



# **ERGEG Transparency WS**

Transparency Monitoring 2007

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XIIIth Madrid Forum (16th October 2007)

# Agenda

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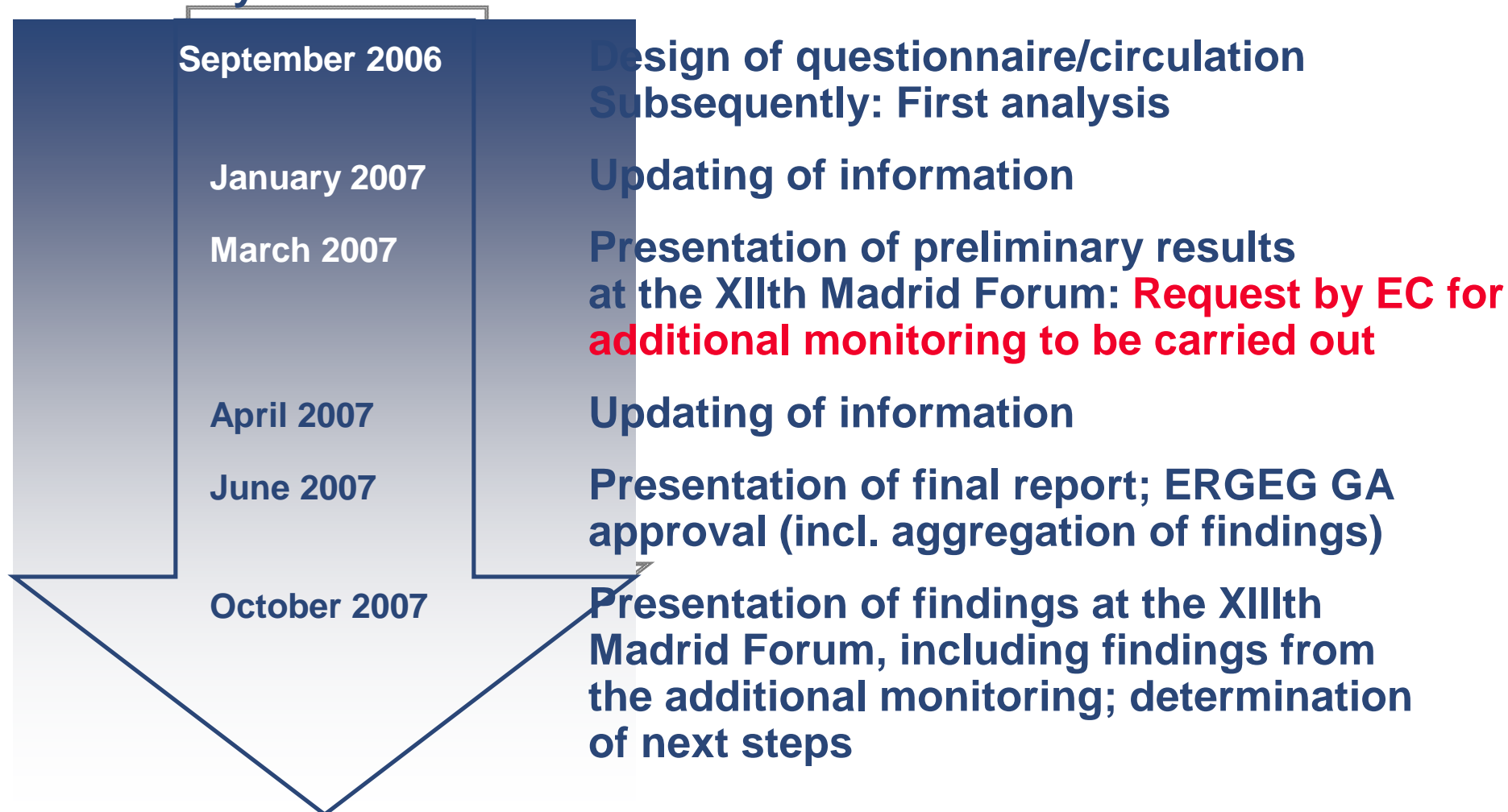
## Overview

- | **Introduction: Monitoring: Key dates**
- | **Transparency Monitoring Report 2007**
  - | TSOs and countries covered
  - | Coverage and response rates
  - | Analysis in practical terms
- | **Potential limitations: Absolute vs. relative levels of transparency**
- | **Key findings by topic area: Selection**
- | **Aggregation of findings by topic area**
- | **Assessment of findings: Overall transparency picture**
- | **Findings from the additional monitoring exercise**
- | **Sanctions and powers of NRAs in case of non-compliance**
- | **Further transparency requirements**

# Transparency Monitoring Report 2007

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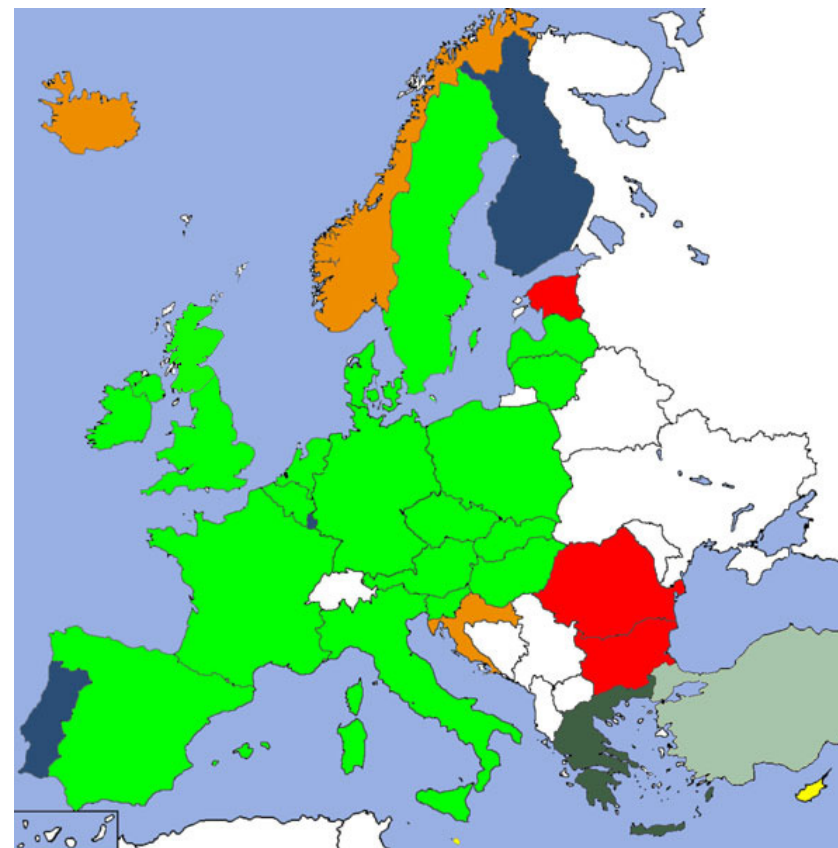
## Key dates



# TSOs and countries covered

## Coverage

- | All ERGEG member states and observers invited to participate
- | 43 (EU and non-EU) TSOs in total
- | **Green: Response**  
**Green & Black:** Response from ERGEG observer  
**Dark green:** TSO in place but no information avail.  
**Red:** No response from ERGEG members  
**Orange:** No response from ERGEG observers  
**Blue:** Derogation under Art. 28  
**Yellow:** No natural gas infrastructure



