



Gas Transparency Monitoring Public Consultation: Conclusions Paper

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1 Executive summary

- (1) Transparency is vital to energy market liberalisation. In order to assess the level of compliance of TSOs with the transparency requirements outlined in Regulation 1775/2005/EC, ERGEG had conducted two extensive monitoring exercises in 2007 that focused on assessing the compliance with the provisions set out in Art. 6 and the Annex to Regulation 1775/2005/EC.
- (2) ERGEG's findings indicate that despite the progress made in transparency, further work is required in this area.
 - Firstly, where it has not yet been done, the 'correct', comprehensive and complete implementation of Regulation 1775/2005/EC needs to be ensured. NRAs need to be given clear powers to effectively enforce the implementation of transparency requirements as outlined in Regulation 1775/2005/EC;
 - Secondly, where needed, existing transparency requirements of Regulation 1775/2005/EC need to be strengthened;
 - Thirdly, where required, additional transparency requirements need to be defined and adopted to allow fair and non-discriminatory access to all types of natural gas infrastructure, not only to transmission systems. There must be clear legislative backing for any additional transparency requirements.
- (3) With regard to information that is already available, ERGEG's transparency monitoring work has shown that there is need for greater harmonisation of data publication methods, particularly in regard to format and language, to ensure that all information is available in English as well as the national language. This includes the harmonisation of information published about cross-border flows.
- (4) ERGEG's view is that the existing requirements in the Gas Regulation in relation to transparency are not sufficient to facilitate the development of an efficient and effective market. ERGEG's key recommendation is that transparency requirements need to be expanded to other parts of the value chain, including:
 - Storage facilities;
 - LNG facilities;
 - Interconnectors.
- (5) ERGEG would like to stress that the overarching principle of introducing new transparency measures has to be based on an assessment of market needs for such transparency items and of the associated benefits to users.

2 Introduction

2.1 Purpose of the Paper

- (6) ERGEG has stated on a number of occasions that existing transparency levels could be enhanced. Relatively early on in the process for preparing this report, the lack of compliance observed served to highlight the need for significant improvements in transparency across the EU gas market.
- (7) The purpose of this paper is to provide a conclusion to ERGEG's monitoring activities and work on transparency carried out since 2007. On this basis, ERGEG has derived its own conclusions on how to best take transparency forward.

2.2 Recap: ERGEG Transparency Monitoring Processes in 2007

- (8) ERGEG's monitoring activities and work on transparency, since 2007, include the following documents:
 - E07-TRA-02-03: *ERGEG Gas Compliance Monitoring Report* - 18 July 2007. ERGEG carried out its first monitoring exercise in order to assess the level of implementation of the transparency-related requirements of the Gas Regulation by 43 European TSOs. ERGEG found that there has been an unsatisfactory and extremely heterogeneous degree of implementation of Regulation 1775/2005/EC.
 - E07-TRA-02-03b: *ERGEG Additional Transparency Requirements* - 9 October 2007. This report was prepared after a request from the European Commission to clarify some of the answers received during the first monitoring exercise and to extend the monitoring to other transparency requirements of the Gas Regulation. Once again, it highlighted a general lack of compliance.
 - C07-SER-13-06-6-PD: *ERGEG's 3rd Package paper 6 on Transparency* - 5 June 2007. With regard to the discussions on the 3rd package, this recommendation paper to the European Commission proposed several amendments to Gas Regulation 1775/2005/EC. It made recommendations beyond the existing requirements, in particular on LNG, storage and balancing, emphasising that transparency is important for all types of infrastructures,
 - E08-GNM-01-04: *Strategic Guidelines and Codes: Rationale and Scope - Example related to Transparency in Natural Gas* - 22 April 2008. This Strategic guideline on transparency, which is not definitive yet, provides an example of what is meant to serve as binding guidance for the development of codes by the future European Network of Transmission System Operators for Gas (ENTSOG).
 - E08-GMM-01-03: *ERGEG Gas Transparency Monitoring: Public Consultation: Evaluation of Comments* – 7 May 2008. This paper summarises the views received by ERGEG in response to the public consultation on the two monitoring reports above (E07-TRA-02-03 and E07-TRA-02-03b).

