

Section XIX NATURAL MONOPOLIES

Article 78 Spheres and Natural Monopoly Entities

1. When regulating natural monopolies, the Member States shall be guided by the rules and regulations provided for by Annex 20 to this Treaty.

2. The provisions of this Section shall be applied to relations with natural monopoly entities, consumers, executive and local authorities of the Member States in the spheres of natural monopolies affecting the trade between the Member States and listed in Annex 1 to Annex 20 to this Treaty.

3. Legal relations in specific spheres of natural monopolies shall be in accordance with this Section, with account of the specifications provided for by Sections XX and XXI of this Treaty.

4. In the Member States, the spheres of natural monopolies shall also include the spheres of natural monopolies specified in Annex 2 to Annex 20 to this Treaty.

Requirements of the legislation of the Member States shall be applied to the spheres of natural monopolies specified in Annex 2 to Annex 20 to this Treaty.

5. A list of services provided by natural monopoly entities included in the spheres of natural monopolies shall be determined by the legislation of the Member States.

6. The Member States shall seek to harmonise all spheres of natural monopolies specified in Annexes 1 and 2 to Annex 20 to this Treaty through their reduction and possible identification of a transitional period in Sections XX and XXI of this Treaty.

7. Natural monopolies in the Member States may be expanded:

in accordance with the legislation of the Member States, if a Member State intends to include in the sphere of natural monopolies a sphere rated as a natural monopoly in another Member State and specified in Annex 1 or 2 to Annex 20 to this Treaty;

by decision of the Commission, if a Member State intends to include in the sphere of natural monopolies a sphere of natural monopolies not specified in Annex 1 or 2 to Annex 20 to this Treaty, following a respective request from the Member State to the Commission.

8. This Section shall not apply to any relations governed by effective bilateral international treaties between the Member States. Newly concluded bilateral international treaties between the Member States may not conflict with this Section.

9. The provisions of Section XVIII of this Treaty shall be applied to natural monopoly entities with account of the specific features stipulated in this Section.

PROTOCOL
ON COMMON REGULATION PRINCIPLES AND RULES FOR ACTIVITIES OF
NATURAL MONOPOLY ENTITIES

List of Amending Documents
(as amended by the [Treaty](#) dated October 10, 2014,
the [Protocol](#) dated May 8, 2015)

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 No. 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 favorable 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 Nos. 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 the Member States;

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 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 Nos. 1 and 2](#) to this Protocol, following a respective application of the Member State to the Commission;
- 2) analyzing 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 harmonization 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 harmonize the legislation in this sphere;

6) controlling the implementation of [Section XIX](#) of the Treaty.

Annex No. 1
to the Protocol on Common Regulation Principles and Rules for Activities of
Natural Monopoly Entities

SPHERES OF NATURAL MONOPOLIES IN THE MEMBER STATES

List of amending documents
(as amended by the [Treaty](#) dated October 10, 2014,
the [Protocol](#) dated May 8, 2015)

Seq. No.	Republic of Belarus	Republic of Kazakhstan	Russian Federation	Republic of Armenia	Kyrgyz Republic
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		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	Services for the transmission of electricity	Transmission and distribution of electricity
3.		Services for technical dispatching of electric power supply and	Services for operational dispatch management in	Services of the electric power system operator	Services for operational dispatch management

		consumption; services for balancing the output and consumption of electricity; services for ensuring electrical load capacity (from January 1, 2016)	the electric power industry		of the national grid
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 transportation	Services for ensuring the use of railway infrastructure	Railway transportation

Annex No. 2 to the Protocol on
Common Regulation Principles and
Rules for Activities of Natural
Monopoly Entities

SPHERES OF NATURAL MONOPOLIES IN THE MEMBER STATES

List of amending documents
(as amended by the Treaty dated October 10, 2014,
the Protocol dated May 8, 2015)

Seq. No.	Republic of Belarus	Republic of Kazakhstan	Russian Federation	Republic of Armenia	Kyrgyz Republic
1.	Transportation of gas via main and spur pipelines	Services for storage and transportation of marketable gas through connecting gas pipelines, main gas pipelines and (or) gas distribution systems, operation of group tank units,	Gas transportation via pipelines	Natural gas transportation services; natural gas distribution services; gas supply system operator services	Transportation, distribution, storage and sale of natural gas

		as well as transportation of raw gas via connecting gas pipelines			
2.	Services of transport terminals, airports; Air navigation services; ground handling of domestic air transportation	air navigation services Services at transport terminals, ports and airports	Services of air navigation;		services of 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 inexpediency of the provision of these types of services, except for universal telecommunications services;	Public telecommunications services and public postal services		Public telecommunications and public postal services

		services for property lease (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		Production, transmission, distribution and sale of thermal energy
5.	Centralized water supply and disposal	Water supply and/or disposal services	Water supply and disposal using centralized systems and utility infrastructure systems	Non-competitive water supply and disposal services	Centralized water supply and disposal

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		
10.				Electricity distribution services	
(paragraph 10 introduced by the Treaty dated October 10, 2014)					
11.				Settlement center services	
(paragraph 10 introduced by the Treaty dated October 10, 2014)					
12.					Production and sale of electricity
(paragraph 12 introduced by the Protocol dated May 8, 2015)					