

# ACER



Agency for the Cooperation  
of Energy Regulators

## **Transit Contracts Inquiry** **Final results**

***Dimitris Lelovitis***  
ACER

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## Outline

- Process
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- Country analysis
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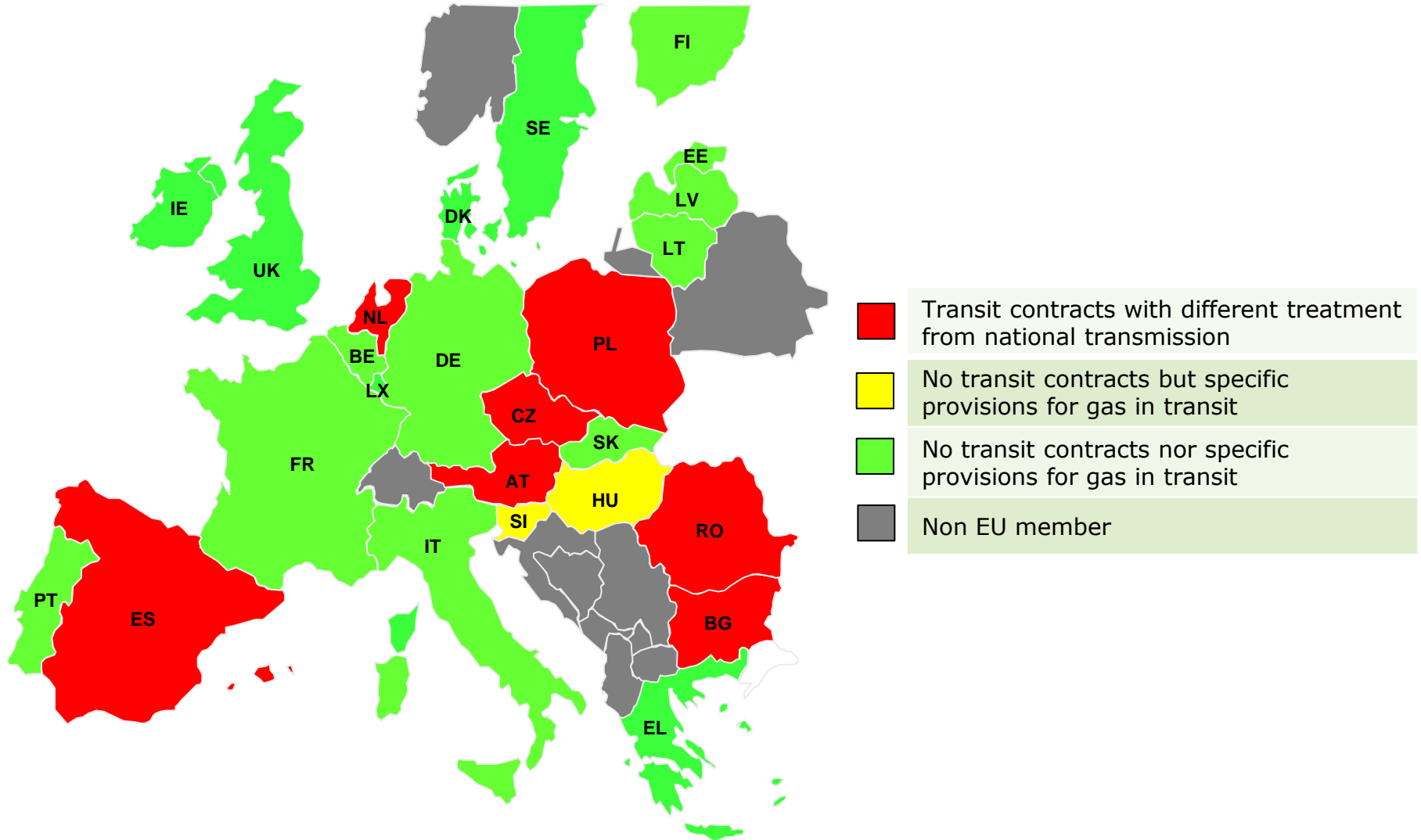
## Process

- Following a mandate from the 19<sup>th</sup> Madrid Forum, ACER has been running an extensive inquiry on the existence of transit contracts in EU countries since June 2011
- A letter was sent to NRAs, who responded to a questionnaire and provided information on the existing **transit contracts** or **specific legal/operational arrangements** applicable to gas in transit
- The results obtained from the inquiry are presented to the Madrid Forum today
- The outcomes of this survey will be mentioned in **ACER/CEER Monitoring Report 2012**
- **ACER shall continue within its mandate to monitor of the transit capacity and the related priority access rights**, but the situation today calls for more definite action

## Main findings

- One of the main findings is the **lack of substantial information and transparency** regarding the remaining transit contracts in the EU
- According to the information obtained, there are transit contracts in at least **seven countries**, in most cases with evidence of different (preferential) treatment, compared to the domestic contracts
- **Favourable treatment** is granted in terms of lower tariffs, priority access to capacity, preferential treatment in case of congestion or disruption or when applying other operational rules (e.g. balancing)
- In some countries, although no transit contracts exist, there are **specific legal or operational provisions** which grant privileges to gas in transit
- Terms and conditions of transit contracts are still usually **not public**, are often negotiated individually and even **not known** to the regulator
- The **information** received by ACER – mostly accurate, but in some cases abstract and inconclusive – does not always allow to discern whether or not gas for domestic supply and gas in transit are equally treated

## Country analysis



## Country analysis

Different cases identified through the inquiry:

- Transit pipelines in ownership of joint ventures between domestic TSO and foreign market player (gas supplier) – *e.g.* Poland
- Pre-liberalisation agreements deliberately extended before a new access regime comes into force – *e.g.* Bulgaria
- Transit contracts which do not fit exactly with the definition from ACER's letter but which could not be in line with EU legislation – *e.g.* Hungary, Lithuania
- Even in the absence of transit contracts as such, preferential specific provisions remain applicable to gas in transit – *e.g.* Slovenia
- Transit contracts whose termination would not affect the country where the transit takes place, but mainly the country of destination of the gas – *e.g.* transit contract across Spain to Portugal
- No transit contracts or provisions exist, but new processes or rules may introduce differences in transit vs national transmission – *e.g.* UK
- Also examples of good practices in bringing transit contracts in line with EU legislation – *e.g.* Portugal, Denmark, Belgium

## Legal Assessment

- **No uncertainty** exists as to the **legal** status of transit contracts – **no legal defense** for the priority access rights
- Discriminatory behaviour demonstrated by historical capacity holders, be it capacity hoarding or self-contracting, constitutes **abusive discrimination** in the meaning of **competition** law
- Practices like self-contracting or extending the duration of transit contracts even after 3<sup>rd</sup> Package publication undermine the arguments of legal certainty and legitimate expectations of the contract holders
- Transit contracts should **be aligned** with the provisions of Directive 2009/73/EC and Regulation (EC) 715/2009, as regards tariffs, congestion management and capacity allocation regimes, and other aspects

## Conclusions and recommendations

- Existing historical transit contracts represent one of the major **obstacles to the internal gas market**
- **Member States and NRAs are liable** for the lack of transparency regarding the preferential treatment of transit capacity in the EU
- Commitment expressed by NRAs to monitor the renegotiation of historical contracts and report back to ACER **is not sufficient**
- The NRAs are under the **clear obligation to ensure compliance** with the 3<sup>rd</sup> Package and take all actions needed
- **Next step : immediate enforcement** proceedings / actions against the non-compliant Member States
- ACER shall publish in **ACER/CEER monitoring report** the conclusions of this survey



**Thank you for your attention!**



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