Range of responses:  
Yes, No, Not applicable, Not known, Empty cell

## Potential limitations:

### Absolute vs. relative levels of transparency

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### Absolute vs. relative levels of transparency

- | The report is not an assessment of the absolute level of transparency across the EU
  - | Instead:  
Set of legally binding transparency requirements has been monitored: Relative levels of transparency
  - | Existing transparency requirements:  
Not sufficient to facilitate the development of an efficient and effective market
  - | More transparency needed: 3rd package
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- | **The presentation will focus on examples of where there is a considerable lack of implementation (QS=Question Set)**
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## List of topic areas covered

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By question set:

1. General questions: 5 questions plus sub-questions
2. Tariffs: 2 questions plus sub-questions
3. TPA Services: 7 questions plus sub-questions
4. Modifications to service conditions: 5 questions plus sub-questions
5. Capacity allocation/congestion: 4 questions
6. Balancing: 3 questions
7. Technical information: 7 questions
8. Capacities: 14 questions plus sub-questions
9. Exemptions: 6 questions plus sub-questions

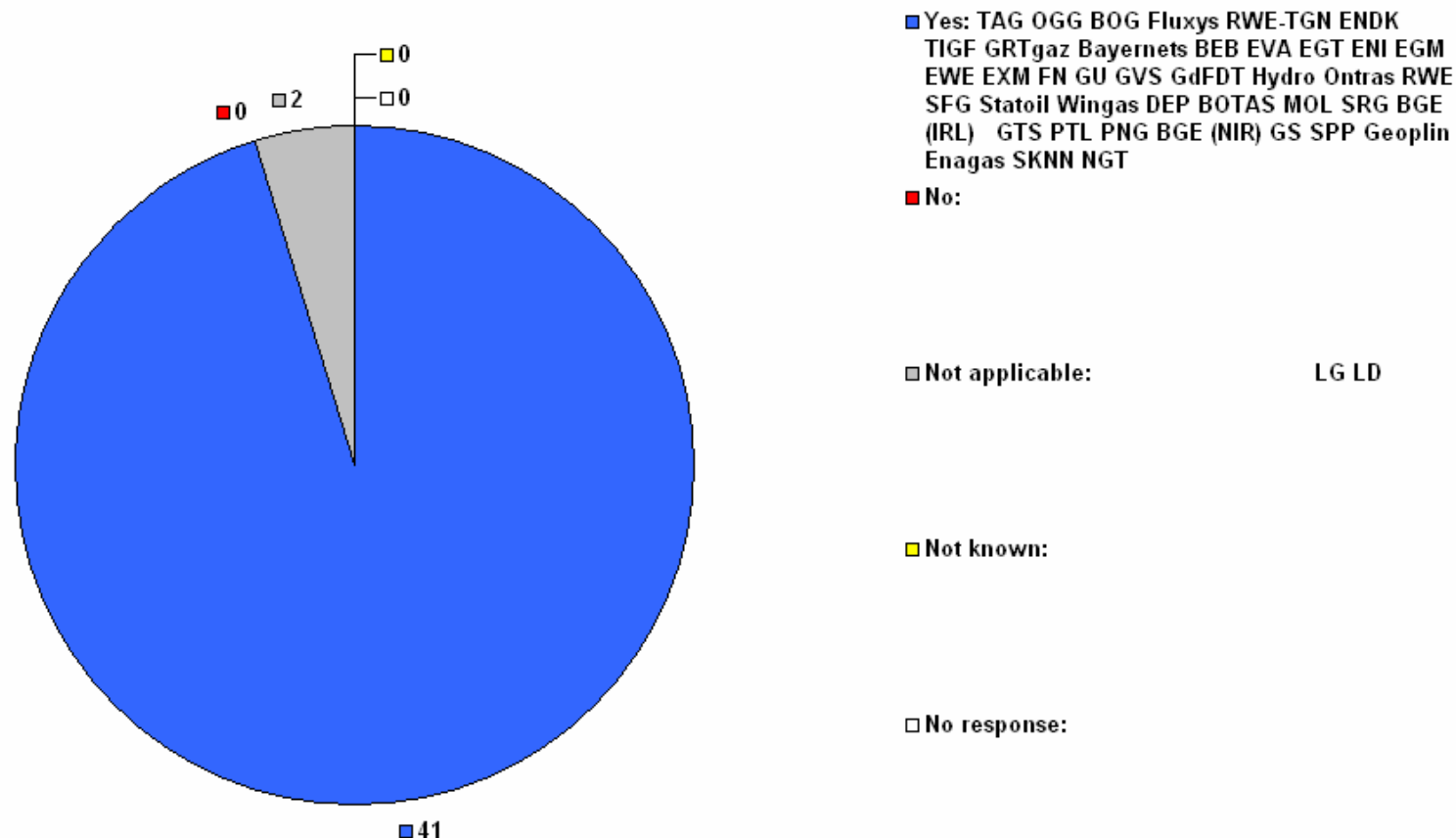
Plus: 10. Provision of additional information: 1 question



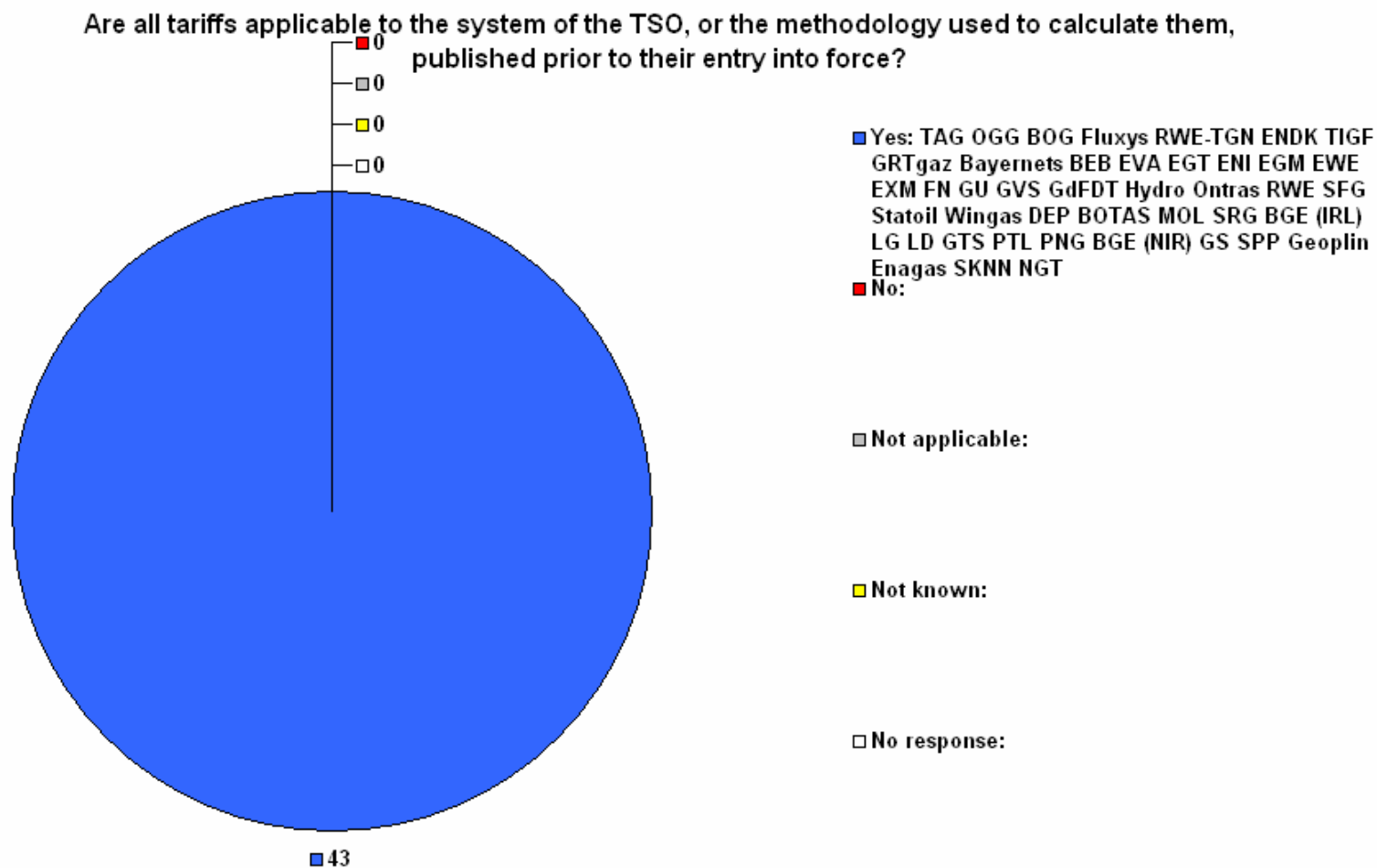
**Cut-off date (first round of monitoring):  
15th April 2007**

