

ERGEG Gas Focus Group / Storage & Balancing TF

Guidelines for Good Practice for Gas Storage System Operators (GGPSSO)

Storage National Report - Germany

14 March 2006

1 Background information on storage in your country

- 1.1. Update of the information already presented in the 2005 Regulators' national reports, especially in case of further developments regarding the storage in market (or anything else affecting the storage market) in your country

With the entry-into-force of the Energy Industry Act (EnWG) on July 13, 2005 the Federal Network Agency and the state regulatory authorities were given a mandate to regulate the supply of electricity and gas in Germany. According to section 28 EnWG and the possibilities offered by EC directive 2003/55 Germany uses negotiated storage access. Within this framework storage system operators must provide access to storage on fair and non-discriminatory technical and commercial terms and conditions. Furthermore the EnWG includes a number of transparency requirements as well as an authorization to pass an ordinance for the detailed regulation of storage access.

The German gas market is currently largely characterized by the introduction of a new entry-exit model for network access. This supersedes the previously existing point-to-point model of gas transportation. The effect of storage systems as a flexibility tool and source of balancing energy is fully maintained in the new model of network access. For downstream storage system operators this may provide new areas of business in the market for balancing energy.

In Germany there are currently more than 20 storage system operators holding a total maximum working gas volume of nearly 19 billion m³ (V_n) (see Annex 1) in over 40 underground storage facilities (cavern storage and pore storage). Amongst the four largest storage system operators are E.ON Ruhrgas AG, WINGAS GmbH, BEB Erdgas und Erdöl GmbH and VNG Verbundnetz Gas AG. They operate over 70 % of the total capacity in underground storage facilities.

A further 15 underground storage facilities are either planned or under construction. After completion of these projects the entire maximum working gas capacity will increase by a further 3.3 billion m³ (V_n) to over 22 billion m³ (V_n).

- 1.2. Description of your competences in the area of storage and of the role of any other bodies/entities involved (where applicable examples of the decision making process would be helpful, i.e. for tariff/price setting or capacity allocation mechanisms).

The Federal Network Agency is the central federal authority for monitoring the obligations under section 28 EnWG. Under section 28 all storage system operators are obliged to grant third party access to their storage facilities under fair and non-discriminatory terms and conditions. The German legislator has anchored a negotiated storage access in this regulation. An ex-ante determination of the

storage access conditions or the storage charges by a regulatory authority is not envisaged. However, the Federal Network Agency can take action ex post in case of any abuse.

During the initial monitoring process in the spring of 2006 the Federal Network Agency will also gather information on whether or not storage system operators grant non-discriminatory third party access. Should there be any indication of a violation of section 28 EnWG ex-post proceedings for abusive practices might be initiated against the storage system operator. The Federal Network Authority is authorized to impose specific measures upon companies found to be contravening section 28 EnWG.

The Federal Network Agency also monitors the transparency requirements of the storage system operators under section 28 (3) EnWG. Pursuant to this clause, storage system operators must publish the available capacity and their main terms and conditions (e.g. treatment of requests for storage access, modality of gas injection and withdrawal) on the Internet. Approval under mining law and the technical monitoring of storage systems is not the responsibility of the Federal Network Agency but of other authorities, instead.

An ordinance regulating access to storage, which may be passed by the Federal Ministry of Economics and Technology under the regulations of the current EnWG and which may include detailed provisions, has not yet been drawn up.

2 Effective implementation of the GGPSSO

2.1 *Roles & responsibilities of Storage System Operators*

2.1.1. Existence of a document setting out all terms and conditions for the use of storage by affiliates under GGPSSO 1.3 and overall assessment:

- ? is such document in line with the general requirements of non discrimination contained in the GGPSSO?

In section 1.3 of the GGPSSO the storage system operators undertake to draw up a document setting out all the terms and conditions relating to storage use by affiliate companies. In December 2005 all storage system operators were sent a written request to submit this document to the Federal Network Agency.

All storage system operators have responded to this request and submitted documents setting out their general terms and conditions, in some cases accompanied by separate agreements/ contracts. The majority pointed out that the terms and conditions for storage access, which are published on the Internet, apply equally to affiliated companies and third parties. More than half of the storage system operators have, by their own admission, developed an additional compliance programme, which is to ensure both non-discrimination and the confidentiality of commercially sensitive information (cf. also chapter 2.4.1)

2.2 *Necessary TPA services*

2.2.1 Institutional arrangements surrounding exclusion of capacity from TPA:

- ? what entities are responsible for making decisions on this matter;
- ? what role does each of them play in the overall process?

