
**ERREG comments on
the draft explanatory notes of DG Energy & Transport on Article 5, paragraph 1 - 5 as
well as Annex 2.1 and 2.2 of Regulation (EC) No 1775/2005 on conditions for access
to the natural gas transmission networks : Cover note**

ERREG welcomes the opportunity to react on the draft explanatory notes of DG Energy & Transport on Article 5, paragraph 1 - 5 as well as Annex 2.1. and 2.2. of Regulation (EC) No 1775/2005 on conditions for access to the natural gas transmission networks. Aside the more detailed comments on the individual paragraphs annexed to this cover note ERREG wants to address some overall requirements.

Availability of transport capacities remains a key requirement for the development of a competitive internal market in natural gas: effective gas-to-gas competition is hindered, where competitors and new market entrants cannot gain adequate, non-discriminatory, third party access (TPA) to pipeline capacity. DG Comp's Energy Sector Inquiry Report identifies contractual congestion as a significant barrier for competition and liquid trade. Physical congestion may also be an issue on some pipelines. The Commission's interpretive¹ notes should provide the necessary guidance for full and consistent implementation of the Gas Regulation in respect of the use and provision of capacity. This will require:

1. Appropriate transparency to allow market participants to take effective commercial decisions
2. Effective and non-discriminatory congestion management mechanisms including UIOLI provisions and 2ndary market trading to overcome short term congestion
3. A framework for ensuring that long term physical congestion can be overcome
4. Coordinated implementation among Member States

Transparency

Full compliance with transparency provisions is a key requirement for non-discriminatory capacity allocation mechanisms: where information is provided selectively or inadequately there is a significant risk that the development of competition will be distorted. If capacity is to be provided on a non-discriminatory basis then there must, as a starting point, be full implementation and compliance with the transparency requirements of the regulation – covering:

- online publication down to daily periods of: technical capacities in both flow directions; currently contracted and interruptible capacities; available capacities (Art 6.3+Annex 3.3 (1));
- online publication of a forecast of available and contracted capacities for the next 18 months; update every month or more frequent when new information becomes available (Art 6.3+Annex 3.3 (2));
- online publication of available short term services (day/week ahead); update daily (Art 6.3+Annex 3.3 (3));

¹ Current drafts on Art 5 as well as announced explanatory notes on transparency.

- online publication of regular long term forecast of available capacities for up to 10 years (Art 6.3+Annex 3.3 (3));
- online publication of historical maximum and minimum monthly capacity utilisation rates and annual average flows for the 3 past years on a rolling basis (Art 6.3+Annex 3.3 (4)); this shall provide essential information to both the TSO and system users: while it allows the TSO to comply with its obligation to make contracted but unused capacities available to the market and thereby ensure for most efficient TPA.

It is crucial that the transparency requirements are adequately defined to ensure consistent implementation – the same information should be published in the same way by all TSOs across the EU. ERGEG's work on monitoring gas storage guidelines shows that market operators will interpret information provision to their advantage – rather than ensuring consistent implementation. It is also crucial – particularly where TSOs are not fully unbundled – to ensure that information management is appropriate.

EREG's Gas Focus Group will assess status of compliance with the transparency requirements of the Gas Regulation until the next 12th Madrid Forum; the assessment shall identify the need for possibly more detailed transparency requirements and/or modification of existing provisions of the Gas Regulation ERGEG has also recently produced transparency guidelines in electricity which could, suitably adapted, form the basis of similar proposals in the gas market focussing on both what information should be published and how it should be managed. ERGEG should by this pleased to act on the EC's proposal announced at the last JWG to ask for ERGEG advice in this respect.

Congestion management

With respect to transport capacities the efficient use of existing capacities is a crucial aspect of non-discriminatory access to networks. Where this is undermined there is the possibility of abuse of dominant market position: the constant non-use of contracted capacities which are not made available to third parties subsequently results in market foreclosure: potential competitors are prevented from entering a market by not being provided with sufficiently available transport customers

In order to meet short term congestion the provision of sufficiently available capacities at first calls for efficient use of existing capacities by the application of appropriate congestion management mechanisms – such as 2ndary markets and use it or lose it (UIOLI) principles – avoiding contractual congestions based on anti-competitive hoarding of capacities. The obligation to free up unused capacities applies to TSOs and system users likewise; a corresponding obligation of users has to be included in the Standard Transportation Contracts.

EREG therefore overall supports the message of both the explanatory notes on capacity allocation mechanisms and congestion management calling for efficient use of existing capacities in order to overcome contractual and short term physical congestion.

CEER's Gas Working Group is currently working on this respect; ERGEG should by this pleased to act on the EC's proposal announced at the last JWG to ask for ERGEG advice with regard of possibly necessary amendments to the Gas Regulation.

Instruments to meet long term congestion

In case existing congestion management mechanisms do not remain the most appropriate and efficient way of managing capacity constraint to ensure that all reasonable demands for capacity can be met the congestion has to be sorted out by the TSO by adding new capacity, i.e. by undertaking investments (new project or enhancement of existing projects). Directive 2003/55/EC Article 2.4 therefore commits transmission system operator to be responsible for ensuring the long-term ability of the system to meet reasonable demands for the transportation of gas. If verified by an open season the additional capacity demand resulting can be judged to be economically viable. It can be assumed that properly unbundled TSOs by acting solely in the interests of a network operator would have an economic interest to invest in new infrastructure provided the investment is economically viable and the regulatory incentives are set right.

ERGEG therefore overall supports the message of both the explanatory notes on capacity allocation mechanisms and congestion management calling for obligatory capacity expansion for sorting out long term congestion.

Possible concept for harmonised implementation

In order to allow for efficient application of the relevant Articles there is a clear need for consistent implementation of the requirements within the Gas Regulation across all Member States including for pipes that cross borders. This calls for effective inter-TSO and inter-regulators cooperation and should involve:

Measures of short term congestion management

- Calculation of available capacities on a cross-border basis rather than for single pipelines
- Verification of available capacities on a cross-border basis rather than for single pipelines: this shall allow for more efficient use of existing capacities by taking into account alternative transport routes and upstream capacities; there shall be an obligatory participation of TSOs in coordination of cross border gas flows to optimize the use of capacities in the European transmission systems
- TSOs shall facilitate the efficient use of existing capacities by offer of interruptible services accompanied by measures facilitating the purchase of substitutes in case of interruption – this could involve the TSO acting as a platform for flexibility products: users should be provided with information which flexibility tool they could use (eg storage for injection at the entry point of the system and withdraw at the system's exit point) in case of interruption, including price of such services in order to allow the for calculation the risk and associated costs properly

Measures of long term congestion management

- Long term capacity planning on a cross-border basis rather than for single pipelines: efficient assessment of need for capacity expansion (in case short term congestion mechanisms would not be sufficient to meet congestion) has to take into account the demand of up- and downstream supply markets connected to a pipeline system rather than demand planning for single markets. In order to identify the market demand TSOs shall undertake open seasons on a regularly basis; demand shall be checked by the regulatory authorities of the markets connected to/affected by the pipeline system concerned (based on national demand forecasts) in order to identify the real market demand
- According to their obligation provided by Art 2.4 of Directive 2003/55 to expand their system in order to meet market demand, TSOs have to expand their system according to the results of the open season; alternatively a third party could undertake the investment