- (9) All documents are publicly available from the following ERGEG web page:
http://www.energy-regulators.eu/portal/page/portal/EER_HOME/EER_PUBLICATIONS

3 ERGEG's findings on transparency

3.1 ERGEG's transparency monitoring

- (10) In its first monitoring report, ERGEG concluded that:
- Firstly, the 'correct', comprehensive and complete implementation of Regulation 1775/2005/EC had to be ensured;
 - Secondly, where required, additional transparency requirements needed to be defined and adopted to allow fair and non-discriminatory access to all types of natural gas infrastructure, not only to transmission systems. In ERGEG's view, this includes:
 - LNG facilities;
 - Storage facilities;
 - Interconnectors.
 - Thirdly, the findings of this monitoring report raise the question of the effectiveness of national regulatory authorities' powers as well as the sanction mechanisms in place to ensure that all the regulatory requirements, not only those related to transparency, are properly implemented.
- (11) In ERGEG's view, the findings from the first monitoring report call for a number of actions, including:
- The removal of the less than 3 rule which is being used extensively to constrain transparency;
 - The introduction of legally binding requirements for transparency in relation to other infrastructure (e.g. LNG, storage, and interconnectors); and
 - Improvements in the frequency of information publication, its scope and the accessibility of information to be published by TSOs.

The conclusions of the second ERGEG monitoring report reiterated the need for comprehensive and complete implementation of Regulation 1775/2005/EC.

3.2 Responses and comments from the public consultation

- (12) Responses and comments received from respondents such as traders and shippers indicate that there is a clear need to enforce existing transparency requirements as well as to develop additional obligations. Furthermore, respondents clearly stress that there is a need for greater harmonisation of the way in which data is published, particularly with regard to both format and language, to ensure that all information is available in English in addition to the national language. This includes the harmonisation of information published on cross-border flows for market integration.
- (13) Some respondents stressed that confidentiality, particularly in less mature markets, also needed to be protected, that new regulations should be introduced only if necessary and that they should not impose undue costs on operators. These are all valid concerns, which ERGEG believes can be addressed while at the same time increasing transparency.

- (14) The views expressed by respondents corroborate many of the recommendations made by ERGEG to the European Commission as part of its input to the 3rd legislative package.¹
- (15) ERGEG agrees –as some respondents to the public consultation have suggested– that regulatory impact assessments should be conducted when introducing new regulations.
- (16) ERGEG welcomes the respondents' (and most notably the users') view that greater sanctions and power mechanisms should be given to NRAs to ensure compliance with the transparency requirements outlined in Regulation 1775/2005/EC. This is in line with ERGEG's own findings from the second monitoring report.
- (17) In principle, ERGEG supports the requests made by shippers and traders in this consultation that more information on actual system utilisation, available capacity, real-time balancing, interruption probabilities and system maps needs to be available. Furthermore, information has to be available on the Internet, in English, in a user-friendly format, at a reasonable cost and without artificial barriers such as logins or access contracts.

¹ In particular: "Transparency requirement for electricity and gas - a coordinated approach (ref. C07-SER-13-06-6-PD), available online at:

http://www.energy-regulators.eu/portal/page/portal/EER_HOME/EER_PUBLICATIONS/CEER_ERGEG_PAPERS/2007/Advice/C07-SER-13-06-6-PD_3rdLegPackage_Transparency_final-2.pdf

4 Taking transparency forward: ERGEG's recommendations

- (18) In this section, ERGEG presents specific suggestions on how to take transparency forward and addresses how to ensure effective compliance in the following section.

4.1 Deletion of the minus 3 rule

- (19) In its input to the 3rd package, ERGEG recommended abolishing the minus 3 rule. This recommendation has been derived from ERGEG's monitoring exercises and is supported by the public consultation.

