

## **ERGEG Gas Focus Group / Storage & Balancing TF**

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

#### **Proposed outline - Storage National Reports**

**8 February 2006**

##### **Introduction**

On 15 September 2005, during the 10<sup>th</sup> Madrid Forum, ERGEG presented the preliminary results of its first monitoring exercise on the implementation of the GGPSSO. The Forum asked ERGEG to produce a follow-up report on the implementation of the Guidelines for the 11th Madrid Forum, to be held in May 2006. On 7 December 2005, ERGEG published the final results of its report on "Monitoring the implementation of the GGPSSO". In parallel, ERGEG proposed to undertake a second monitoring exercise assessing the effectiveness of the GGPSSO, and the functioning of the market for storage services.

The two main findings of ERGEG's first monitoring report on the implementation of the GGPSSO were that:

- the level of implementation of some key areas of the GGPSSO was insufficient;
- compliance with some specific requirements of the GGPSSO needed further investigation, which might in some cases require **assessment at national level**.

The Terms of Reference of ERGEG's second monitoring report on the implementation of the GGPSSO, approved during the 17 January GFG meeting, call for a series of actions aimed at addressing these issues. As indicated in the Terms of Reference, it would be extremely helpful if each ERGEG member with storage facilities in their jurisdiction produced a short national report on storage (5 to 10 pages) (hereafter referred to as the "Storage National Report"). These reports should focus on those GGPSSO requirements which are easier to monitor at national level, e.g. confidentiality requirements.

The present document sets the basic outline of the Storage National Report. By outline, we mean a description of the main sections the Storage National Report ought to contain, in order to ensure a minimum degree of consistency between the different reports. The exact content of each section is however left to the discretion of ERGEG members, who are better positioned than the Gas Storage & Balancing TF to assess what issues are of critical importance in their respective markets.

The information presented in the 2005 Regulators' national reports should constitute the starting point.

The **deadline** for submitting the **completed Storage National Reports is 14th March 2006**.

Please return them to [rcarnevalini@autorita.energia.it](mailto:rcarnevalini@autorita.energia.it), [pierre-marie.cussaguet@cre.fr](mailto:pierre-marie.cussaguet@cre.fr) and in copy to [Rafael.Gonzalez@ceer-eu.org](mailto:Rafael.Gonzalez@ceer-eu.org).

In order to ensure that all interested parties are consulted, ERGEG will send out a questionnaire to SSOs. Storage users will be consulted from May 2006, to gather their feedback on the implementation of the GGPSSO requirements after 1 April 2006. Their views will be particularly important in assessing implementation of the GGPSSO.

ERGEG intends to publish an initial report on the implementation of the GGPSSO in May 2006 and it expects to present its findings at the next Madrid Forum. ERGEG will issue a final report on implementation after it has an opportunity to consider responses to its initial report.

Any question on this questionnaire should be directed in the first instance to:

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## **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

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).

## 1 General

1.1 Name of National Regulatory Authority: **Energie-Control GmbH, Austria**

1.2 Is TPA to storage implemented in your country and how:

(a) national legislation passed before the Directive 2003/55/EC	<input checked="" type="checkbox"/>
(b) article 19 of the Gas directive transposed into national law	<input checked="" type="checkbox"/>
(c) TPA implemented by SSOs, in the absence of a national legal framework	<input type="checkbox"/>
(d) no TPA	<input type="checkbox"/>

1.3 Does your National Regulatory Authority (NRA) regulate:

(a) tariffs for TPA to storage	<input type="checkbox"/>
(b) terms and conditions for TPA to storage	<input type="checkbox"/>
(c) other ( <i>please provide comments below</i> )	<input checked="" type="checkbox"/>
notes: SSOs have to negotiate their tariffs on the basis of cost orientation. In case that Austrian storage tariffs are higher than 20 % above average storage tariffs in the EC, NRA can fix which cost components have to be used to calculate tariffs.	

1.4 Please provide a list of any other Relevant National Regulatory Authorities (RNRA) involved in regulation of TPA to storage (e.g. Ministry)

none

1.5 Please specify who is the authority legally competent for dispute settlement with respect to the issues mentioned in article 19 of the gas Directive:

(a) your regulatory authority	<input checked="" type="checkbox"/>
(b) another RNRA ( <i>please specify below</i> )	<input type="checkbox"/>
notes:	
(c) NRA or RNRA not competent according to national legislation	<input type="checkbox"/>

## 2 Effective implementation of the GGPSSO

### 2.1 Roles & responsibilities of Storage System Operators

2.2.1. 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?