## Key findings: Access to systems (QS1)

Is information easy to find using these systems?



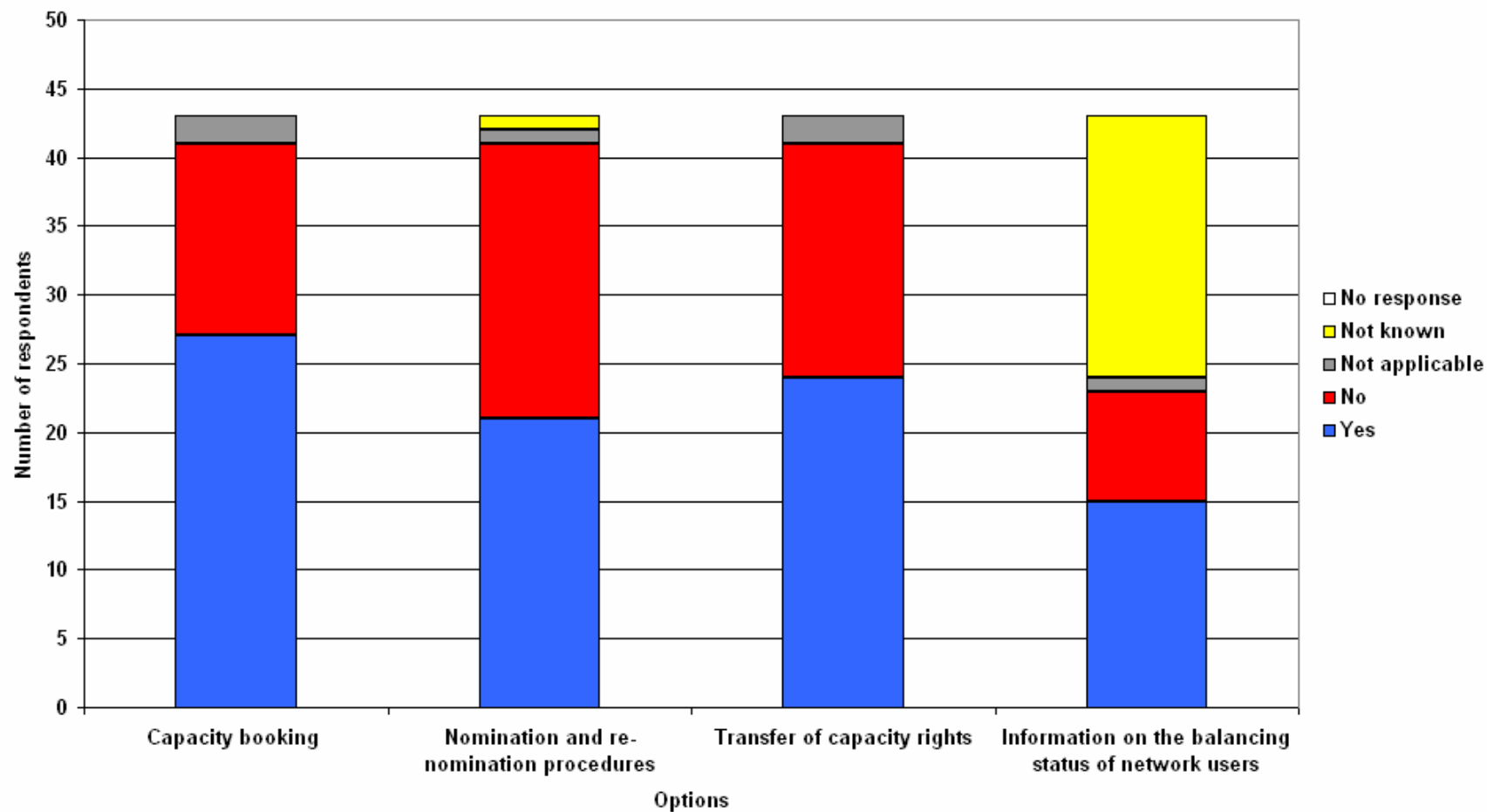
## Key findings: Tariffs (QS2)





