffs (prices) by natural monopoly entities by a national authority.

7. In tariff (price) regulation, the national authorities of the Member States may also apply the following methods of tariff (price) regulation or a combination thereof, in accordance with the legislation of the Member States:

- 1) the method of economically justified costs;
- 2) the method of indexation;
- 3) the method of investment capital profitability;
- 4) the method of comparative analysis of the efficiency of activities of natural monopoly entities.

8. The tariff (price) regulation shall take into account:

- 1) compensation to natural monopoly entities of economically justified costs related to carrying out the regulated activities;
- 2) obtaining economically justified profit;
- 3) encouraging natural monopoly entities to lower costs;
- 4) setting tariffs (prices) for services of natural monopoly entities taking into account the reliability and quality of such services.

9. When setting the tariffs (prices), the following may be taken into account:

- 1) specific features of functioning of natural monopolies on the territories of the Member States, including specific features of technical requirements and regulations;
- 2) state subsidies and other state support measures;
- 3) market conditions, including the level of prices in unregulated market segments;
- 4) territorial development plans;
- 5) state taxation, budget, innovation, environmental and social policy;
- 6) energy efficiency measures and ecological aspects.

10. Regulation of tariffs (prices) for services of a natural monopoly entity provides for separate accounting of expenditures, including investments, as well as income and operating assets, by types of regulated services of natural monopoly entities when calculating the costs of the natural monopoly entity.

11. Tariffs (prices) for services of natural monopoly entity may be regulated based on long-term regulation parameters, which may include the level of reliability and quality of regulated services, the dynamics of changes in costs associated with the supply of the respective services, the rate of return, the periods of return on invested capital and other parameters.

For the purposes of regulation of tariffs (prices) for services of natural monopoly entity, long-term regulation parameters obtained using the method of comparative analysis of the efficiency of activities of natural monopoly entities may be applied.

12. Specific features of application of paragraphs 4-11 of this Protocol in certain spheres of natural monopolies may be determined in Sections XX and XXI of the Treaty.

IV. Rules of Access to Services of Natural Monopoly Entities

13. The Member States shall determine in their legislation the rules of regulation ensuring access to services of natural monopoly entities as specified in paragraph 2 of this Protocol.

National authorities of the Member States shall ensure control over observation of the rules of access and connection (joining, use) of consumers to services of natural monopoly entities.

14. The rules of ensuring consumer access to services of natural monopoly entities shall include:

1) the essential terms of contracts, as well as the procedure for their conclusion and execution;

2) the procedure for determining the availability of technical capabilities;

3) the procedure for submitting information on services provided by natural monopoly entities, their cost, access terms, potential sales volumes, technical and technological capabilities of providing such services;

4) the conditions for obtaining public information, allowing to provide to interested persons the possibility to compare the terms of circulation of and/or access to services of natural monopoly entities;

5) a list of information that may not be regarded as trade secret;

6) the procedure for handling complaints and claims and resolution of disputes regarding access to services of natural monopoly entities.

15. Natural monopoly entities of the Member States shall be allowed to apply differentiated terms of access to their services for consumers of the Member States (taking into account the specific features of each individual

sphere of natural monopoly, as determined in Sections XX and XXI of the Treaty), if such terms are not applied based on the principle of affiliation of consumers with any Member State, subject to observation of the legislation of each Member State.

16. Without prejudice to the provisions of paragraph 15 of this Protocol, the legislation of the Member States shall not contain any rules determining for consumers of the Member States any differentiated terms of access to services of natural monopoly entities on the basis of their affiliation with any Member State.

17. Specific features of application of paragraphs 13-16 of this Protocol in specific spheres of natural monopolies, including transit, are determined in Sections XX and XXI of the Treaty.

V. National Authorities of the Member States

18. The Member States shall have national authorities entitled to regulate and/or control activities of natural monopoly entities in accordance with the legislation of the Member States.

National authorities of the Member States shall operate in accordance with the legislation of the Member States, the Treaty, as well as other international treaties of the Member States.

