

Article 38 Closed distribution systems

1. Member States may provide for regulatory authorities or other competent authorities to classify a system which distributes electricity within a geographically confined industrial, commercial or shared services site and does not, without prejudice to paragraph 4, supply household customers, as a closed distribution system if:

a) for specific technical or safety reasons, the operations or the production process of the users of that system are integrated; or

b) that system distributes electricity primarily to the owner or operator of the system or their related undertakings.

2. Closed distribution systems shall be considered to be distribution systems for the purposes of this Directive. Member States may provide for regulatory authorities to exempt the operator of a closed distribution system from:

(a) the requirement under Article 31(5) and (7) to procure the energy it uses to cover energy losses and the non-frequency ancillary services in its system in accordance with transparent, non-discriminatory and market-based procedures;

(b) the requirement under Article 6(1) that tariffs, or the methodologies underlying their calculation, are approved in accordance with Article 59(1) prior to their entry into force;

(c) the requirements under Article 32(1) to procure flexibility services and under Article 32(3) to develop the operator's system on the basis of network development plans;

(d) the requirement under Article 33(2) not to own, develop, manage or operate recharging points for electric vehicles;

and

(e) the requirement under Article 36(1) not to own, develop, manage or operate energy storage facilities.

3. Where an exemption is granted under paragraph 2, the applicable tariffs, or the methodologies underlying their calculation, shall be reviewed and approved in accordance with Article 59(1) upon request by a user of the closed distribution system.

4. Incidental use by a small number of households with employment or similar associations with the owner of the distribution system and located within the area served by a closed distribution system shall not preclude an exemption under paragraph 2 being granted.

Article 38a Special closed distribution systems

1. Member states may provide for regulatory authorities or other competent authorities to classify a closed distribution system, as defined in Article 38, as a special closed distribution system if the system is operated by a company whose principal economic activity is not the supply or sale of electricity

2. Special closed distribution systems shall be considered to be distribution systems for the purposes of this Directive. Member States may provide for regulatory authorities to exempt the operator of a special closed distribution system from the obligations applicable to distribution system operators, without prejudice to the minimum requirements set forth in paragraph 3 of this Article .

3. Member States shall ensure that operators of special closed distribution system comply, as a minimum, with the following requirements:
 - a. operators shall enable the non-discriminatory transit of electricity through their installations for users of the special closed distribution system and the electricity supplier(s) of their choice;
 - b. Users of the special closed distribution system shall have the right to make use of such transit in accordance with this Directive;
 - c. for billing purposes, users of the special closed distribution system shall be treated as if they were directly connected to the upstream network and shall pay upstream network tariffs and levies in full in accordance with applicable law;
 - d. operators may recover their own costs incurred for technical implementation by means of a flat rate infrastructure charge, which shall not exceed the incremental costs of voltage conversion;
 - e. metering points relevant for balancing purposes required for such supply shall be provided and administered by the upstream network operator against payment of an appropriate fee.

4. Incidental use by a small number of households located within the area served by a special closed distribution system shall not preclude an exemption under paragraph 2 being granted.

5. An existing closed distribution system which has been classified as such, or which has obtained one or more exemptions, under Article 38 prior to the entry into force of national legislation transposing this Article 38a, shall continue to be regulated exclusively under the regime set forth in Article 38 and shall not be reclassified as a special closed distribution system, unless the operator of such system expressly requests such reclassification in writing to the competent regulatory authority. Any request for reclassification of an existing closed distribution system as a special closed distribution system under this Article shall be admissible only if submitted by the operator of such system. Requests submitted by users of the existing closed distribution system or other third parties shall be inadmissible and shall not result in any reclassification of the existing closed distribution system.