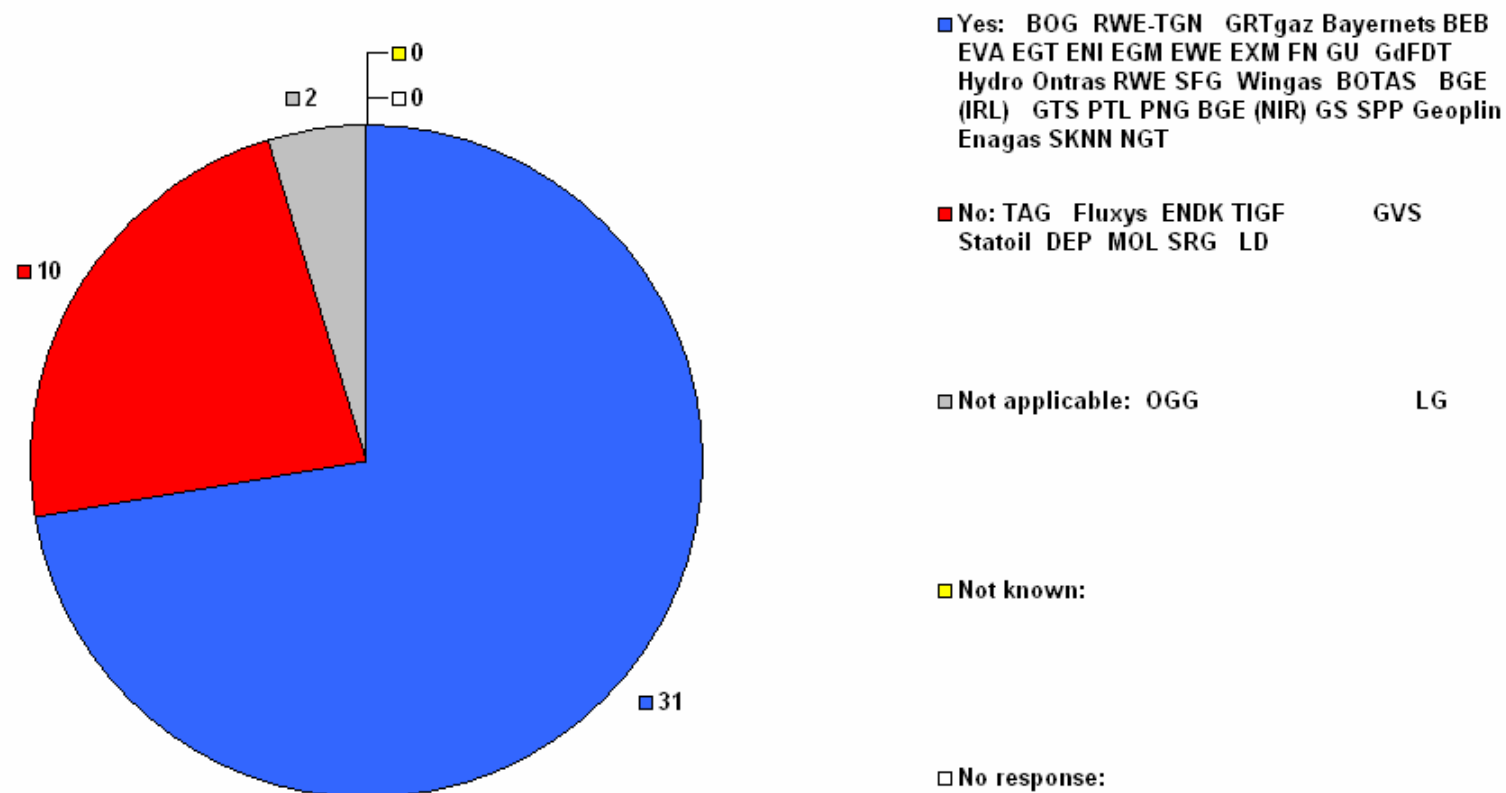
## Key findings: TPA Services (QS3)

Does the TSO offer the following services online?



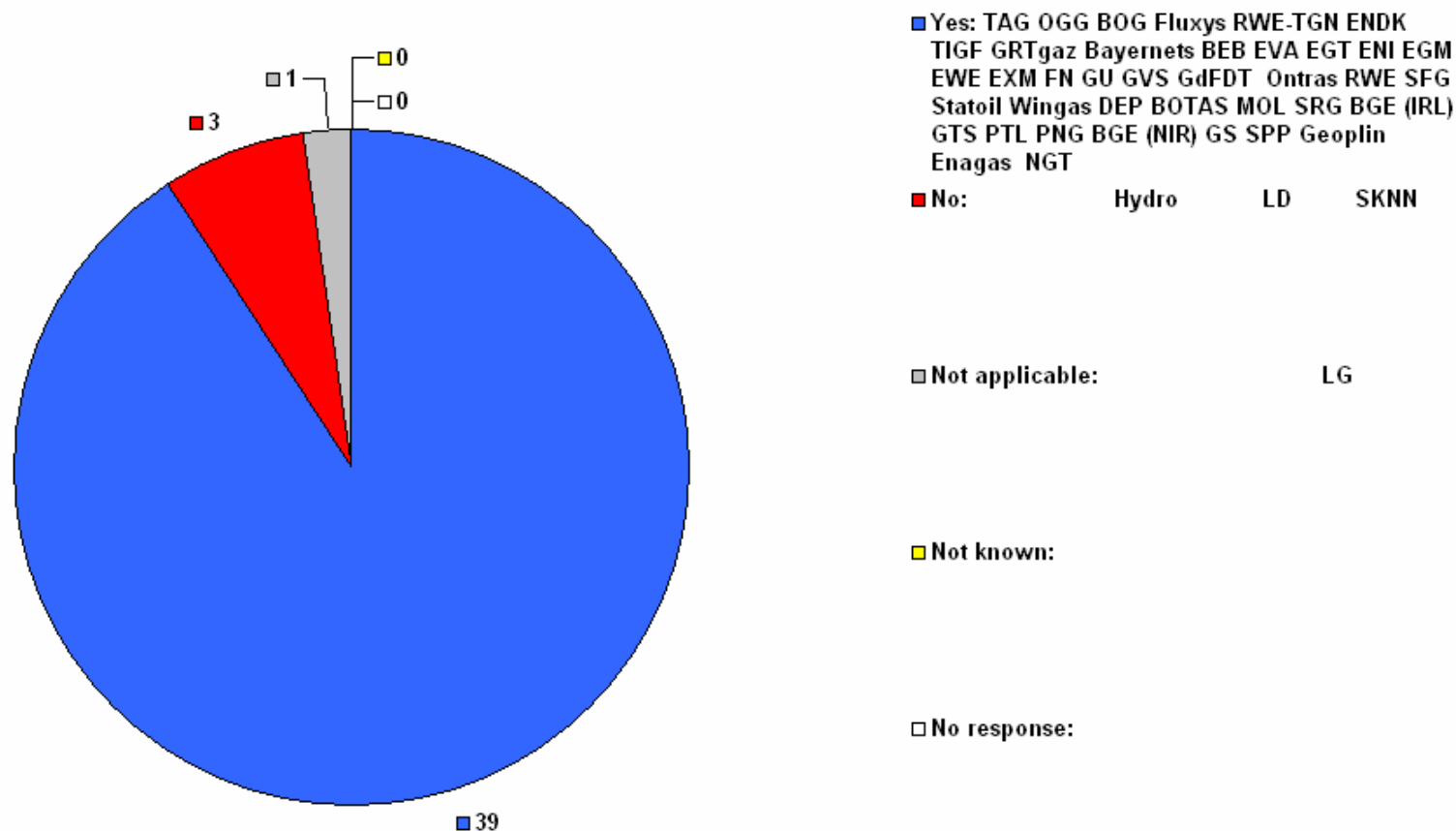
# Key findings: Modifications to service conditions (QS4)

During maintenance periods: Does the TSO publish regularly updated information on the details of and expected duration and effect of the maintenance?