Based on article 22 of directive 2003/55/EG, section 28a EnWG provides for the possibility of granting temporary exemption from third party access for new storage infrastructures. This exemption is granted by the Federal Network Agency, but must generally be decided upon in agreement with the Federal Cartel Office. An application for an exemption from third party access must be submitted to the Federal Network Agency and be examined by both authorities in parallel. Exemption can be granted subject to conditions applying to the entire storage system or parts thereof. As stipulated by article 22 (4) of the directive, the exemption will be notified, without delay, to the Commission; the Commission may request an amendment or withdrawal of the decision. The decision will be published on the website of the Federal Network Agency.

Any other refusal to grant third party access, which may be admissible in exceptional circumstances, e.g. for operational reasons (including a lack of available capacity), must be notified to the Agency and suitably justified. In case of insufficient grounds for refusing to grant third party access, the Federal Network Agency may take supervisory measures and order the operator to grant such access.

2.2.2. Role of your regulatory authority (and any other bodies/entities involved) in designing the menu of services offered by the SSO:

- ? is it completely up to the SSO to design services offered or is a relevant national regulatory authority consulted or in charge of approving this offering?

The Federal Network Agency is not involved in the individual design of the menu of services offered by the storage system operators, nor does the Agency approve any such offering. However, it does monitor whether or not the services are appropriate and are offered in a non-discriminatory way (see above).

2.2.3. Storage services tariffs/pricing methodologies:

- ? is your regulatory authority (or any relevant national regulatory authority) involved (e.g. by benchmarking storage tariffs, by regulating tariffs)?

As mentioned above, the EnWG does not envisage an ex-ante regulation of tariffs for storage access. Neither are there are specific requirements in terms of methods to be used for the calculation of such tariffs. Section 28 (1) EnWG does, however, require fair and non-discriminatory commercial terms and conditions for storage access. In case of a complaint the Federal Network Agency can also investigate whether or not the tariffs are fair and issue an order (cf. also 1.2) in case the tariff is found to be unfair or discriminatory.

Initial investigations for storage service tariffs have shown that individual bundled solutions with different tariff structures are being offered, which are difficult to compare. A comprehensive benchmarking of storage tariffs is not envisaged by law and has as yet not been performed.

2.2.4. Overall assessment of the menu of services offered by the SSO(s):

- ? are storage services offered in a way that facilitates competitive, non-discriminatory, and efficient access to best meet storage users' needs (in accordance with the requirements of the GGPSSO 3.3)?

The transparency of services is a major prerequisite for non-discriminatory storage access. There have been major improvements compared to the status quo in 2005 (cf. 2.5)

Due to the bundling of services into predefined service bundles, the service offering does not appear to be particularly well focused on individual customer requirements. However, the pooling opportunities offered by some operators may in turn facilitate access for smaller customers.

2.3 Capacity allocation and congestion management

2.3.1. Capacity allocation procedures and congestion management mechanisms, and the development of competition:

- ? are these arrangements likely to create undue barriers to market entry and not prevent market participants, including new market entrants and companies with a small market share, from competing effectively (in accordance with the requirements of the GGPSSO 4.1.a&c) ?

Those storage system operators who publish information on their capacity allocation procedures stated that they acted on the “first committed - first saved” basis.

Very few storage system operators describe explicit measures for congestion management. Some envisage the possibility of buying back unused storage capacity. It is at present difficult to assess whether or not the mechanisms used for the allocation of capacity are appropriate. The Federal Network Agency is currently not aware of pending complaints related to the allocation of storage capacity or the capacity allocation procedures. One issue that might prove a problem to new market participants, however, is that German underground storage facilities show hardly any available storage capacity.

2.3.1. Description of the relationship between storage contract durations and capacity allocation procedures / congestion management

The duration for which capacity is allocated cannot be extracted from published information, as this contains no information on the storage contract duration. Availability is usually only indicated for the duration of the current year.

2.3.3. Description of the relationship between PSO (Public Service Obligations) and capacity allocation procedures/congestion management

The law does not envisage a preferred capacity allocation for public service obligations.

2.4 Confidentiality

2.4.1. Overall assessment of the arrangements in place to ensure that no information available to the SSO concerning its storage business is passed to other parts of the any affiliate (e.g. databases related to storage operations kept separate, new IT systems being developed in vertically integrated undertakings developed separately for the storage business, separate buildings for the SSO and for the supply business):

- ? have these arrangements been monitored and by whom?
- ? are these arrangements effective?

