

APPENDIX 20
to the Treaty on the
Eurasian Economic Union

PROTOCOL
on Common Principles and Rules for Regulation of
Activity of the Natural Monopoly's Subjects

I. General Provisions

1. The present Protocol has been developed according to article 78 of the Treaty on the Eurasian Economic Union (hereinafter - the Agreement) and is aimed at establishing the legal basis for application of the common principles and general rules of regulation of the activities of entities of natural monopolies of the member States in the areas specified in Appendix No. 1 to the present Protocol.

2. The terms used in the present Protocol shall mean the following:

“internal market” shall mean a market of a member State, in which services provided by natural monopoly entities circulate;

“access to the services of natural monopoly entities” shall mean rendering services related to the sphere of natural monopolies by natural monopoly entities of one member State, to the consumers of the other member State under the conditions no less favorable than those, under which similar service is rendered to the consumers of the first member State, when it is technically feasible;

«natural monopoly» shall mean a state of the services market, under which creation of competitive conditions for satisfying the demand for a particular type of services is impossible or is economically inexpedient due to technological features of producing and rendering services of such type;

«legislation of member States» shall mean the national legislation of each of the member States concerning the spheres of natural monopolies;

«national bodies of the member States» shall mean bodies of the member State that regulate and (or) control the activities of natural monopoly entities;

«rendering services» shall mean rendering the services, producing (realization) the goods, which are an object of the civil circulation;

«consumer» shall mean a subject of the civil law (natural person or legal entity) using or intending to use services rendered by natural monopoly entities;

«natural monopoly entity» shall mean a business entity rendering services in natural monopoly sectors established by national legislation of the member States;

«natural monopoly sector» shall mean a sector of service circulation, referred to the natural monopoly by the legislation, in which the consumer can acquire services of natural monopoly entities.

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

3. The Principles, by which member States are guided in regulation and (or) control of activities of natural monopoly entities in natural monopoly sectors specified in the Appendices No 1 and 2 to this Protocol, shall-be:

1) observance of the balance of interests of consumers and natural monopoly entities of the member States, that provides an availability of the rendered services and appropriate level of their quality for consumers, effective functioning and development of the natural monopoly entities;

2) promotion of the regulation efficiency aimed at further reduction of the natural monopoly sectors through creation of the conditions for development of competition in these sectors;

3) application of the flexible tariff (price) regulation of the natural monopoly entities taking into account the industry specifics, scales of their activity, market conditions,

medium-term (long-term) macroeconomic and industry forecasts, as well as measures for tariff (price) regulation of such entities, including application of the possibility for establishment of the differentiated tariff, which cannot be based on the principle of the consumer's affiliation (consumer groups) with any of the member States;

4) introduction of regulation in cases, when the analysis of the respective domestic market demonstrates that such market is in the state of natural monopoly;

5) reduction of barriers to domestic markets access by, inter alia, ensuring access to the services rendered by natural monopoly entities;

6) application to the activities of natural monopoly entities of regulating procedures that ensuring independent decisions-making, continuity, openness, objectivity and transparency;

7) obligingness for contracts on regulated services to be concluded by natural monopoly entities and consumers, under the condition of technical feasibility determined according to the national legislation of the member States, unless otherwise is provided by provisions of sections XX and XXI of the Agreement ;

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

9) focusing the regulation on a particular natural monopoly entity;

10) ensuring conformity of the established tariffs (prices) to the quality of services in natural monopoly sectors being regulated;

11) consumers' interests² protection, including against various infringements by natural monopoly entities related to application of the tariffs (prices) for regulated services;

12) creation of the economic conditions, under which costs reduction, introduction of new technologies, and more effective use of investments become profitable for natural monopoly entities.

III. Types and Methods of Regulation of the Activity of Natural Monopoly Entities

4. The member States apply the types (forms, techniques, methods, instruments) of regulation of activities of natural monopoly entities of the member States on the basis of the general principles and rules for regulation of natural monopolies established by the present Protocol.

5. The following types (forms, methods, techniques, and instruments) of regulation are applied in regulation of activities of natural monopoly entities:

- 1) tariff (price) regulation;
- 2) types of regulation established by the present Protocol;
- 3) other types of regulation established by the legislation of the member States.

6. The tariff (price) regulation of services rendered by natural monopoly entities, including the establishment of the cost of connection (joining) to the services of natural monopoly entities, can be carried out by:

- 1) establishment (approval) of the tariffs (prices) for regulated services of the natural monopoly entities by national body, including their limit levels on the basis of the methodology (formula) and rules of its application approved by national body, as well as the relevant control exercised by the national body over the application of the established tariffs (prices) by the natural monopoly entities;

- 2) establishment (approval) of the methodology and rules of its application by national body according to which, the natural monopoly entity establishes and applies the tariffs (prices), and control exercised by the national body over the tariffs (prices) established and applied by natural monopoly entities.