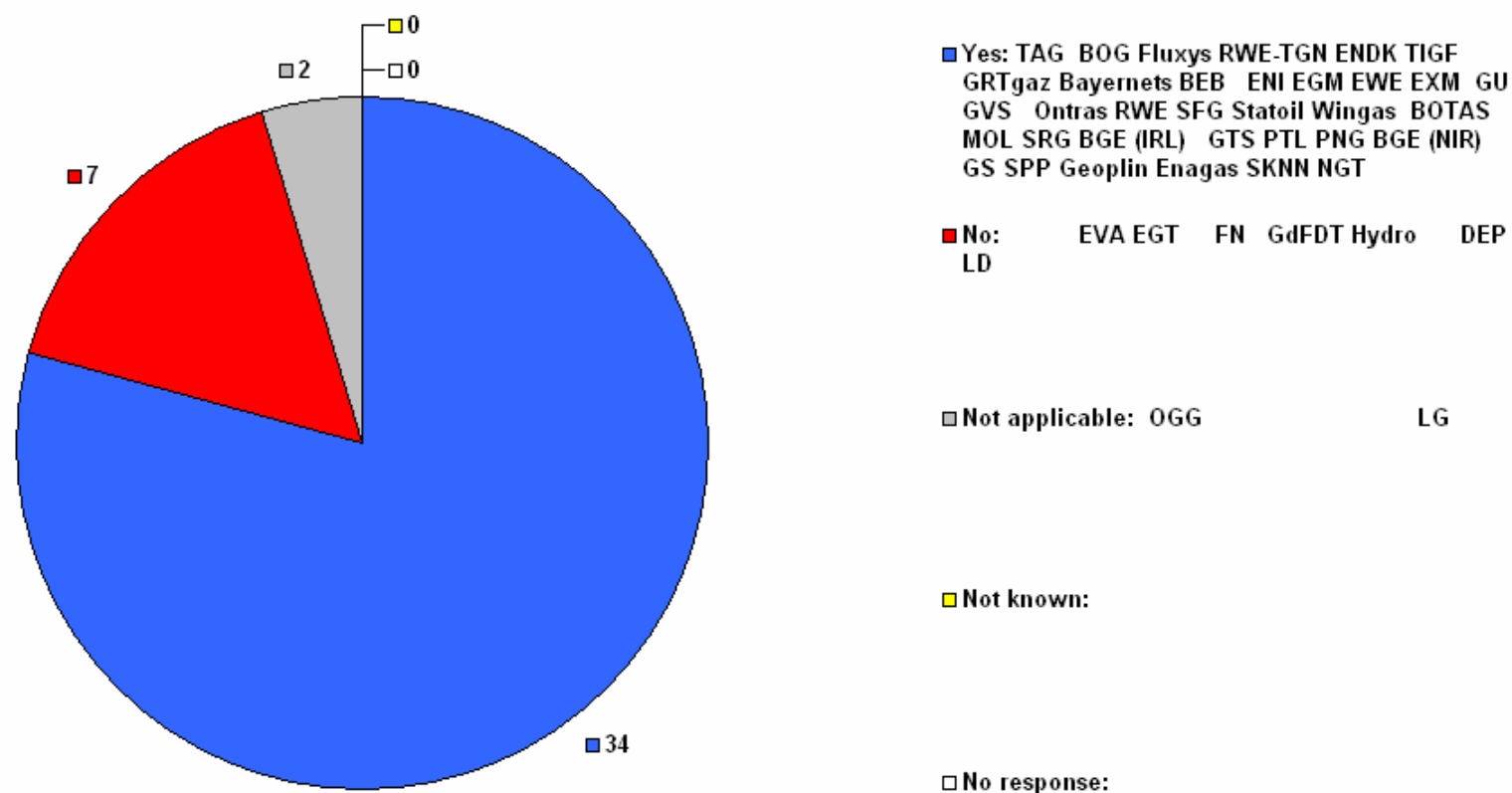
# Key findings: Capacity allocation/congestion (QS5)

Does the TSO publish provisions on capacity allocation?



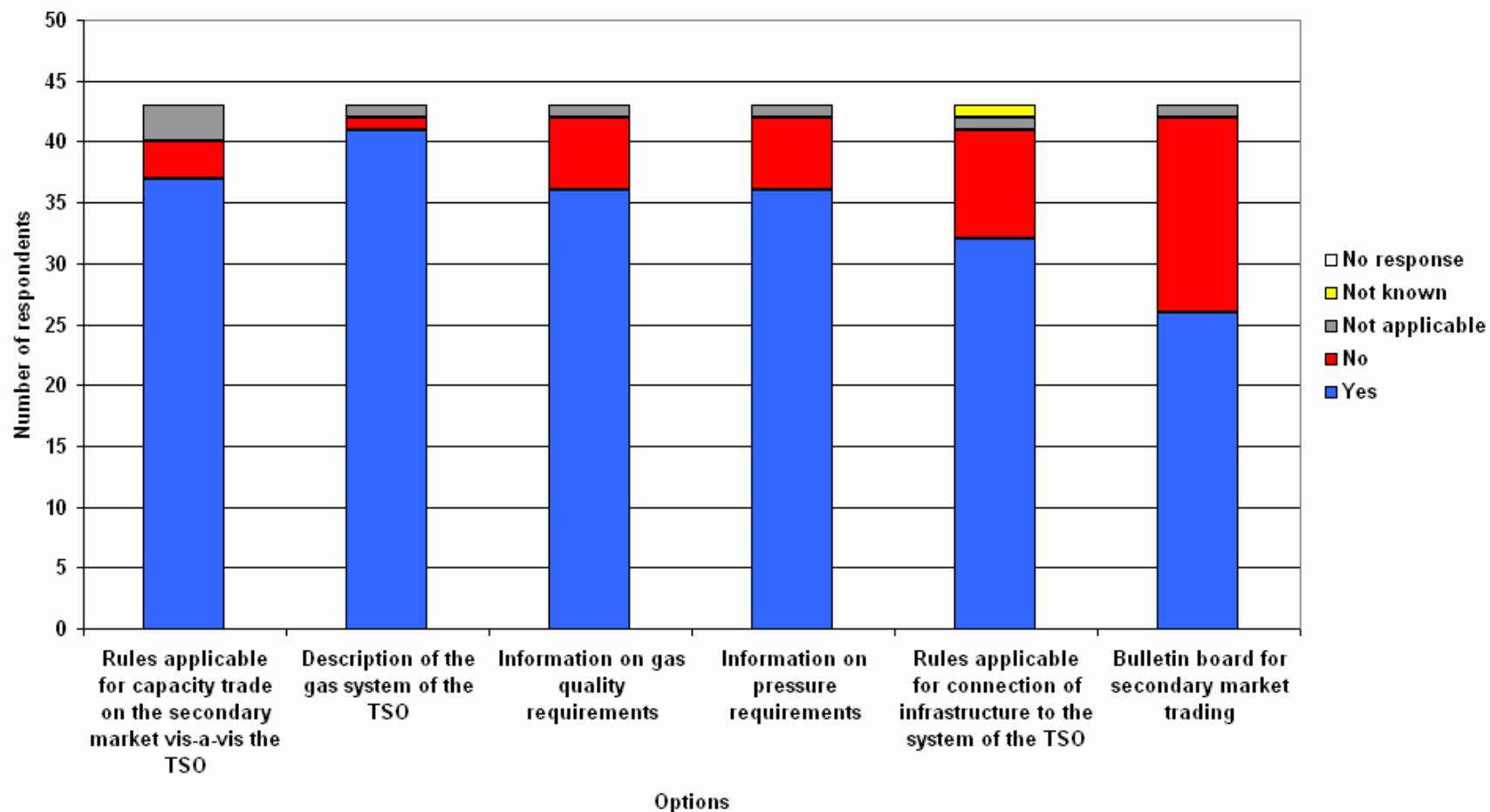
## Key findings: Balancing (QS6)

Are the methodology and final tariffs for imbalance charges public?