The larger network and storage system operators have drawn up a compliance programme, which relates to both network access and storage access. A key aspect of this programme is to ensure the confidentiality of commercially sensitive information. Within the context of unbundling the Federal Network Agency is also responsible for monitoring adherence to this compliance programme. As part of the process of implementing the statutory unbundling requirements the Agency has recently published the draft version of detailed application guidelines. As yet it is too early to assess the effectiveness of these guidelines.

2.4.2. Overview of the content of the code of conduct/compliance programme with main strengths/weaknesses highlighted

The Federal Network Agency and the responsible national regulatory authorities have not yet completed their examination of the compliance programme. Should this examination bring to light insufficient measures, the compliance officers of the relevant companies will be requested to rectify those. However, the Federal Network Agency is always available to answer questions from the compliance officers.

2.4.3. If compliance to the confidentiality requirements of the GGPSSO is poor:

? is it an issue for the development of the market for the storage capacity?

The compliance programmes are a key indicator for fulfilment of the confidentiality requirement. Since the examination has not yet been completed it is currently not possible – as mentioned above – to assess the extent of its implementation.

Maintaining confidentiality of commercially sensitive data is also an important issue for storage. There must be no discrimination based on a flow of information to an affiliated company resulting in additional information on capacity contracts with third parties and their duration, since this would detrimentally affect the chances of third party access.

2.5 Transparency

2.5.1. Description, where applicable, of the process followed in case some of the information required by the GGPSSO is not published by the SSO(s) in your jurisdiction (e.g. notification to national regulator)

Some of the transparency requirements stipulated in the GGPSSO have also been made mandatory in the EnWG. The Federal Network Agency has the competency to monitor the legally required transparency requirements. However, the Agency has no comparable legal competency with regard to compliance with the further determinations in the GGPSSO.

A first survey by the Federal Network Agency regarding the transparency requirements under section 28 (3) EnWG has revealed, as did the monitoring of the GGPSSO implementation, that storage system operators have complied with the transparency requirements under national law and GGPSSO in some areas, but not to the full extent. In mid-October 2005 the Federal Network Agency requested the storage systems operators in writing to immediately fulfil the statutory obligations and requirements under GGPSSO. In their responses nearly 80 % of storage system operators stated they had already fulfilled the transparency requirements under the EnWG or were pursuing their implementation. While only a small number of operators already fully comply with the transparency requirements under GGPSSO, over half the operators claimed to be actively trying to fully meet the transparency requirements under GGPSSO as quickly as possible.

This year, too, the Federal Network Agency actively supports ERGEG for the second round of monitoring in order to document the state of implementation. In the case of insufficient implementation the Federal Network Agency will insist upon compliance with the obligations and request the storage operators once again to comply.

2.5.2. Description, where applicable, of the process followed in case a storage user has made a request to a SSO so that the information about the aggregate use of storage is not published (e.g. review of the decision made by to national regulator).

The Federal Network Agency is currently not aware of any application by storage users to not disclose its usage data.

2.6 Secondary markets

2.6.1. General assessment of the extent to which secondary markets are developed or undeveloped in your jurisdiction

The terms and conditions of most storage system operators allow for a trade in storage capacities; however, some storage system operators only allow secondary trade after prior consultation. For secondary trading bulletin boards or simple platforms are available, which the storage customers can use to view the current offering.

In addition VNG (with a working gas capacity of around 2 billion m³ (V_n) the fourth largest storage system operator in Germany) has announced the launch of an internet based platform (store-x) for secondary trading in storage capacity. The first presentation of the demo version confirmed that storage customers are offered two different auction procedures, that trading in single components as well as service bundles is possible and that the entire procedure up to the contract for selling on capacity is run anonymously. The portal offers an electronic map of Germany which contains all storage facilities with their operator and their technical maximum capacity. Analogous to the already existing transport capacity platform trac-x plans are afoot for not only VNG but also further storage system operators to offer the opportunity of marketing storage capacity via this platform.

