



Regulation 1775/2005: Compliance Monitoring Report

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Purpose of the presentation

The purpose of this presentation is **threefold**

1. To update all participants of the Madrid Forum on the status and outcome of the transparency compliance monitoring public consultation process
2. To highlight areas where further action is necessary, e.g.
 - è **By TSOs, to become compliant**
 - è **By regulators, to ensure compliance**
 - è **By the EC, to provide enhanced legal basis**
3. To provide an outlook and make suggestions for areas where further compliance monitoring work is urgently required

Structure of the presentation

- § **Brief overview:**
ERGEG transparency monitoring 2007/2008
- § **Key results:**
ERGEG transparency - evaluation of responses paper
- § **Regulatory actions taken:**
Actions taken to ensure compliance of existing transparency requirements
- § **Implications:**
Sanctions & enforcement mechanisms
- § **Open topics:**
Areas where further work is required
- § **Outlook:**
ERGEG transparency - conclusions paper

Brief review: ERGEG transparency monitoring



- 07/2006** **Enactment of Regulation 1775/2005/EC**
Directly applicable
- 01/2007** **Beginning of ERGEG's monitoring work**
Focus on transparency related provisions
(Art. 6 & Para. 3 of Annex)
- 2007** **MF12: Presentation of initial findings**
MF13: Presentation of findings from additional monitoring
Beginning of public consultation process
- 2008** **Finalisation of 2007 monitoring work**
Presentation of findings from the public consultation
Publication of the ERGEG conclusions paper

§ Comments by stakeholders

- § General issues
- § Comments by users
- § Comments by TSOs

§ General issues

- § A complete and homogeneous level of transparency is a key prerequisite for the creation of a European single market for energy
- § Existing transparency requirements are insufficient
- § Data access needs to be facilitated
- § Harmonisation of data presentation is necessary
- § Harmonisation of units -> via GTE Transparency platform?

Public consultation: summary and results



- § Responses received to the public consultation by some TSOs showed that there have been small improvements
- § Although there have been improvements in some countries, overall level of compliance remains unsatisfactory and unacceptable
- § Application of 3-minus rule as main loophole to the provision of capacity information
- § Preconditions for the application of the 3-minus rule are not always fulfilled
- § A traffic light system (without indicating numerical data) to be in place in any case, if 3-minus rule has been approved by NRA

Very reduced capacity	to 5 %	
Reduced capacity	5 - 20 %	
Free capacity	above 20 %	

ERGEG transparency evaluation of responses paper



§ Consultation period: from 16 November 2007 until 23 January 2008

§ 9 non-confidential responses, one confidential response and one confidential annex have been received

§ Responses regarding two ERGEG reports:

§ Compliance with Transparency Requirements of Gas Regulation 1775/2005/EC - An ERGEG Monitoring Report” [E07-TRA-02-03]

§ “Transparency Requirements – An ERGEG Additional Monitoring Report” [E07-TRA-02-03b]

Respondent		Country
CENTRICA	Centrica Plc	UK
ENI	Eni S.p.A.	Italy
EUROGAS	Eurogas	Belgium
GTE	GTE	Belgium
GTS	Gas Transport Services B.V.	Netherlands
OGG	OMV Gas GmbH	Austria
PGNiG	Polskie Górnictwo Naftowe i Gazownictwo S.A.	Poland
TAG	TAG GmbH	Italy
EFET	EFET	UK
Confidential Response		
Confidential Annex		UK

ERGEG transparency evaluation of responses paper



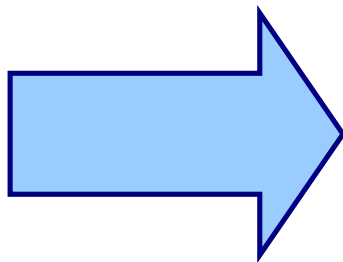
- | Additional transparency requirements considered necessary by respondents to the public consultation**
 - | Abolition of the 3-minus rule**
 - | Greater harmonisation of data publication, in particular with regard to both format and language**
 - | All non-confidential data to be published openly on the internet**
 - | Need for detailed and accurate maps of transmission systems clearly showing all entry and exit points in a consistent way**
 - | More information on available capacity levels**
 - | Better access to daily flows, interruption probabilities and real-time balancing information**