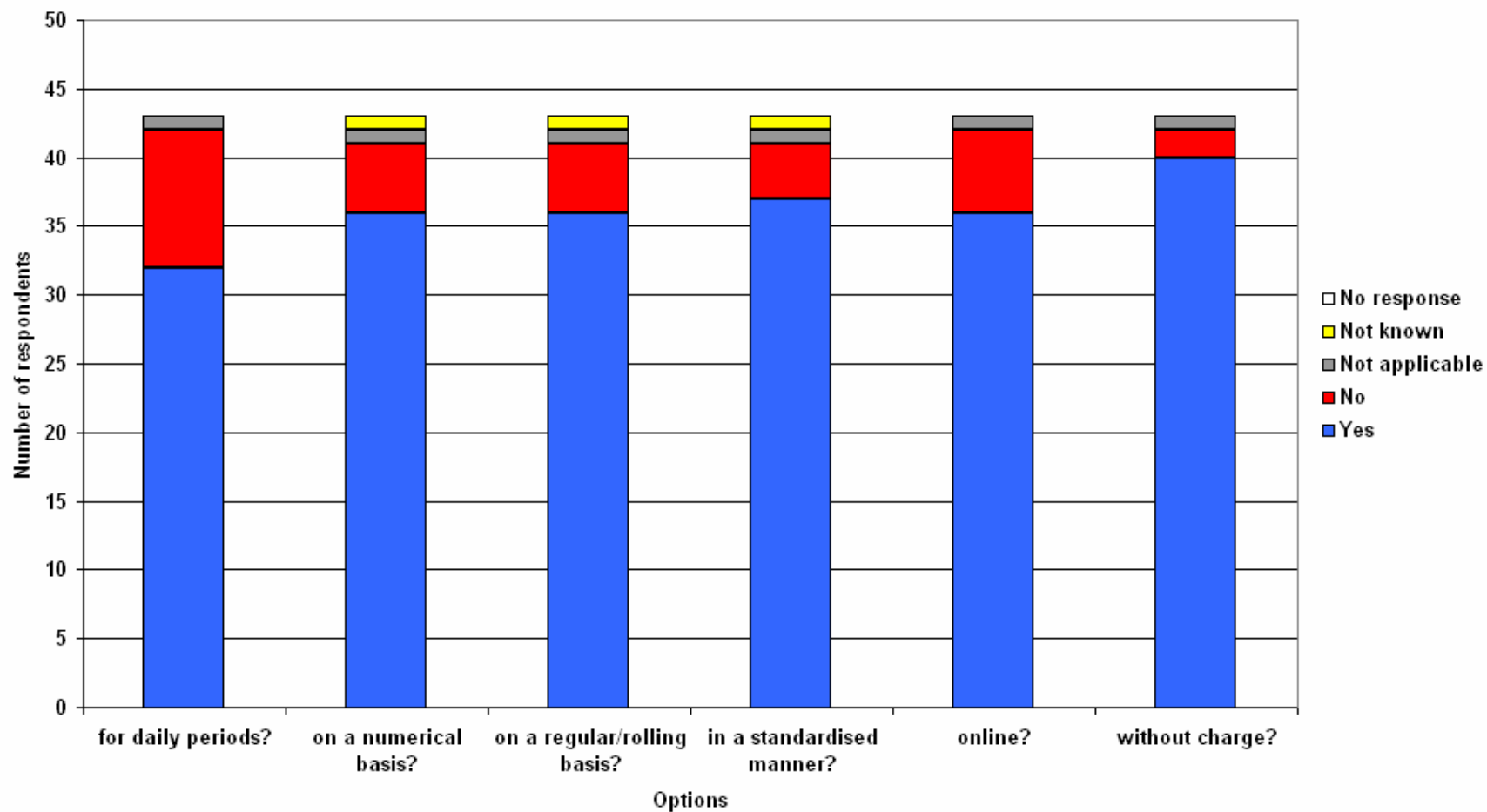
## Key findings: Technical information (QS7)

Is the following information made available by the TSO?



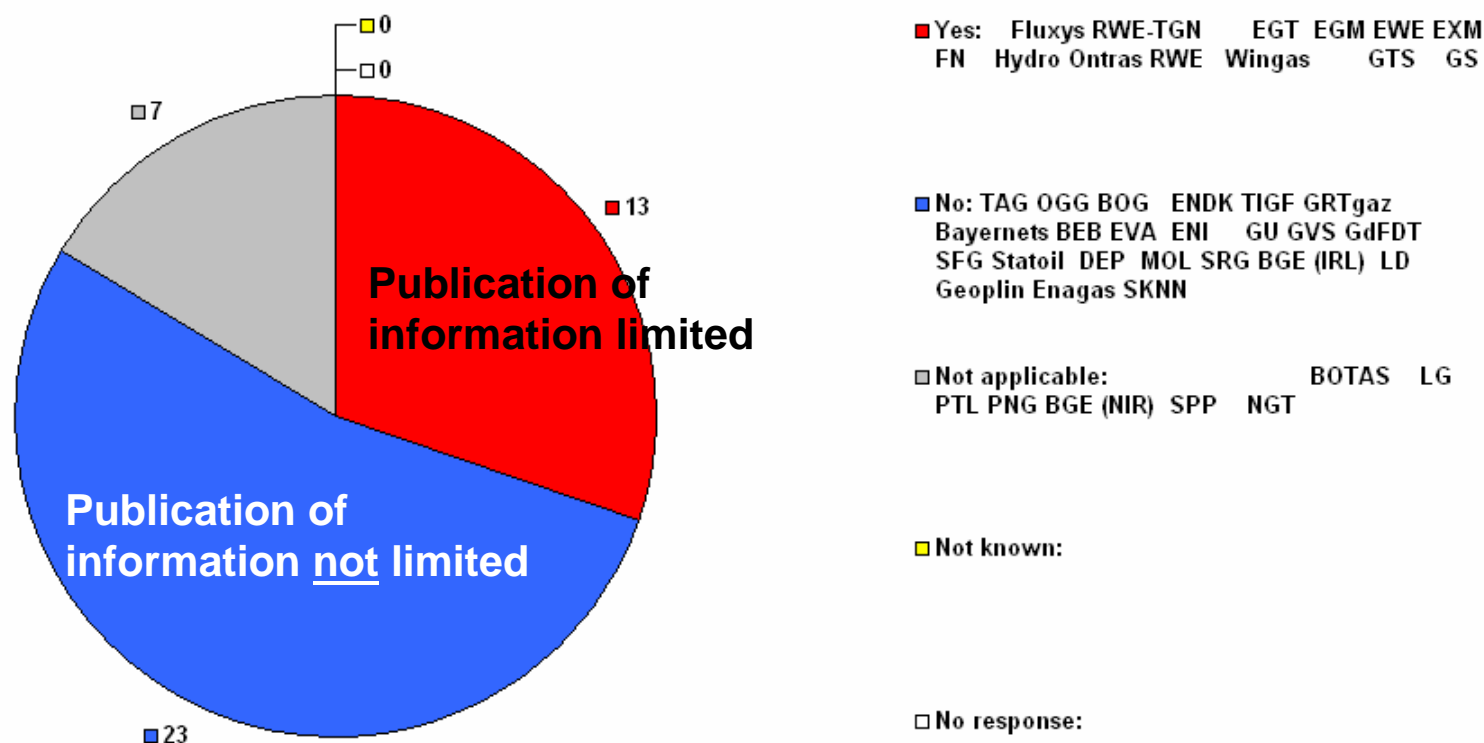
## Key findings: Capacities (QS8)

Does the TSO publish for all relevant points the available firm capacity?