7. Regulating the tariff (price), the national bodies of member States have the right to apply inter alia the following methods of tariff (price) regulation or their combination according to the national legislation of the member States:

- 1) method of economically justified costs;
- 2) method of indexation;
- 3) method of investment capital profitability;

- 4) method of comparative analysis of the performance efficiency of the natural monopoly entities.

8. The following items are taken into consideration at regulation of the tariffs (prices):

- 1) compensation to the natural monopoly entities of economically justified costs related to carrying out of regulated activity;
- 2) gaining of economically justified profit;
- 3) incentives for natural monopoly entities to reduce costs;
- 4) formation of the tariffs (prices) for services of natural monopoly entities taking into account the reliability and quality of services rendered.

9. The following items can be considered in establishing the tariffs (prices):

- 1) peculiarities of operation of natural monopolies in the territories of member States, including the features of technical requirements and regulations;
- 2) government subsidies and other measures of state support;
- 3) market opportunities, including the level of prices for unregulated market segments;
- 4) territory development plans;
- 5) state taxation, budgetary, innovative, ecological and social policies;
- 6) energy efficiency measures and ecological aspects.

10. While regulating the tariff (price) of services of natural monopoly entity shall provide that separate records of expenses including investments and records of income and committed assets to be maintained for different types of regulated services of natural monopoly entities in cost planning of the natural monopoly entities.

11. The tariffs (prices) for services of the natural monopoly entity can be regulated on the basis of long-term regulation parameters, which can also include the level of reliability and quality of regulated services, dynamics of change in expenses related to the supply of relevant services, rate of return, the terms of return on investment terms, and other parameters.

The long-term regulation parameters obtained by the method of comparative analysis of the performance efficiency of natural monopoly entities can also be applied in tariff (price) regulation of services of the natural monopoly entity.

12. The peculiarities of application of paragraphs 4 - 11 of this Protocol in certain natural monopoly sectors can be determined in the sections XX and XXI of the Agreement .

IV. Rules for Ensuring of Access to Services of Natural Monopoly Entities

13. The member States establish in their national legislations the rules of regulation that ensure access to services of natural monopoly entities, as determined by paragraph 2 of this Protocol.

The national bodies of the member States shall provide control over compliance with rules for provision of access of consumers to services rendered by natural monopoly entities and conditions for connecting (joining, use) to them to the consumers.

14. The rules for provision of access to the services of natural monopoly entities to the consumers include:

1) essential terms of the agreements and a procedure for their conclusion and execution;

2) a procedure for determining the existence of technical feasibility;

3) a procedure for providing information on services rendered by natural monopoly entities, on their cost, access to such services, possible sales volumes, technical and technological possibilities for rendering such services;

4) terms for receiving public information that allows the interested persons to compare conditions of circulation of and (or access) to services rendered by natural monopoly entities;

5) a list of information that should not be commercially confidential;

6) a procedure for administration of complaints, applications and settlement of the disputes concerning access to services of natural monopoly entities.

15. The natural monopoly entities of member States are allowed to apply the differentiated conditions of access to their services provided to the consumers of the member States (taking into account the specificity of each separate natural monopoly

sector defined in the Sections XX and XXI of the Treaty), if such conditions are not applied according to the principle of state affiliation [and domicile] of consumers with any of the member States, and provided that the national legislation of each member State is observed.

16. Without prejudice to the provisions of paragraph 15 of this Protocol, the national legislation of the member States shall not contain the norms establishing the differentiated conditions of access to services of natural monopoly entities for consumers of member States on the basis of state affiliation [and domicile] of the consumers with any of the member States.

17. The specifics of application of paragraphs 13 – 16 of this Protocol in certain natural monopolies sectors, including issues of transit, are defined in sections XX and XXI of the Agreement .

V. National Bodies of Member States

18. The national bodies of member States assigned with powers to regulate and (or) control activities of natural monopoly entities according to the national legislation of the member States shall operate in the member States.

The national bodies of the member States shall carry out their activities according to the national legislation of the member States, the Treaty, as well as other international agreements of the member States.

