

- Transparency –

**Draft Explanatory note of DG Energy & Transport
on Article 6 and Annex 3 of
Regulation (EC) No 1775/2005 of the European Parliament
and of the Council
of 28 September 2005
on conditions for access to the natural gas transmission
networks**

THIS DOCUMENT IS NOT BINDING ON THE COMMISSION

1.	Introduction.....	3
2.	Scope of the Regulation.....	3
3.	Technical information (Article 6.1 and Annex 3.1).....	4
3.1.	Provisions of the Regulation	4
3.2.	Explanation of key elements	4
4.	Tariff information (Article 6.2)	6
5.	Capacity (Article 6.3 and Annex 3.3).....	6
5.1.	Provisions of the Regulation	6
5.2.	Capacity information.....	7
5.3.	Capacity utilisation.....	8
6.	Relevant points (Article 6.4 and Annex 3.2)	8
7.	Confidentiality (Article 6.5)	9
8.	User-friendliness (Article 6.6)	10

1. INTRODUCTION

- (1) On 28 September 2005, the European Parliament and the Council adopted Regulation (EC) No 1775/2005 on conditions for access to the natural gas transmission networks (OJ L 289 of 3.11.2005, page 1). According to its Article 17, the Regulation enters into force on the 20th day following its publication, i.e. 23 November 2005 and shall apply from 1 July 2006.
- (2) With a view to ensuring consistent application of the provisions of the Regulation, in particular on the matter of transparency for access to the networks, the Commission services of DG Energy & Transport issue this document, which intends to provide explanatory comments on Article 6, as well as Annex 3 of the said Regulation.
- (3) Transparency is essential for a well-functioning market. Access to information on capacity is necessary for access to markets, decision-making on supply and trading possibilities and risk management. The Regulation contributes to this goal by setting the minimum requirements that transmission system operators should fulfil. Gas transport must optimally facilitate the development of the (internal) gas market. This is why the Regulation defines the requirements that should make the maximum amount of information available on the network without disclosing sensitive information concerning the commercial position of market participants.
- (4) Information is a key factor in the development of a free market, not only for companies to know and react to market developments, but also to create confidence in the market. Confidence in the market will facilitate the competitive part of the sector by providing reliable information for market assessment and risk management, and thereby stimulate competition and liquidity.
- (5) The central element of Article 6 and Annex 3 is transparency on information necessary for gaining effective network access and information for the process of contracting and using capacity in particular. Besides that Article 6 and Annex 3 set the conditions so that this information is clear and useful for (potential) network users. Last but not least there is a specific provision defining when confidentiality can prevail over transparency. Transparency is equally important in the context of capacity allocation, congestion management, balancing and tariffs, but it is not dealt with in this note.

2. SCOPE OF THE REGULATION

- (6) Pursuant to its Article 1 (“Subject matter and scope”), the Regulation

“... aims at setting non-discriminatory rules for access conditions to natural gas transmission systems...”

This means that the scope of the Regulation in practice depends on the definition of “transmission” which is provided in Article 2(1), point 1 and reads

“‘Transmission’ means the transport of natural gas through a network, which mainly contains high pressure pipelines, other than an upstream pipeline network and other than the part of high pressure pipelines primarily used in the context of local distribution of natural gas, with a view to its delivery to customers, but not including supply;”

- (7) As a consequence, the concept of transmission in the Regulation encompasses all high pressure pipelines, unless they are used for production or processing of gas¹ or are primarily used in the context of local distribution of natural gas, with a view to its delivery to customers, i.e. are part of a local distribution system. The scope of the Regulation is therefore not limited to cross-border trade, but also includes high-pressure pipeline systems operating at regional scale.²
- (8) In a number of Member States, transmission systems not involved in imports of gas or cross-border trade exist. Thus, the scope of the regulation includes these systems, too.
- (9) In accordance with Article 10 of the Regulation, the regulatory authorities of the Member States established under Article 25 of Directive 2003/55/EC shall ensure compliance with this Regulation and the Guidelines adopted pursuant to Article 9 of this Regulation, when carrying out their responsibilities under Regulation 1775/2005.