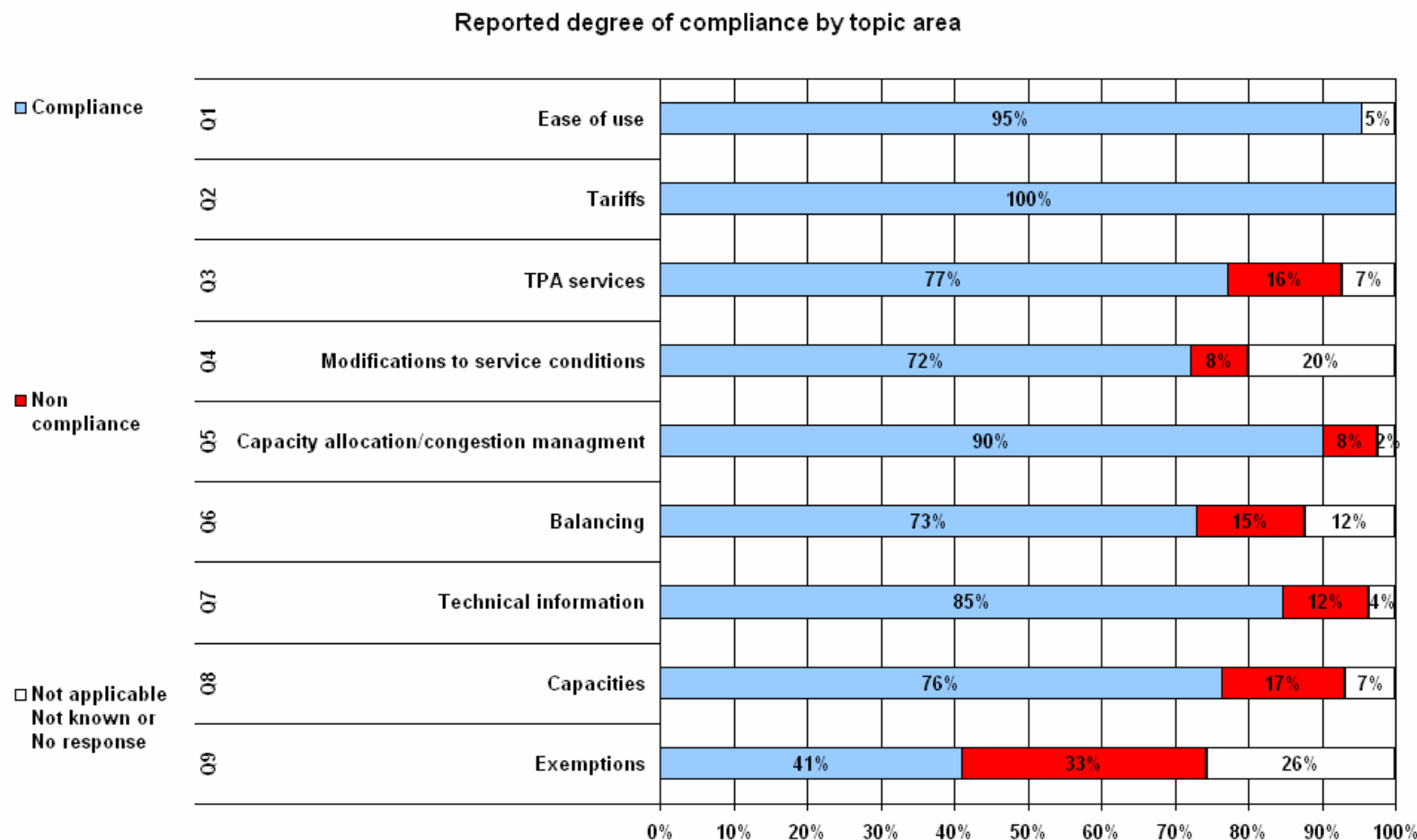


## Key findings: Exemptions (QS9)

Does the TSO limit publication of information on the capacity situation for certain points of his system due to the Application of the “3 minus shipper rule”  
[see Art. 6.5 of the Regulation]



# Aggregation of findings by topic area



Report  
clearly  
shows:

Un-  
satisfactory  
and un-  
acceptable  
level of  
compliance  
in some  
areas!



# Compliance by region: GRI REM

## Compliance varies by region:

South: 89%  
 South-South East: 84%  
 North-West: 80%



§ North-West\*\*

\*\*not including Poland



§ South



§ South-South East\*

\*Greece not included

## Assessment of findings: Overall transparency picture

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- | **Implementation**

Heterogeneous and in some areas low degree of implementation of Regulation 1775/2005/EC

- | **Clear message**

Lack of degree of compliance

Overall aim: 100 per cent compliance to be achieved

- | **What's needed?**

Comprehensive and complete implementation of Regulation 1775/2005/EC needs to be ensured

è Are regulatory powers and sanction mechanisms sufficient?



**Findings are highly unsatisfactory:  
Need for improvement**

## Additional monitoring exercise 2007

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- | Request for further monitoring expressed at the XIIth Madrid Forum
- | In addition:  
Letter from EC to TRA WS (August 2007) seeking further clarification, e.g. regarding
  - | “Answer not available”
  - | “Answer not known”
  - | Input of users
  - | Infringements
  - | Clarity
- | Can „not applicable“ be a valid answer?



**Presentation of findings  
from additional monitoring work**

## **Additional monitoring exercise 2007**

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### **Areas covered**

- | **NRAs**
  - | **Competent authority**
  - | **Sanction mechanisms**
  - | **3minus shipper rule**
- | **TSOs**
  - | **Transparency requirements**
  - | **Tariffication: Tariffs for access to networks**
  - | **Capacity allocation mechanisms (specific aspects)**
  - | **Congestion management procedures (specific aspects)**



**Cut-off date (additional monitoring):  
1st July 2007**

## NRAs: Enforcement & sanctions

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- | The responsibility for imposing sanctions is either allocated to NRAs, Ministries and/or Courts
- | The nature of sanction mechanisms varies; fines and penalties are the predominant mechanisms though
- | Regarding the power to impose sanctions on Art. 3 to 8 related violations of the Regulation 1775, there is a no consistent empowerment of regulators to impose such sanctions
- | Potential sanctions are often too small to be dissuasive
- | Only one member state reported having actual experience with imposing sanctions at all
- | 3minus shipper rule: Few countries affected reg. requests for exemptions from publication
- | **We were unable to assess how many member states have notified their sanction mechanisms to the EC**
- | **The EC is requested to verify if effective sanction mechanism are in place**

## TSOs: Impressions from responses

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- | **Additional monitoring shows:**
  - | Additional responses and explanations provides useful/important insights
  - | However: Picture remains: General lack of compliance
  - | The comprehensive and complete implementation of Regulation 1775/2005/EC is currently not ensured

### **BUT:**

- è Transparency requirements too general? à less prescriptive than national law
- è Explanatory notes seen as not legally binding à therefore mostly ignored
- è Monitoring of non-legally binding requirements (expl. Notes) not useful as compliance is judged as not necessary by many TSOs

# Quality of responses obtained: „Not applicable“: A valid answer?

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## § Acceptable if

- § No congestion  
No congestion management procedures (CMP)
- § Only firm capacity offered  
No information on interruptible capacities
- § If enough capacity at the primary market  
No need for a secondary market/secondary market platform