ERGEG transparency evaluation of responses paper



ERGEG's preliminary conclusions

- § Transparency remains vital to energy market liberalisation
- § Despite the progress made, the lack of transparency is still a major hurdle to market integration. Therefore further work is required
 - è Monitoring existing transparency requirements
 - è Effectively sanctioning of non-compliance
 - è Introducing new transparency requirements where needed and clarification of existing requirements where necessary
- § Overall aim:
fair and non-discriminatory access to all types of natural gas infrastructure, not just transmission systems

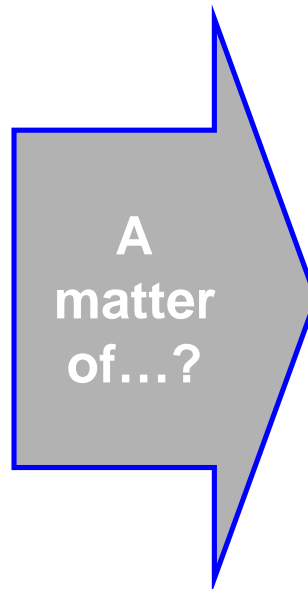


**Conclusions to be elaborated upon
in the ERGEG conclusions paper
(First draft currently being discussed)**

- I Question: How did regulators respond to the findings of the two monitoring reports?
 - i Question of enforcement and sanctioning
hence: Related to regulatory powers

Examples from

- § Austria
- § Germany
- § The Netherlands



- § Self-regulation (by TSOs)
- § Interaction (NRAs & TSOs)
- § Legal enforcement (NRA or responsible body)

Enforcement of TSOs Compliance: Austria



Steps taken by E-Control to achieve full compliance:

October 2007

- I E-Control requested TAG, OMV Gas and BOG provide justification for not implementing the requirements as stated in the ERGEG Monitoring Report

November 2007

- I E-Control specified request by pointing to the main areas of non-compliance
- I E-Control set date (31 January 2008) by when the TSOs must implement the requirements not yet implemented

February 2008

- I Requirements have been implemented by the TSOs
- I OMV Gas: request for application of the 3-minus-rule at one relevant point
 - i Request has been withdrawn by OMV Gas after discussion with E-Control

➡ Full compliance achieved

Enforcement of TSOs Compliance: Germany



- § Substantial improvements through NRA/TSO interaction
- § Action taken (January – April 2008)
 - Review of compliance level of selected TSOs (5 least compliant)
 - Agreement on binding action plan with deadlines (within 1-3 months) reached in bilateral meetings
 - Non-compliance with action plan will result in formal proceedings/penalties
 - Review of compliance after expiry of deadlines
- § Review of compliance by additional selected TSOs ongoing (next round of bilateral meetings planned for May/June)
- § Ongoing follow-up of agreed action plans and obstacles for implementation

 **Compliance improved**

- § **Netherlands:**
Enforcement case against Zebra (local TSO) to comply with Reg. 1775/2005/EC
- § **Case:**
Long term contracts for total capacity, partly unused therefore contractual congestion
- § **Legal action:**
Binding order by DTe (Dutch Office of Energy Regulation) issued: Call for non-criminal sanction (in line with Art. 60 of the Dutch Gas-act)

- § **Content of the order: Obligation of TSO Zebra (operator of small high pressure network NL to Belgium) to:**
 - è **Provide for the maximum use of total technical capacity**
 - è **Request primary capacity holders offer unused capacity to the secondary market**
 - è **Offer capacity itself if the primary capacity holders does not**
 - è **Provide information on capacity as ordered by Reg. 1775/2005**
 - è **In case of (re)negotiation, Zebra has to offer the capacity to all shippers**
- è **Current status decision: in force, still under appeal (no date set yet for coming up for trial)**