3. TECHNICAL INFORMATION (ARTICLE 6.1 AND ANNEX 3.1)

3.1. Provisions of the Regulation

- (10) Article 6.1 provides: “Transmission system operators shall make public detailed information regarding the services they offer and the relevant conditions applied, together with the technical information necessary for network users to gain effective network access.” Annex 3.1 contains a detailed *Definition of the technical information necessary for network users to gain effective access to the system*. Compulsory definitions of the technical information guarantee that the TSO’s apply the information in a non-discriminatory way. Some of the provisions of the annex are clear and need not be explained here, namely 3.1(a), 3.1(e), 3.1(f) and 3.1(i). Here below are the provisions that require further explanation or specification.
- (11) When the regulation states that information should be made public, this means that everybody can have access to this information, and that publication shall be non-discriminatory, meaning that the information is made available to all interested parties at the same time and in the same manner. The best way to guarantee non-discriminatory access is through publication on a publicly accessible web-site. The information requests should be provided free of charge, in line with Annex 1(6), as long as such requests do not require extraordinary or excessive expenses, as stated in Annex 1(7).

3.2. Explanation of key elements

- (12) Concerning harmonised contracts as mentioned in Annex 3.1(b), the Regulation states in recital (10) that they ‘do not mean that the terms and conditions of the transportation contracts of a particular system operator in a Member State must be the same as those of another transmission system operator in the Member State or in another Member State,

¹ See the definition of “upstream pipeline network” in Directive 2003/55/EC, which pursuant to Article 2(2) of the Regulation is also applied in the Regulation.

² In theory, Directive 2003/55/EC would allow regional transmission pipelines to be covered by the definition of “distribution” contained in the Directive (see Article 2, point 5 of Directive 2003/55/EC). According to this definition, “distribution” means the “transport of natural gas through local or regional pipeline networks...” The definition of “transmission” used in the Regulation does not allow such an approach.

unless minimum requirements are set which must be met by all transportation contracts.’ Therefore, harmonisation among TSO’s of the transport contracts offered is not demanded by the Regulation, but it does require that transport contracts offered by one TSO should have a standard form that facilitates the capacity booking process and trade. This means that they should be identical in terms and conditions other than those determining differences in price between different contracts offered by the TSO. These ‘determining’ variables should be offered and defined as much as possible in line with commodity contracts for gas offered in the market, or other demands from the market. It must be noted however that the Regulation does require TSOs to actively seek further harmonisation of contracts through for example the convergence of tariff structures and the harmonisation of balancing regimes.

- (13) As regards key terms as mentioned in Annex 3.1(c), all terms relating to the system, services or operating procedures that are relevant for contracts and conditions need to be specified by the TSO. This should be done in line with the definitions in the Regulation and the Directive.
- (14) In Annex 3.1(d) is stated that the technical information should include capacity allocation, congestion management and anti-hoarding and re-utilisation procedures. The procedures and conditions on these subjects should be in line with the content of the Explanatory Notes on Article 5 of the Regulation (concerning Capacity Allocation Principles and Congestion Management).
- (15) A detailed description of the gas system, as mentioned in Annex 3.1(g), should consist of the information on the pipeline system and all its entry and exit points, availability of ancillary services and factors influencing the availability of transport services. The description of the gas system provides information for network users to analyse the availability of (firm) capacity and to verify that the TSO optimises the availability of capacity in a non-discriminatory manner.
- (16) Concerning gas quality and pressure (Annex 3.1(h), the entry and exit specification conditions have to be defined clearly for all the relevant points. Gas quality and pressure are two important aspects of a safe and continuous network operation. The TSO should be equally transparent on services related to gas quality and pressure as for transport capacity, especially when these services are scarce. This means that the TSO should provide information on technical, contracted and available capacity of these services, and provide historical information on these services, as is stated in Article 6.3 and Annex 3.3.
- (17) The TSO should also provide maximum information on the risks related to requirements on gas quality and pressure that can affect shippers. The TSO has to state what will happen in case that the gas or the pressure do not meet these specifications at the relevant points. This means that the TSO has to state who is liable in such a case, and what measures the TSO can possibly take (if applicable at what costs) to guarantee continuation of flows. The TSO should make information available on the history of gas quality and pressure specifications at all relevant points. The TSO should also publish information on every occasion the flow was interrupted due to gas quality or pressure problems, if applicable.
- (18) Changes to services or conditions (Annex 3.1(j)) should be communicated clearly and timely, or as soon as possible in the case of unexpected changes. In case of temporary changes, for example because of unplanned flow disruptions, information should be provided on the expected duration of these changes. Any information concerning changes to

services or conditions that affect the commercial position of network users should be communicated to all parties at the same time.

