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**COMMISSION STAFF WORKING DOCUMENT**

**Commission Staff working document on transparency requirements regulated under Article 6 of Regulation (EC) No 1775/2005 on conditions for access to the natural gas transmission networks**

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**1. INTRODUCTION**

- (1) With a view to ensuring consistent application of the provisions of the Regulation, in particular on the matter of transparency for access to the networks, this document intends to provide explanatory comments on Article 6 and Annex 3 on transparency requirements of Regulation (EC) No 1775/2005.
- (2) The central element of Article 6 and Annex 3 is transparency on information necessary for gaining effective network access and, in particular, information for the process of contracting and using capacity. In addition, Article 6 and Annex 3 require that this information is clear and useful for (potential) network users. Finally, there is a specific provision defining when confidentiality can prevail over transparency. Transparency is equally important in the context of capacity allocation, congestion management, balancing and tariffs. However, the latter topics are however not dealt within this document but in the Commission staff working documents on Article 3 (SEC (2007) 535) and Article 5 (SEC (2007) 822) of Regulation (EC) No 1775/2005.

**2. TECHNICAL INFORMATION (ARTICLE 6.1 AND ANNEX 3.1)**

- (3) Where the regulation states that information should be made public, this means that anyone can have access to this information, and that publication shall be non-discriminatory. This implies that the information is made available to all interested parties at the same time and in the same manner. The best way to guarantee non-discriminatory access is through publication on a publicly accessible web-site. The information must be provided free of charge, in line with Annex 1(6), as long as such requests do not require extraordinary or excessive expenses, as stated in Annex 1(7).

**2.1. Explanation of key elements**

- (4) Concerning harmonised transportation contracts as mentioned in Annex 3.1(b), the Regulation states in recital (10) that references to them ‘do not mean that the terms and conditions of the transportation contracts of a particular system operator in a Member State must be the same as those of another transmission system operator in the Member State or in another Member State, unless minimum requirements are set which must be met by all transportation contracts.’ Therefore, harmonisation among TSOs of the transport contracts offered is not demanded by the Regulation, but it does require that transport contracts offered by one TSO should have a standard form that facilitates the capacity booking process and trade and that it be applied equally to all users. This means that they should be identical in terms and conditions other than those determining differences in price between different contracts offered by the TSO.

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<sup>1</sup> OJ L 289 of 3.11.2005, p. 1

- (5) With regard to key terms as mentioned in Annex 3.1(c), all terms relating to the system, services or operating procedures that are relevant for contracts and conditions need to be specified by the TSO. This should be done in line with the definitions in the Regulation and Directive 2003/55/EC on common rules for the internal market in natural gas.
- (6) Annex 3.1(d) states that the technical information should include capacity allocation, congestion management and anti-hoarding and re-utilisation procedures. The procedures and conditions used for these subjects must be in line with the content of the Explanatory Notes on Article 5 of the Regulation (concerning capacity allocation and congestion management).
- (7) A detailed description of the gas system, as mentioned in Annex 3.1(g), should consist of the information on the pipeline system and all its entry and exit points, availability of ancillary services and factors influencing the availability of transportation services. The description of the gas system provides information for network users to analyse the availability of (firm) capacity and to verify that the TSO optimises the availability of capacity in a non-discriminatory manner.
- (8) Concerning gas quality and pressure (Annex 3.1(h)), the entry and exit specification conditions have to be defined clearly for all relevant points. Gas quality and pressure are two important aspects of a safe and continuous network operation. The TSO should be equally transparent on services related to gas quality and pressure as on transport capacity. This means that the TSO should provide information on technical, contracted and available capacity of these services, and provide historical information on these services, as stated in Article 6.3 and Annex 3.3.
- (9) The TSO should also provide maximum information on the risks related to requirements on gas quality and pressure that can affect shippers. The TSO has to state what will happen when the gas or the pressure do not meet these specifications at the relevant points. This means that the TSO has to state who is liable in such a case, and what measures the TSO can possibly take (and if applicable at what costs) to guarantee continuation of flows. The TSO should make information available on the history of gas quality and pressure specifications at all relevant points. The TSO should also publish information on each occasion when the flow has been interrupted due to gas quality or pressure problems.
- (10) Changes to services or conditions (Annex 3.1(j)) should be communicated clearly and in a timely manner, or as soon as possible in the case of unexpected changes. In case of temporary changes, for example because of unplanned flow disruptions, information should be provided on the expected duration of these changes. Any information concerning changes to services or conditions that affect the commercial position of network users should be communicated to all parties at the same time.

### **3. TARIFF INFORMATION (ARTICLE 6.2)**

- (11) Article 6.2, concerning tariffs provides that: “reasonably and sufficiently detailed information on tariff derivation, methodology and structure...” shall be published by the TSO or the national regulatory authority. This information needs to be made public

in order for the network user to verify that he is charged a fair and non-discriminatory tariff for the service(s) he uses.