The 'Zebra' case clearly shows that

- è 'Soft sanction regime' in Reg. 1775/2005 (sanctions of criminal nature not allowed)
- è Cases take long time, probably too long to make an impact
- è National differences w.r.t. sanction mechanisms and powers

Summary:

General weakness: Ineffective sanction regime

Note: no provisions in third package for amending 'soft sanction regime' w.r.t. Reg. 1775/2005

Sanctions & enforcement mechanisms



ERGEG's view

- | Where voluntary approaches are not successful, regulators need to be given effective sanction mechanisms
- | Sanction mechanisms need to be
 1. Direct from the NRA targeted at the TSO (not via a third party, eg administrative body)
 2. Proportionate to size of TSO, e.g. percentage of turnover
 3. Easy to execute, in a speedy manner



General weakness at the European level: Ineffective sanction mechanisms in case of non-compliance

Areas where further work is required

What are the **top priorities** for enhancing transparency?

1. Expanding transparency to other parts of the value chain, including: Storage facilities, LNG facilities, interconnectors and **hubs**
2. Ensuring efficient sanction mechanism in case of non compliance
3. ACER should develop efficient monitoring capability based on ERGEG's monitoring experience
4. Enforcement = **Continuous monitoring** instead of cut off date related monitoring



Further clarifications needed to enhance transparency at a very practical level under the existing legal framework

I **Technical Information:**

Comprehensive list of technical information and TPA services to be published by the TSO and information updating requirements (provisions on capacity allocation, congestion management and anti-hoarding and re-utilisation procedures; rules applicable for capacity trade on the secondary market; the flexibility and tolerance levels included in transportation,...)

I **Definition of relevant entry and exit points of the TSO system:**

Clarification of what constitutes a relevant point for which information has to be published

I **Tariff information**

Transparency on tariffs and elements of tariff calculation including the definition of financial criteria applied in calculating tariffs and information updating requirements

Need for further clarification - 2



I **Capacity information**

TSOs are to make publicly available the relevant capacity and flow information per relevant entry and exit point both historically and capacity forecasts for future dates

eg. information on system utilisation, in particular, information on actual daily flows including, information on interruptions to those flows, including the chances (likelihood) of interruptions and reasons of interruptions.

I **Balancing information**

comprehensive list of information

- necessary to assess the balancing risk eg. publication of measures taken as well as cost incurred to balance the system and
- balancing status to be provided to individual network users on a confidential basis

Need for further clarification - 3



User friendliness

- areas for provision of user-friendly instruments
- non-discriminatory access to information
- provision of information free of charge in an easily accessible manner
- provision of information in both national language and English

§ ERGEG transparency conclusions paper

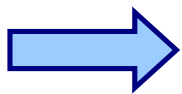
- § In its conclusion paper, ERGEG will
 - ... summarise key results from monitoring exercises
 - ... provide proposal for enhanced/additional transparency
 - ... underline need for additional transparency requirements

Key statements:

- è **Revising annexed guidelines to the existing regulation via comitology is limited to the scope of the current Regulation but more is needed**
- è **ERGEG supports new mechanism in 3rd package, because parts of the natural gas value chain –other than gas- are at present not covered by Regulation 1775**
- è **Enhanced transparency especially needed for other essential facilities: storage, LNG and hubs**

Conclusions

- è **Results of the evaluation of comments to transparency monitoring and conclusions clearly indicate further need for transparency**
- è **Further monitoring of the Regulation 1775/2005 is needed, especially with regard to**
 - § Art. 3: Tariffs
 - § Art. 5: CAM&CMP
 - § Art. 7: Balancing
 - § Art. 8 :Trading of capacity rights
- è **Assessment of adoption of industry developed technical codes (eg. CEN, EASEE-gas CBPs)**
- è **Coordination with EC to avoid overlapping monitoring efforts e.g. Art. 3 and 7**



EC should encourage MS to fully implement Article 13 to enable Regulators to monitor and enforce compliance

Further information



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