19. The functions of national authorities of the Member States shall include:

- 1) tariff (price) regulation of services rendered by natural monopoly entities;

- 2) regulation of access to services of natural monopolies, including setting fees (prices, tariffs, charges) for the connection (joining) to services of

natural monopoly entities, in cases provided for by the legislation of the Member States;

3) protection of the interests of consumers of services of natural monopolies;

4) consideration of complaints and claims, settlement of disputes regarding setting and applying regulated tariffs (prices) and access to services of natural monopoly entities;

5) examination, approval or integration of investment programmes of natural monopoly entities and control over their implementation;

6) ensuring observance by natural monopoly entities of the restrictions provided for by the legislation of the Member States on referral information to trade secret;

7) controlling activities of natural monopoly entities, including through inspections and in other forms (monitoring, analysis, expert examinations);

8) other functions provided for by the legislation of the Member States.

VI. Competence of the Commission

20. The Commission shall exercise the following powers:

1) adopting a decision on expansion of spheres of natural monopolies in the Member States when a Member State intends to include in the sphere of natural monopolies another sphere of natural monopolies not specified in Annexes 1 or 2 to this Protocol, following a respective application of the Member State to the Commission.

2) analysing and suggesting methods to coordinate the development and implementation of decisions of national authorities relating to the spheres of natural monopolies;

3) conducting comparative analyses of the systems and practices of regulation of natural monopoly entities in the Member States with preparing respective annual reports and memoranda;

4) promoting harmonisation of regulation measures in the spheres of natural monopolies in respect of ecological aspects and energy efficiency;

5) submitting for consideration by the Supreme Council the results of ongoing work referred to in sub-paragraphs 3-4 of this paragraph, as agreed with the national authorities of the Member States, as well as proposals for establishing regulatory legal acts of the Member States in the sphere of natural monopolies, as agreed with the Member States, which shall be subject to approach, and determine the sequence of implementation of respective measures to harmonise the legislation in this sphere;

6) controlling the implementation of Section XIX of the Treaty.

Annex 1
to the Protocol on Common
Regulation Principles and Rules for
Activities of Natural Monopoly
Entities

Spheres of Natural Monopolies in the Member States

Item No.	The Republic of Belarus	The Republic of Kazakhstan	The Russian Federation
1.	Transportation of oil and petroleum products via main pipelines	Services to transport oil and/or petroleum products via main pipelines	Transportation of oil and petroleum products via main pipelines
2.	Transmission and distribution of electricity	Services for the transmission and/or distribution of electricity	Services for the transmission of electricity
3.		Services for technical dispatching of supply and consumption of electricity; services for balancing the output and consumption of electricity; services to ensure availability of electric power for the load (January 1, 2016)	Services for operational dispatch management in the electric power industry
4.	Services provided by railway transport communications ensuring the traffic of public transport, management of railway traffic and rail transportations	Services of main railway networks	Railway transportations

Annex 2
to the Protocol on Common
Regulation Principles and Rules for
Activities of Natural Monopoly
Entities

Spheres of Natural Monopolies in the Member States

Item No.	The Republic of Belarus	The Republic of Kazakhstan	The Russian Federation
1.	Transportation of gas via main and spur pipelines	Storage services, transportation of marketable gas via connecting and main pipelines and/or gas distribution systems, operation of group tank units, as well as transportation of raw gas via connecting pipelines	Gas transportation via pipelines
2.	Services of transport terminals, airports; air navigation services	Services of air navigation; services of ports and airports	Services at transport terminals, ports and airports
3.	Public telecommunications and public postal services	Telecommunications services, in the absence of a competitive service provider due to the technological impossibility or economic infeasibility of the provision of these types of services, except for universal telecommunications services; services for property lease	Public telecommunications services and public postal services

Item No.	The Republic of Belarus	The Republic of Kazakhstan	The Russian Federation
		(rent) or charter of cable ducts and other fixed assets technologically related to connection of telecommunication networks to the public telecommunications network; public postal services	
4.	Transmission and distribution of thermal energy	Services for the production, transmission, distribution and/or supply of thermal energy	Services for the transmission of thermal energy
5.	Centralised water supply and disposal	Water supply and/or disposal services	Water supply and disposal using centralised systems and utility infrastructure systems
6.			Services for the use of the inland waterway infrastructure
7.		Railway services using railway transport under concession contracts	
8.		Approach route services	
9.			Icebreaker support of vessels in the waters of the Northern Sea Route