4.2 Strengthening existing transparency requirements

- (20) The primary motivation for introducing new transparency measures should be to:
- Make timely and adequate information available regarding the precise level of un-booked capacity;
 - Allow users access to information regarding the likelihood of interruption (in case of interruptible transportation capacity);
 - Ensure the publication of actual flow information (physical utilisation), contracted and final nominated capacity on a daily basis (shown by balancing period if this is shorter);
 - Enforce the release of information that can be used for real-time balancing.
- (21) Information must be published for relevant points. Relevant points are at least those major physical points where capacity can be contracted.
- (22) Transmission system operators shall clearly identify all entry and exit points to their systems ('relevant points') and implement a code structure for each of these points (upon approval of the Agency/ACER).
- (23) Relevant points can be defined as follows
- a) TSO-TSO connection points;
 - b) LNG-TSO connection points;
 - c) SSO-TSO connection points;,,
 - d) Gas Producers-TSO connection points;
 - e) TSO-DSO connection points, where shippers have to book capacity. At TSO-DSO connection points where shippers are not required to book capacity, publication is subject to NRA decision.
- (24) Tariff principles must be clearly defined in a comparable and standardised manner for all TSOs. This includes the definition of the financial criteria applied in calculating tariffs. The tariff methodology and resulting tariff must be published by TSOs/NRAs.
- (25) The relevant capacity and flow information should at least cover the following data:
- a) information on system utilisation, in particular, information on actual daily flows including maximum hourly mean values (kWh/hr) per day;

- b) information on interruptions to those flows, including the chances (likelihood) of interruptions, the reasons for interruptions;
 - c) maximum technical capacity for flows in both directions, contracted firm and interruptible capacity, available firm and interruptible capacity and aggregated nominated capacity.
- (26) Historical data should be provided for the prior three years on a rolling basis, future data should be projected for at least 18 months ahead and available capacity should be published for all the years for which capacity is contracted. The unit of time for the publication of any capacity-related information is daily, unless otherwise specified.
- (27) Transmission system operators should keep effective records of all capacity contracts and all other relevant information in relation to calculating and providing access to available capacity. The responsible national authorities should have access to this data to fulfil/exercise their duties. If so requested by the national regulatory authority, transmission system operators should publish the use of the system capacity reserved for shippers, which should include the granting of capacity rights and the relevant actual physical use of the system capacity stated.
- (28) TSOs should make the information necessary to understand the balancing needs of the system publicly available. TSOs should make available to individual network users, on a confidential basis, the information needed to understand their balancing position.
- (29) The information needed to understand the balancing needs of the system can be defined as follows:
- a) Forecast demand;
 - b) Actual demand;
 - c) Shrinkage factors and quantities;
 - d) Pricing information including calculation method (cost of service, imbalance charges and penalties);
 - e) Standard contract information;
 - f) Aggregate network user imbalance charges;
 - g) Planned and unplanned interruptions.
- (30) The information needed by individual network users to understand their balancing position can be defined as follows:
- a) Network user specific input and output scheduling calculations and charges;
 - b) Network user specific energy imbalance and related charges;
 - c) Network user specific penalty charges;
 - d) Forecast demand;
 - e) Actual demand².

² Further details are to be clarified in line with the provisions made in ERGEG's Guidelines for Good Practice for Gas Balancing (GGP-GB), E06-GFG-17-04, 6 December 2006.

- (31) TSOs should make their information public in a meaningful, quantifiable clear and easily accessible way; in a common electronic format including the underlying data on a non-discriminatory basis and in a timely, concise and correct manner. Further details may need to be specified in a separate code. Transmission system operators should provide user-friendly instruments for calculating tariffs and set up a tariff calculator as well as an online platform to check the available capacity.
- (32) Non-discriminatory access to information must be guaranteed through publication on a publicly accessible web-site. All information should be easily accessible (as stated in Art. 6.1 and 6.3 of Regulation 1775/2005/EC) e.g. via online access to the respective documents for all system users without necessarily being registered or otherwise signed on with the TSO. Further details are to be specified in a separate code, such as the EASEE-Gas code on a common data communication network. Information published to meet any newly introduced transparency requirements should be provided without charge. Additional information services offered by the TSO should be transparent and non-discriminatory. Furthermore, all information must be published in the national language and in English.
- (33) ERGEG also recommends that complaints by system users or potential shippers regarding the information services offered must be reported to the responsible authorities.