- (12) Sufficient information with respect to the structure means that at least the fixed and variable tariff elements must be published.
- (13) Sufficient information with respect to derivation and methodology means that the tariff principles or methodology underlying the access tariffs must be clearly defined and published. It must also include information on the financial criteria applied in calculating tariffs. This may include the asset base and cost of capital applied or, where applicable, the auction methodology and calculation of reserve prices or the results of a benchmark. Any deviation from the defined standard methodology for tariff determination should be clearly motivated.
- (14) In case only the tariff methodology – but not the resulting tariff - is approved by the regulator, the tariff methodology has to provide a level of transparency allowing system users to establish the actual tariffs for the respective services.

#### **4. CAPACITY (ARTICLE 6.3 AND ANNEX 3.3)**

##### **4.1. Provisions of the Regulation**

- (15) For effective access to transport networks knowledge of capacity availability and use is essential. Market participants need to know the available capacity and the likelihood of interruption, at both entry and exit points (the relevant points, discussed further down). Key issues are the unit of time used in flow definition, the timeline of available information, and historical and future information. Annex 3.3 therefore defines more closely these issues.
- (16) The unit of time (e.g. hourly/daily/monthly) of capacity information addressed specifically here, since capacity is not always a fixed amount. Whether the capacity information is published in flow per year, month or day makes a difference to the value of the information. The information on the capacity should always be provided in the same way as it is sold on the market and in line with the balancing regime, providing the same amount of transparency to the network users who have contracted capacity and those who have not. This is also the reason why information on technical, contracted and available capacity should be published in absolute figures.
- (17) It should be noted that there are different ways of determining the interruptible capacity that is offered. It can for example be determined on the basis of actual or expected nominations or on the basis of experience, gained with historical flows or any other mechanism. In all cases, transparency of historical data is essential to provide information to network users on the likelihood of interruption, and the level of information provided should reflect this. Information on the likelihood of interruption should be provided by publishing the historical data of system interruptions and/or by defining ex-ante the contractual parameters related to the interruptible capacity (e.g. duration, notice and maximum number of allowed interruptions).

- (18) The Annex requires information to be published on a regular and rolling basis. The frequency should be according to the changes that take place with respect to the capacity situation and according to the duration of the capacity offered.

#### **4.2. Capacity information**

- (19) Annex 3.3(1) states that information should be made available for the maximum technical capacity at the relevant points, as well as the total contracted and available capacity (firm and interruptible), down to daily periods. The likelihood of interruption should be stated and its relation to the price of the capacity.
- (20) As stated in Annex 3.3(3), updates of available capacity are necessary to make sure the day-ahead and week-ahead capacities are correct, based on, *inter alia*, prevailing contractual commitments, conditions and nominations. This also ensures that short-term services are kept up to date.
- (21) Annex 3.3(2) and (3) state that available capacity should be published for a period of at least 18 months ahead. The unit of time used should reflect the capacity sold according to the contracts. Updates should be made at least every month or more frequently if new information becomes available. Long-term forecasts of available capacity must be published for the next ten years on an annual basis. Information on future capacities will be based on booked and technical capacities. To make the information useful, aggregated contracted capacity should also be published, in the units of time as it is sold by the TSO. With respect to long-term information TSO's should on a voluntary basis publish available capacity over all years where capacity is contracted up to the first year where all capacity is available for booking by network users. For instance, if a TSO has contracted a certain portion of the capacity in its system up to x years ahead from today, but has not yet sold any capacity in year x+1 and following years and this capacity may at this time be booked, it should publish available capacities for the next x+1 years to come.

#### **4.3. Capacity utilisation**

- (22) Maximum and minimum monthly capacity utilisation rates for the past three years (Annex 3.3(4)) should be expressed in such a way that the absolute figures can be determined, making it independent of variable capacity per entry or exit point as explained in paragraph (16). The utilisation rates should be understood to reflect the used capacity (realised flows) versus the booked and technical capacity, thus giving a true numerical indication of the usage of capacity and whether there has been contractual congestion.
- (23) Annual average flows for the past three years (Annex 3.3(4)) should give an idea to the market of the load of the network. However, this will only give limited information, and it is probably not sufficient to make estimates on the likelihood of interruption, especially when it is determined through historical flows. Therefore it would be preferable for the TSO to publish the flow data to the level of detail of its prevailing nominations regime.

## **5. RELEVANT POINTS (ARTICLE 6.4 AND ANNEX 3.2)**

- (24) When stated in the Annex under 3.2(a) 'all entry points to a network operated by a transmission system operator' and under 3.2(b) 'all exit points or exit zones covering more than 2% of the network', this includes physical as well as virtual points, such as, for example, hubs.
- (25) The rule on 2% for exit points is valid only for exit points within the system of the TSO (to DSOs or consumers) but not for exit points to other systems, as clarified by 3.2(c) which states that relevant points include "all points connecting different networks of transmission system operators."
- (26) Points within the system can also be relevant points if a transport system is built on multiple subsystems. When the connecting points of these subsystems are relevant entry- and exit-points for a shipper (for example when booking capacity, nominating or because they form different balancing zones), the provisions of the Regulation on transparency apply to these points as well. They can be considered as relevant points as defined under Annex 3.2(c), indicating as relevant points "all points connecting *different* networks of transmission system operators". When two different networks are managed as one single network, without requiring shippers to book capacity at the interconnection points, the interconnection between the two networks does not have to be considered a relevant point.
- (27) Annex 3.2(f) states that relevant points include those "necessary for providing ancillary services as defined by Article 2(14) of Directive 2003/55/EC." Ancillary services are defined in this article as "all services necessary for access to and the operation of transmission and/or distribution networks and/or LNG facilities and/or storage facilities including load balancing and blending, but excluding facilities reserved exclusively for transmission system operators carrying out their functions". This means that relevant points include entry and exit points to storage facilities.