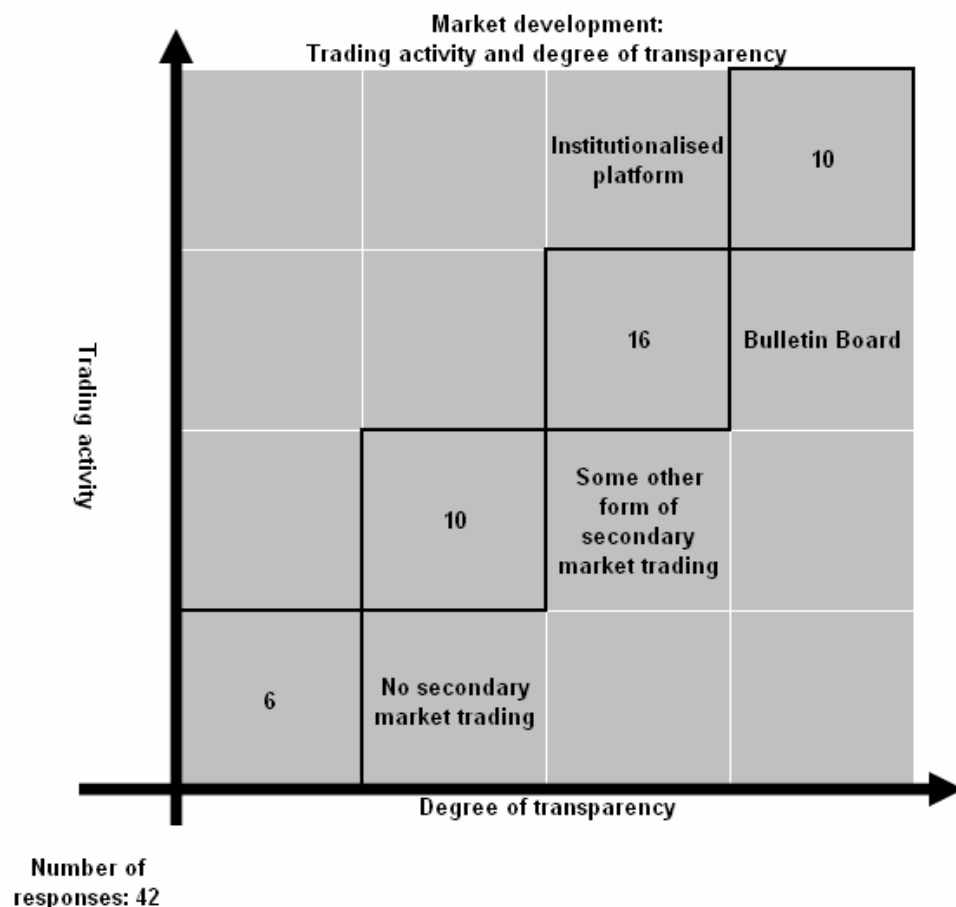
## § Not acceptable if

- § TSOs simply did not (want to) answer the question
- § (It is known that) TSOs do not comply with rules

è **Potential violation of Regulation 1775/2005/EC**

# Example: Further harmonisation needed

## Secondary market trading



- § Most advanced option:  
Open and transparent,  
institutionalised platform
- § Bulletin Boards are only  
second best, other forms  
only third best
- § Only in few cases is there  
no secondary market  
trading
- è Regulators to coordinate  
efforts
- è Creation of well-  
functioning secondary  
markets



## Case studies on sanctions: Selected countries

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Example of application of sanction mechanisms:

- | **Netherlands:**  
Enforcement case against Zebra (local TSO) to comply with Reg. 1775

No application so far:

- | **Austria:** Administrative fine of approx. EUR 14,000 per case only, no sanctions implemented so far
- | **Germany:** No sanctions implemented so far, administrative fine of EUR 10,000
- | **France:** CRE, after due process proceedings resulting in a formal notice, may impose penalties, equivalent to a maximum of 3% of the turnover of the party liable for the breach (increased to 5% if the offence is repeated), in the event of violation of legislative rules or of regulatory decisions. In France, there is no general legal basis for sanctioning non compliance with Reg. 1775/2005.
- | **UK:** Ofgem can fine up to 10% of UK turnover for breach of existing licence condition (new/modifications to licence conditions can be proposed at any time); can revoke licences in some cases (e.g. supply); breach of Network Code same as breach of licence condition – also as Network Code backed by commercial agreements possibility of compensation through legal proceedings.

## **Background: DTe case of 15 February 2007**

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**Issue of binding order by DTe (Dutch Office of Energy Regulation) (sanction based on art. 60 Gasact); obligation of TSO Zebra (operator of small high pressure network in the South of NL) to comply i.a. with:**

- § The task set out in section 10 of the Dutch Gasact and section 5 (4) of the Regulation 1775/2005 providing for the registration of the actual use of technical capacity, including unused capacity, and to provide for the maximum use of the total technical capacity in the most efficient way.
- § Zebra: To request current suppliers/shippers to make unused capacity available on the secondary market against reasonable prices and conditions and in a timely fashion.  
  
In case current suppliers do not themselves offer unused capacity on the secondary market against reasonable prices and conditions, in spite of demand, Zebra shall offer capacity itself. Zebra shall provide for reasonable compensation to capacity holders.
- § Zebra shall provide information on the use of the total technical capacity, including unused capacity, to the network users.
- § Zebra shall switch the supplier when asked by a customer.

## **Background: DTe case of 15 February 2007**

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The main **obligations** of Zebra are in short:

- § Provide for the maximum use of total technical capacity
- § To request primary capacity holders to offer unused capacity to the secondary market
- § To offer it itself in case the primary capacity holders does not
- § To provide the information on capacity as ordered by Reg. 1775/2005
- § In case of (re)negotiation, the capacity has to be offered to all shippers

**Current status decision: in force, under appeal**



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

# Effectiveness of sanctions

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## § Who issues sanctions?

- § NRAs-Ministries-Administrative bodies
- § Only very few NRAs have the power to sanction/fine
- § If NRA can initiate sanctions only via “other administrative institutions”, this is usually not very effective

## § Extent of sanctions/fines

- § Must be proportionate to size of TSO
- § Small fixed fines ineffective
- § Example: EUR10,000/EUR14,000 administrative fine vs. percentage of turnover

## § Speed and ease of the sanctioning process

- § Directly by NRA vs. other body with huge administrative procedures taking long time

## Conclusions

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### 1. **Scope of Regulation 1775/2005/EC**

The comprehensive and complete implementation of Regulation 1775/2005/EC should be ensured by competent authorities in an effective manner. In reality this is currently not the case in many countries.

### 2. **Additional transparency requirements**

Those need to be defined and adopted to allow fair and non-discriminatory access to all types of natural gas infrastructure, not just transmission systems, including:

1. LNG facilities;
2. Storage facilities; and
3. Interconnectors

## Conclusions

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### 3. **Scope of transparency requirements**

Explanatory notes are not regarded as being obligatory by most TSOs. Therefore there is a wide range of interpretation of the obligations by TSOs

### 4. **Make sanctions more effective**

The general nature of many obligations make them difficult to enforce at national level.

**AND**

Sanction mechanisms are in many cases ineffective

The EC needs to verify if sanction mechanism exist, have been notified and meet the specified requirements to be deemed “effective”

## Outlook: Next steps

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- | **ERGEG to conduct a public consultation on findings after the XIIIth Madrid Forum**
- | **ERGEG to assess the respective importance of specific transparency requirements**
- | **ERGEG to stimulate stakeholder engagement, e.g. by:**
  - § **Inviting TSOs to explain areas of non-compliance in detail**
  - § **Inviting shippers to state concrete transparency requirements**
  - § **Appealing to NRAs (or other competent authorities) to ensure compliance**
  - § **Reminding Member States to notify EC reg. Art. 13**
- | **Extension of monitoring work: Monitoring in other areas, such as**
  - | **Balancing, Open Season, LNG**
  - | **Inclusion in ERGEG Work Programme 2008**

## Further information

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