The documents required are the storage contracts with the affiliates. The request of these documents is substituted by the obligatory submission of all storage contracts to the national regulatory authority. The submitted contracts are in line with the general requirements of non discrimination, but the submitted contracts are not complete for one SSO. For this reason it is not possible to check the compliance overall.

## **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?

No party is responsible for PSOs recording to national law. Energie-Control has not approved or monitored the exclusion of capacity from TPA; reasons for exclusions are not made public.

### **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?

SSOs design the menu of services; ECG is not consulted.

### **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)?

ECG is not involved in tariff setting. If the storage tariffs are 20% higher than the average storage tariffs in the EU, Energie-Control Commission (ECK) may decide which cost-components are to be used to calculate tariffs.

### **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)?

OMV Gas offers the required services of the GGPSSO. RAG does not offer short term services and interruptibles. We only see limited competition between OMV Gas and RAG to seasonal products.

Whether the storage services are non-discriminatory cannot be proved for one SSO due to the lack of storage contracts. For both SSOs it seems that storage costumers with a similar user profile pay the same price.

If the offered storage services support efficient access cannot be said definitely; Anyway we have not seen any storage contract with new storage costumers since market opening.

## **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) ?

For both SSOs capacity allocation procedures are first come first served; congestions management does not exist. For the case of OMV Gas GmbH non compliance with congestion management requirements is justified by lack of long term congestion. OMV Gas GmbH moreover OGG offers a short term product ("day ahead rate") to meet very short term congestion; this is however merely a balancing tool. Non compliance of RAG is not justified.

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

Energie-Control has no information about this relationship from RAG; OMV Gas has no long term congestion.

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

We have no PSO.

## **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?

Energie-Control monitors the general compliance program of OMV, which is however not explicitly related to storage.

The accounts are normally audited by registered auditors. The regulator carries out separate audits, aimed at identifying and preventing cross-subsidisation, during the tariff review procedure.

- are these arrangements effective?

Audit of accounting unbundling is an essential tool for the regulator and can not be substituted by audits done by certified accountants. As regards tariffs for storage, E-Control has not received complaints of storage costumers so far.

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

Due to the legal requirements of the Directive 2003/55/EC the compliance programs shall contain measures that have been taken by the grid operator to exclude discriminatory behaviour. In practice compliance programs contain rather general remarks than concrete

measures, such as construction of "Chinese walls", education of employees as regards non-discrimination et alia. Since the legal provisions of the Directive and the implementing national law are rather indeterminated, they leave a wide scope of interpretation to the companies. Another point is that the Directive and national law provide no effective sanctions to enforce the unbundling rules.

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?

Vertical integration of transport/storage and gas trade is still an issue for the market development.

## **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)

First the SSO is formally requested to submit or publish the information. If the SSO does not follow the request Energie-Control would order the submission of the information by a formal decision. The SSO may appeal against this decision to the Energie-Control Commission (ECK). If the ECK refuses to comply with the decision the SSO may file an application with the Administrative Court or the Constitutional Court. This has turned out as an effective remedy in similar cases, but has not yet been executed in this very respect.

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).

In this case, the same procedure described under 2.5.1. applies as these proceedings may be opened ex officio as well as upon request of a legitimated party.

## **2.6 Secondary markets**

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

The storage costumers of both SSOs has the right to trade gas-in-store, but the SSOs have no information about the development of trading between their costumers. For this reason also Energie-Control has no information about the development of a secondary market. OMV Gas allows secondary market trading (in the sense that it is not explicitly forbidden in the GTC) but sees no need for a secondary market due to available capacities in the primary market.

## **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.

In any case the GGPPSSO have to be implemented as a whole set. Relying solely on the compliance of the one or the other criteria of the GGPSSO as a yardstick for an effectively functioning single

market might in some cases be misleading. The same is true in concentrating analysis on the behaviour of each SSO individually. Lack of harmonised implementation of the GGPSSO on a pan European level is leading to significant differences in compliance between individual systems. It is obvious, however, that a single market requires necessary convergence of standards. Concerning the effectiveness of the GGPSSO two cases have to be considered:

- 1) scope of GGPSSO: in case it should turn out that the GGPSSO are fully followed but need to be improved concerning certain provisions, an amended version of GGPSSO is suggested.
- 2) bindingness: in case monitoring results should highlight a considerable lack of compliance with the GGPSSO this would point out that voluntary agreements do not provide a sufficient guarantee for such harmonisation. Consequently this suggests the need for the rules and principles contained in the GGPSSO to form the basis of a new Regulation.