3 Need for other measures beyond the GGPSSO

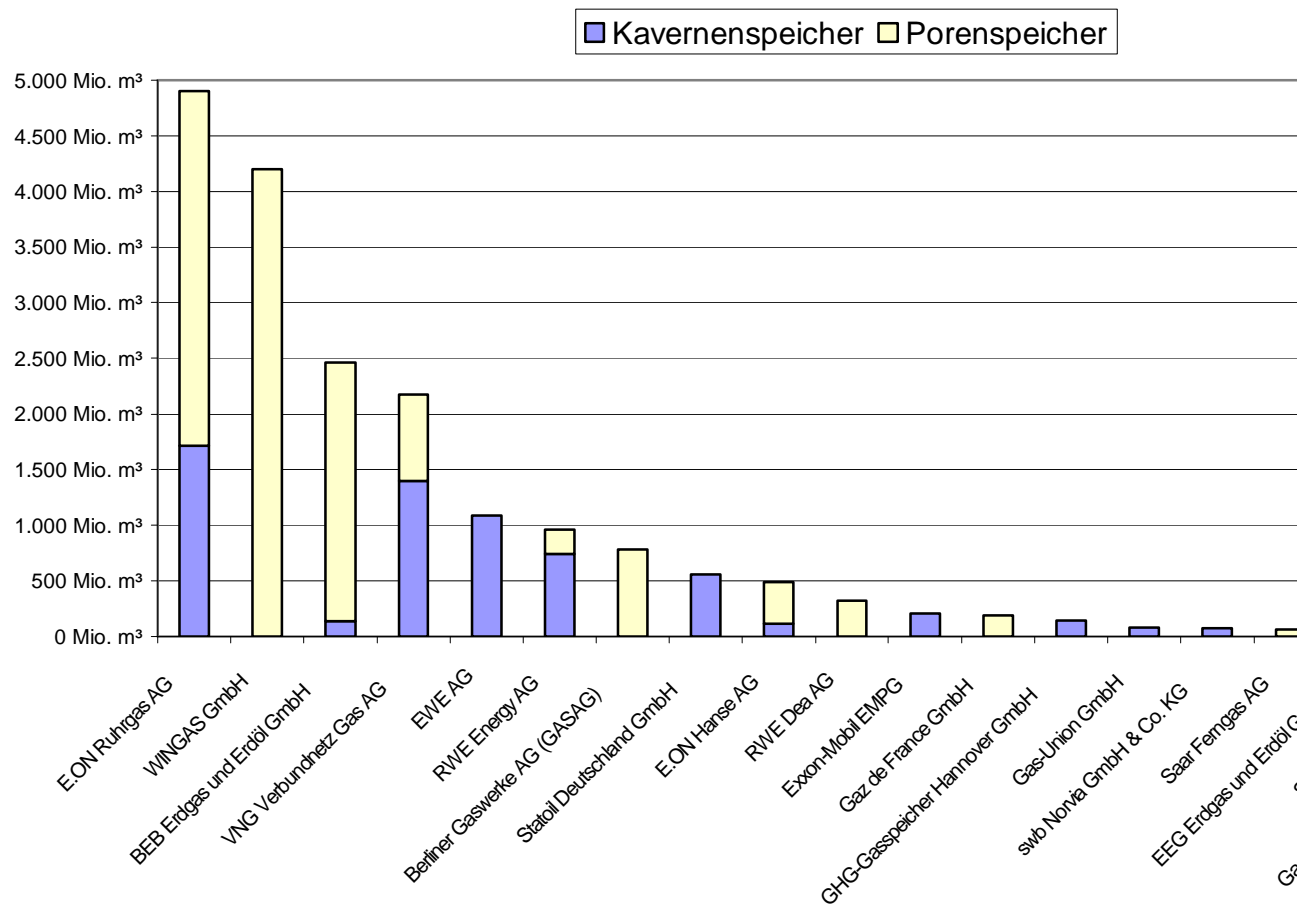
3.1. Proposal of additional measures, at European level, if indeed the GGPSSO are not sufficient to ensure fair, transparent and non discriminatory conditions for access to storage, in the light and in the spirit of Directive 2003/55.

The Federal Network Agency proposes to initially insist upon comprehensive and complete compliance with the existing regulations, in particular the GGPSSO, that were initially due to be implemented by the storage system operators by April 1, 2005.

Should the second round of monitoring on the GGPSSO implementation reveal that there are still deficits in the level of implementation, that the European storage market is inefficient or not sufficiently transparent or that the access to storage is subject to discrimination, the Federal Network Agency feels that individual regulatory authorities must fully exploit their competencies in order to monitor the GGPSSO. The need for further action can not yet be assessed.

Annex 1: Maximum working gas capacity of German storage system operators as at 2006

Maximale Arbeitsgaskapazität



Source:

Niedersächsisches Landesamt für Bodenforschung (Hannover), *Jahrbuch der europäischen Energie- und Rohstoffw* and a survey conducted by the Federal Network Agency.