## **6. CONFIDENTIALITY (ARTICLE 6.5)**

- (28) Although the general rule states that TSOs need to publish all information required in the Regulation, information can be confidential in exceptional cases. As indicated above, information on capacity can be considered confidential if it reveals sensitive information on the commercial position of market participants. This could be the case if transparency on capacity reveals information on the (kind of) customers that are served by the shipper, the shippers portfolio for supplying gas to specific customers, or the price of the shippers portfolio.
- (29) Article 6.5 indicates possible situations where this could be the case, namely when less than three network users have contracted capacity at the same point. In that case, the TSO has to seek the authorisation of the competent authority, which has to decide by finding a balance between respect for legitimate commercial confidentiality and the objective of creating an internal gas market. The principles that form the basis for such a decision by the competent authority should be consulted on with network users and other stakeholders.

- (30) Reasons why commercial confidentiality can or cannot be regarded as more important than the objective of creating an internal gas market are:
- a) Capacity booked is very rarely a valid consideration. Long-term capacity bookings do not reveal commercially sensitive information since they are not directly related to nominations. For short-term services, such as day-ahead and week-ahead, capacity booked is also not commercially sensitive since it does not reveal substantial information due to the short period of the booking.
  - b) Information on historical maximum and minimum monthly capacity utilisation and annual average flows may only be confidential in case of one user or if there are two users and one of them knows that there is only one other user, as it is only in this case that such information can reveal market sensitive information on the portfolio of individual users.
  - c) When the same level of confidentiality can be obtained by the TSO not disclosing information on the number of network users, this is preferable to not publishing information on capacity.
  - d) Concerning interruptible capacity, the TSO should always publish information on the likelihood of interruption. It is not necessary for this to be based on nominations.
- (31) As is stated in the second paragraph of Article 6(5): "If the authorisation is granted, available capacity shall be published without indicating the numerical data that would contravene confidentiality." This means that firm and interruptible available capacity always has to be published as it never contravenes confidentiality. In the presence of valid considerations relating to confidentiality, the TSO does not have to publish information that would contravene confidentiality, namely the technical and the booked capacity.
- (32) Exit capacity within a system directly linked to end consumers and entry capacity within a system directly linked to producers is not essential information for shippers who want to know their shipping possibilities, but can be important confidential information for the users of the capacity related to their consumption or production. Therefore Paragraph 30(b) and paragraph 31 of this note do not apply to points where this situation prevails.
- (33) The third paragraph of Article 6(5) reads: "No such authorisation [...] shall be granted where three or more network users have contracted capacity at the same point." This makes no distinction between primary and secondary capacity holders and should be interpreted to cover both. Therefore, if there are three capacity holders, whether they are primary or secondary capacity holders, no such authorisation should be granted. It is the responsibility of the competent authority and the TSO to verify exactly, before granting an authorisation, how many capacity holders there are in the relevant period.
- (34) The competent authority takes the decision on confidentiality on a case-by-case basis. Confidentiality exemptions should normally only be granted on a monthly basis, but longer exemptions up to one year might be possible if the competent authority was confident that an exemption would be justified for the whole period. Such decisions should be published. For smaller periods the information is unlikely to be essential to

justify commercial confidentiality and the objective of creating a competitive internal gas market weighs heavier. If the regulator wants to allow confidentiality for shorter term deals, he should set the standard criteria with which a deal should comply and only control whether confidentiality has been justified ex-post. These criteria should be consulted on with network users and other stakeholders.

- (35) The competent authority concerned should set a deadline before which a demand for authorisation by the competent authorities has to be submitted. In the meantime, the TSO has to publish the information. If the submission is not complete or sufficiently clear the regulator does not have to take it into account and the TSO is required to publish the information for which it makes the confidentiality request. The competent authority should publish information on the necessary contents of a request for confidential treatment.
- (36) The TSO has to submit the request, but should only do so at the explicit request of the shipper, which should be submitted together with the rest of the confidentiality request. Confidentiality arrangements through contracts signed before the entry into force of the Regulation have to be notified by the TSO to the competent authority. The TSO cannot be liable for publishing data that are not considered confidential by the competent authority or as defined by the Regulation.

## **7. USER-FRIENDLINESS (ARTICLE 6.6)**

- (37) Article 6.6 and Annex 3.3(7) require the TSO to take into account the demand of the network user when defining user-friendliness. Data should be published in the most basic (untreated) format possible that allows independent analysis by the shipper, instead of publishing data that are already interpreted. All information that is necessary to be(come) a network user should be free and easily accessible, without it being necessarily to be registered or otherwise signed on with the TSO.