4.3 Extending capacity requirements

- (34) In order to enhance transparency beyond the current provisions of Regulation 1775/2005/EC, ERGEG's key recommendation is that transparency requirements should be expanded to other parts of the value chain, including:
- Storage facilities;
 - LNG facilities;
 - Interconnectors.

4.4 Ensuring compliance

- (35) The findings from this monitoring report raise the question of whether national regulatory authorities have effective powers and enforcement mechanisms in place to ensure the compliance and implementation of all regulatory requirements, not only the transparency requirements.
- (36) ERGEG's work in this area has shown that at present not all NRAs have such powers and sanction mechanisms. In its response to the EC's 2007 Communication "An Energy Policy for Europe" (COM(2007)1), ERGEG identified the minimum powers that regulators need in order to undertake their tasks effectively.³ These recommendations include:

³ERGEG's response to the European Commission's Communication: "An Energy Policy for Europe", ERGEG document C06-BM-09-05, 6 February 2007, is available online at:

- Expanded powers of national regulators so they are at a common high level;
 - Independence of national regulators, from both commercial and political influence.
- (37) These powers and sanction mechanisms need to ensure that NRAs can:
- Regulate monopoly activities effectively;
 - Oversee and enforce market rules;
 - Oversee and enforce transparency and information management;
 - Execute their information gathering powers;
 - Execute general market oversight to ensure efficient market functioning;
 - Cooperate effectively across borders.
- (38) Where voluntary approaches to enforcing transparency requirements are not successful, regulators need to be given effective sanction mechanisms. These sanction mechanisms should be:
- directly granted to NRAs to sanction the TSO (not via a third party, e.g. administrative body);
 - Effective sanctions; e.g. proportionate to the size of the TSO;
 - Easy to execute, in a speedy manner.

5 CONCLUSIONS

- (39) Transparency of information is crucial to the development of a competitive market. Any lack of transparency can create barriers to entry and can impede the development of competition and trade as well as the integration of markets. The foundation for the implementation of transparency requirements was laid down in Regulation 1775/2005/EC.
- (40) ERGEG has carried out a comprehensive monitoring exercise on certain aspects of this regulation, namely, and most importantly, Art. 6 and the Annex to Regulation 1775/2005/EC. The objective is to assess the current level of implementation of the relevant requirements in the Gas Regulation. Based on these findings, ERGEG has drawn its own conclusions regarding the degree of implementation and the level of compliance with Regulation 1775/2005/EC. ERGEG has also made concrete proposals to enhance transparency and to equip NRAs with the powers and sanction mechanisms they need to enforce these transparency requirements effectively.
- (41) ERGEG's view is that the existing transparency requirements in the Gas Regulation are not sufficient to facilitate the development of an efficient and effective gas market.
- (42) Considering that in many markets, the degree of implementation of Regulation 1775/2005/EC is excessively low, it is necessary to ensure a comprehensive and complete implementation of Regulation 1775/2005/EC; NRAs have already undertaken important steps to change this. However, there is also room for more transparency in adjacent areas.
- (43) Future requirements for transparency could affect two areas, namely
- (i) proposed changes to guidelines annexed to Regulation 1775/2005/EC;
 - (ii) proposed changes to Regulation 1775/2005/EC.
- (44) ERGEG suggests implementing the proposed changes that relate to annexed guidelines to Regulation 1775/2005/EC by means of comitology.
- (45) ERGEG's key recommendation is that transparency requirements need to be expanded to other parts of the value chain, including:
- Storage facilities;
 - LNG facilities;
 - Interconnectors.
- (46) ERGEG would like to stress that the enforcement of any transparency requirements will lead to a continuous monitoring of these requirements, where the self-reporting by TSOs is continuously audited at the national level. It is also suggested that the future Agency for the Cooperation of Energy Regulators (ACER) could play an important role in monitoring transparency, for instance by coordinating NRAs.
- (47) In conclusion, ERGEG would like to stress that the overarching principle of introducing additional transparency requirements has to be based on an assessment of market needs for such transparency items and the assessment of the associated benefits to users.