4. TARIFF INFORMATION (ARTICLE 6.2)

- (19) Art 6.2, concerning tariffs provides that: “reasonably and sufficiently detailed information on tariff derivation, methodology and structure...” shall be published by the TSO or the national regulatory authority. This information needs to be public in order for the network user to verify that he is charged a fair and non-discriminatory tariff for the service(s) he uses.
- (20) Sufficient information with respect to the structure means that at least the fixed and variable tariff elements must be published. .
- (21) Sufficient information with respect to derivation and methodology means that the tariff principles or methodology underlying the access tariffs must be clearly defined and published. It must also include information on the financial criteria applied in calculating tariffs. This may include the asset base and cost of capital applied, where applicable, the auction methodology and calculation of reserve prices or the results of a benchmark. Any deviation from the defined standard methodology for tariff determination should be clearly motivated.
- (22) In case only the tariff methodology – but not the resulting tariff - is approved by the regulator, the tariff methodology has to provide a level of transparency allowing system users to establish the actual tariffs for the respective services.
- (23)

5. CAPACITY (ARTICLE 6.3 AND ANNEX 3.3)

5.1. Provisions of the Regulation

- (24) Art 6.3 states what transparency requirements are for capacity: “For the services provided, each transmission system operator shall make public information on technical, contracted and available capacities on a numerical basis for all relevant points including entry and exit points on a regular and rolling basis and in a user-friendly standardised manner.
- (25) Annex 3.3: *Information to be published at all relevant points and the time schedule according to which this information should be published*, is for a large part dedicated to detailed specifications on these demands. The main issue is the definition of what is considered technical, contracted, available capacity needed to enable effective network access. All three are needed to ensure that all the capacity available is offered by the TSO.
- (26) For effective access to transport networks knowledge on capacity is essential. The overall principle is as for transparency in general: the network operator should give as much information to the market as possible without disclosing sensitive information on the commercial position of market participants. Market participants need to know the available capacity and the chance of interruption, both on entry and exit point (the relevant points, discussed further down). Key issues are: the unit of time used in flow definition, timeline of

available information, historical and future information. Annex 3.3 therefore defines more closely these issues.

- (27) The unit of time (eg. hourly/daily/monthly) of capacity-information is especially addressed here, since capacity is not a fixed number. Whether the capacity information is published in flow per year, month or day etcetera makes a difference to the value of the information. The information on the capacity should always be provided in the same way as it is sold on the market and in line with the balancing regime, providing the same amount of transparency to the network users who have contracted capacity and those who have not. This is also the reason why information on technical, contracted and available capacity should be published in absolute figures.
- (28) It should be noted that there are different ways of determining the interruptible capacity that is offered. It can for example be determined based on actual/expected nominations or based on experience, gained with historical flows or any other mechanism. In all cases, transparency on historical data is essential to provide information to network users on the chance of interruption, and the level of information provided should reflect this. Information on the chance of interruption should be provided publishing the historical data of system interruptions and/or defining ex ante the contractual parameters related to the interruptible capacity (e.g. duration, notice and maximum number of allowed interruptions).
- (29) Throughout the annex it is demanded that information is published on a regular and rolling basis. The frequency should be in function of the changes that take place with respect to the capacity situation and in function of the duration of the capacity offered.