19. The functions of national bodies of member States include:

- 1) tariff (price) regulation of the services of natural monopoly entities;
- 2) regulation of access to services of natural monopoly entities, including establishment of the payment (prices, tariffs, fees) for connection (joining) to the services of natural monopoly entities, in cases provided for in the by national legislations of member States;
- 3) protection of interests of consumers of services of natural monopoly entities;

4) consideration of the complaints, applications, disputes settlement of issues related to the establishment and application of regulated tariffs (prices), and to access to services of natural monopoly entities;

5) consideration, approval or coordination of the investment programs of natural monopoly entities and control over their implementation;

6) ensuring the compliance of the natural monopoly entities with the restrictions provided for in ~~by~~ the national legislations of the member States with regard to classifying information as commercially confidential;

7) control over the activities of natural monopoly entities, including through inspections and in other forms of control (monitoring, analysis, examination);

8) other functions provided for in the ~~by~~ national legislations of member States.

VI. Competence of the Commission

20. The Commission shall exercise the following powers:

1) to make decision on expansion of the natural monopolies sectors in the member States if the member State intends to qualify as a natural monopoly sector the natural monopoly sector, which is not indicated in the appendixes No 1 and 2 to this Protocol, after the relevant request of the member States to the Commission;

2) to analyze and offer the methods of coordination, development and execution of the decisions of national bodies, concerning the natural monopoly entities;

3) to carry out comparative analysis of the system and practice of regulation ~~of activities~~ of natural monopoly entities activities in member States with preparation of the relevant annual statements and Protocols;

4) to promote the harmonization of regulation in natural monopoly sectors with regard to ecological aspects, energy efficiency;

5) to submit for the consideration of the High Council results of the performed work agreed with the national bodies of the member States and specified in subparagraphs 3 – 4 of this paragraph, as well as agreed with the member States

proposals on establishment of the legislative acts of member States in natural monopoly sectors that are subject to harmonization, and on identification of the sequence of the relevant measures on legislation harmonization in this sector,

6) to carry out the control over execution of section XIX of the Treaty.

Appendix 1
to the Protocol On Common Principles and
Rules for Regulation of Activities of Natural
Monopoly Entities

Natural Monopoly Sectors in Member States

No	The Republic of Belarus	The Republic of Kazakhstan	The Russian Federation
1.	Transportation of oil and oil products through the backbone pipelines	Services on transportation of oil and (or) oil products through the main -backbone pipelines	Transportation of oil and oil products through the pipelines backbone
2.	Transfer and distribution of electric energy	Services on transfer and (or) distribution of electric energy	Services on transfer of electric energy
3.		Services on technical dispatching of release of electric energy into network and its consumption; services on organization of balancing of electric energy production and consumption; services on maintenance of readiness	Services on operative dispatching management in electric power industry

No	The Republic of Belarus	The Republic of Kazakhstan	The Russian Federation
		of electric capacity for load carriage (from 1th of January 2016)	
4.	Services rendered by rail transport communications, ensuring movement of common-use transport, train traffic management, railway transportation	Services of main railway networks	Rail transportation

Appendix 2

To the Protocol On Common Principles and
Rules for Regulation of Activities of Natural
Monopoly Entities

Natural Monopoly Sectors in Member States

No	The Republic of Belarus	The Republic of Kazakhstan	The Russian Federation
1.	Gas transportation through the backbone and distributing pipelines	Services on storage, transportation of tank (commercial) gas through connective, backbone gas pipelines and (or) gas distribution systems, operation of group reserve plants, and also transportation of crude (raw) gas through connecting gas pipelines	Transportation of gas through pipelines
2.	Services of transport terminals, airports; Aeronautical services	Aeronautical services services of ports, airports	Services in transport terminals, ports and airports
3.	Public services of electric communications and public postage services	Telecommunication Services provided the absence of competitive communication operator	Services of public electric communication and public post communication

No	The Republic of Belarus	The Republic of Kazakhstan	The Russian Federation
		owing to technological impossibility or economic inexpediency of provision of such types of services, except for universal services of telecommunications; services on provision of leasing of the cable drainage and other fixed assets technologically connected with connection attaching of telecommunication networks to the telecommunication network for common use; public post services	
4.	Transfer and distribution of thermal energy	Services on production, transfer, distribution and (or) supply of thermal energy	Services on thermal energy transfer
5.	Centralized water supply and water drainage	Water supply and (or) water drainage services	Water supply and water drainage with use of centralized systems, systems of communal infrastructure

No	The Republic of Belarus	The Republic of Kazakhstan	The Russian Federation
6.			Services on use of an infrastructure of internal waterways
7.		Services of railway lines with objects of railway transportation under concession Agreements	
8.		Entry line (approach route) services	