5.2. Capacity information

- (30) Annex 3.3(1) states that information should be made available for the maximum technical capacity at the relevant points, as well as the total contracted and available capacity (firm and interruptible), down to daily periods. The chance of interruption should be stated and its relation to the price of the capacity.
- (31) As stated in Annex 3.3(3), updates of available capacity are necessary to make sure the day-ahead and week-ahead capacities are correct, based on, *inter alia*, prevailing contractual commitments, conditions and nominations. This also ensures that short-term services are kept up to date.
- (32) Annex 3.3(2) and (3) state that available capacity should be published for a period of at least 18 months ahead. The unit of time used should reflect the capacity sold according to the contracts. Updates should be made at least every month or more frequently if new information becomes available. Long-term forecasts of available capacity must be published for the next ten years on an annual basis. Information on future capacities will be based on booked and technical capacities. To make the information useful, aggregated contracted capacity should also be published, in the units of time as it is sold by the TSO. With respect to long term information TSO's should on a voluntary basis publish available capacity over all years where capacity is contracted up to the first year where all capacity is available for booking by network users. For instance, if a TSO has contracted a certain portion of the capacity in its system up to x years ahead from today, but has not yet sold any capacity in year x+1 and following years and this capacity may at this time be booked, it should publish available capacities for the next x+1 years to come.

5.3. Capacity utilisation

- (33) Maximum and minimum monthly capacity utilisation rates for the past three years (Annex 3.3(4)) should be expressed in such a way that the absolute figures can be determined, making it independent of variable capacity per entry or exit point as explained in paragraph (27). The utilisation rates should be understood to reflect the used capacity (realised flows) versus the booked and technical capacity; thus giving a true numerical indication of the usage of capacity and whether there has been contractual congestion.
- (34) Annual average flows for the past three years (Annex 3.3(4)) should give an idea to the market of the load of the network. However, this will only give limited information, and it is probably not sufficient to make estimates on the chance of interruption, especially when it is determined through historical flows. Therefore it would be preferred if the TSO would publish the flow data to the level of detail of its prevailing nominations regime.

6. RELEVANT POINTS (ARTICLE 6.4 AND ANNEX 3.2)

- (35) There are two parts in the Regulation where the relevant points are discussed. First of all in Article 6.3 on capacity which reads: "... for all relevant points including entry and exit points..." What relevant points are is specified in Annex 3.2 *Definition of all relevant points for transparency requirements*. This list reflects all the points for which information as defined in the previous chapter is needed in order to be able to transport gas through a system.
- (36) When stated in the annex under 3.2(a) 'all entry points to a network operated by a transmission system operator' and under 3.2(b) 'all exit points or exit zones covering more than 2% of the network', this includes physical as well as virtual points, like for instance hubs.
- (37) The rule on 2% for exit points only goes for exit points within the system of the TSO (to DSO's or consumers) but not for exit points to other systems, as is clarified by 3.2(c) which states that relevant points include "all points connecting different networks of transmission system operators."
- (38) Points within the system can also be relevant points if a transport system is built on multiple subsystems. When the connecting points of these subsystems are relevant entry- and exit-points for a shipper (for example when booking capacity, nominating or because they form different balancing zones), the provisions of the Regulation on transparency apply to these points as well. They can be considered as relevant points as defined under Annex 3.2(c), indicating as relevant points "all points connecting *different* networks of transmission system operators".
- (39) Annex 3.2(f) states that relevant points include those "necessary for providing ancillary services as defined by Article 2(14) of Directive 2003/55/EC." Ancillary services are defined in this article as: "all services necessary for access to and the operation of transmission and/or distribution networks and/or LNG facilities and/or storage facilities including load balancing and blending, but excluding facilities reserved exclusively for transmission system operators carrying out their functions;" This means that relevant points include entry- and exit points to storage facilities.

7. CONFIDENTIALITY (ARTICLE 6.5)

- (40) As indicated above, information on capacity can be considered confidential if it reveals sensitive information on the commercial position of market participants. This could be the case transparency on capacity reveals information on what (kind of) customers are served by the shipper, what the shippers portfolio is to provide the gas for specific customers, or what the prices are in the shippers portfolio.
- (41) Article 6.5 indicates possible situations where this could be the case, namely when less than three network users have contracted capacity at the same point. In that case, the TSO has to seek authorisation of the competent authority, which has to decide by finding a balance between respect for legitimate commercial confidentiality and the objective of creating an internal gas market. The principles that form the basis for such a decision by the competent authority should be consulted with network users and other stakeholders.
- (42) Considerations why commercial confidentiality can or cannot be regarded as more important than the objective of creating an internal gas market are:
- a) Capacity booked is very rarely a valid consideration. Long-term capacity bookings do not reveal commercially sensitive information since they are not directly related to nominations. For short-term services, like day-ahead and week-ahead, capacity booked is neither commercially sensitive since it does not reveal substantial information due to the short period of the booking.
 - b) Historical maximum and minimum monthly capacity utilisation and annual average flows is only confidential in case of one user, as it is only in this case that such information can reveal market sensitive information on the user's portfolio.
 - c) When the same level of confidentiality can be obtained by the TSO not disclosing information on the number of network users, this is preferable over not publishing information on capacity.
 - d) Concerning interruptible capacity, the TSO should always publish information on the likelihood of interruption. It is not necessary that this is based on nominations.
- (43) As is stated in the second paragraph of Article 5: "In case when the authorisation is granted, available capacity shall be published without indicating the numerical data that would contravene confidentiality." This means that firm and interruptible available capacity always has to be published as it never contravenes confidentiality. In the presence of valid considerations relating to confidentiality, the TSO does not have to publish information that would contravene confidentiality, namely the technical and the booked capacity.
- (44) In the third paragraph of Article 5 reads: "No such authorisation [...] shall be granted where three or more network users have contracted capacity at the same point." This means that this is not limited to the primary market but includes the secondary market as well. However, capacity contracted on the secondary market is only notified to the TSO if the capacity right is transferred. Capacity traded on the secondary market of which the TSO is not notified therefore cannot be included in determination if three or more network users have contracted capacity.
- (45) The competent authority takes the decision for confidentiality on a case-by-case basis. Confidentiality exemptions should only be given on a yearly/monthly basis, and if such a decision is taken it should be published. For smaller periods the information is unlikely to be essential to justify commercial confidentiality and the objective of creating a competitive internal gas market weighs heavier. If the regulator wants to allow confidentiality for shorter

term deals, he should set the standard criteria that a deal should comply with and only control whether confidentiality was justified ex-post. These criteria should be consulted with network users and other stakeholders.

- (46) The competent authority concerned should set a deadline before which a demand for authorisation by the competent authorities has to be submitted. In the meantime the TSO does not have to publish the information. If the submission is not complete or sufficiently clear the regulator does not have to take it into account and the TSO is required to publish the information for which it makes the confidentiality demand. The competent authority should publish what a demand for confidential treatment should consist of.
- (47) The TSO has to submit the request, but should only do this at the explicit request from the shipper, which should be submitted together with the rest of the confidentiality request. Confidentiality arrangements through contracts signed before the entry into force of the Regulation have to be notified by the TSO to the competent authority. The TSO cannot be liable for publishing data that are not considered confidential by the competent authority or as defined by the Regulation.

8. USER-FRIENDLINESS (ARTICLE 6.6)

- (48) In the Regulation there are few provisions on user-friendliness of the available information. The overall principle should be that the TSO is a market facilitator and therefore makes the information available the customer demands. This means that all information that is necessary to be(come) a network user should be free and easily accessible, without being necessarily registered or otherwise signed on with the TSO. The provisions are as follows:
- (49) Art 6.6 is especially dedicated to user-friendliness, stating that: “Transmission system operators shall always disclose the information required by this Regulation in a meaningful, quantifiably clear, easily accessible way and on a non-discriminatory basis.” Annex 3.3(7) states explicitly that the information should be made available so that the customer can use it to explore markets: “Transmission system operators shall provide user-friendly instruments for calculating tariffs for the services available and for verifying on-line the capacity available.” For both Art 6.6 and Annex 3.3(7) the TSO should take into account the demand of the network user when defining user-friendliness. Data should be published in the most basic (untreated) format possible that allows independent analysis by the shipper, instead of publishing data that are already interpreted. An easily accessible way means that the information should be available at least in the common business language in the European gas market.