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COMMISSION STAFF WORKING DOCUMENT

Accompanying document to the

Proposal to amend Chapter 3 " Definition of the technical information necessary for network users to gain effective access to the system, the definition of all relevant points for transparency requirements and the information to be published at all relevant points and the time schedule according to which this information shall be published", that is in the Annex of Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks

Summary of IMPACT ASSESSMENT

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Summary of IMPACT ASSESSMENT

1. PROBLEM DEFINITION

Gas suppliers in the European gas market are lacking important information necessary to compete adequately. The lack of transparency regarding use and availability of the gas transmission network prevents flexible and non-discriminatory use and leads to distorted prices and impacts negatively on the security of supply.

The following information is not available in an adequate form:

- (1) Gas traders and shippers do not know the available capacities in detail and in a timely manner so they cannot optimize the flows and their supply.
- (2) The risk of interruptions is not known, and there is very little historical data on interruptions available. This gives a competitive advantage to established actors and deters competition.
- (3) There is no equal access to all the information that would be required for the systems users to effectively make their allocations decisions. The network owners and some suppliers have priority access to data, whereas shippers need to rely on assumptions.

The lack of such information negatively impacts on competition which in turn affects prices and services available to energy consumers. Gas transmission networks are regulated entities to ensure that no monopoly profits are made through the network operations. If Transmission System Operators (TSOs) were to make the information above available, they will face costs that need to be accounted for in the regulated revenue. Regulatory intervention is needed to allow for such cost inclusion.

2. JUSTIFICATION FOR EU ACTION

Uniform transparency requirements are a necessity for the creation of a truly functioning energy market in Europe, in particular for an integrated European gas network. The Regulation EC N° 1775/2005 on conditions for access to the natural gas transmission networks (the Gas Regulation) was adopted by the Member States already as a follow-up that

set out in greater detail the principles of Directive 2003/55/EC concerning common rules for the internal market in natural gas (the Gas Directive). This Regulation includes detailed requirements regarding transparency of gas networks, but the information that is defined there is not sufficient in the current gas market. The transparency requirements were not included in Regulation EC N° 715/2009, which repeals Regulation EC N° 1775/2005 from 3 March 2011, because of their detailed nature. Therefore new EU action is needed.

3. MAIN POLICY OBJECTIVES

Competitiveness, Security of Supply and Sustainable Development are defined as the main policy objectives of the European Union Energy policy. The internal market contributes strongly to the objectives of competitiveness and security of supply. Competitiveness as well as security of supply are enhanced by equal access to information and better use of the networks. Sustainable development and the use of renewable energies requires gas as back up fuel and therefore gas also needs to be competitive in prices.

More specifically, increased transparency should lead to equal and full information on network use for all the market participants. Once the information is in place and available, in the medium long term there should be increased effectiveness in the use of the network and capacity allocation. Furthermore it should be easier for new entrants to enter the market and the diversification of shippers and sources is expected to lead to more buffer capacity. Diversification and real time information support maximum responsiveness in crisis situations. Finally the competitive gas prices also enable investments in renewable energies and thereby support sustainable development.

Both the general and more specific objectives are consistent and support the objectives of other EU policies like the Lisbon Strategy and Sustainable Development strategies.

4. POLICY OPTIONS

Below the policy options are presented, all of which have been assessed in detail.

4.1. Option 1 - No EU-action

The Regulation 715/2009 is left unaltered and the reporting requirements of TSOs to the NRAs stay as they are for the moment. Neither Gas Regional Initiatives nor any kind of financial incentives are encouraged and implemented. The voluntary schemes continue as they are for the moment.

4.2. Option 2 - Voluntary agreement by TSOs, system users and NRAs through regional initiatives

The European Regulators Group for Electricity and Gas (ERGEG) launched its Gas Regional Initiative (GRI) spring 2006. The Regional Initiatives framework created three gas regions in Europe. North-West¹; South South-East²; and South³ regions as an interim step to creating a single-EU gas market.

¹ Netherlands, Belgium, France, Ireland, Great Britain, Germany, Denmark, Sweden, Northern Ireland, Norway (observer)

According to the different levels of market development and ambition level the regions have set measures in an order of priority. Transparency is the second priority in the NW region and the third in the South region and not included at all in the SE region's priorities. In this options the Commission will, with the aim of encouraging the voluntary implementation of transparency projects, organise workshops and put in place advisory committees and support the exchange of best practices between TSOs.

4.3. Option 3 - Voluntary financial incentives for the TSOs to increase transparency

In the UK the system users, the NRA (Ofgem) and TSO (National Grid) have agreed upon an incentive scheme that rewards the TSO for providing with transparent and accurate information. The background to the initiation of the incentives system is winter 2005/2006. During that period the large gas customers experienced problems with National Grids inadequate demand forecasting and website performance. The poor performance resulted in significant costs for large customers.

In this option the Commission encourages and advises the systems users and NRAs to implement incentive systems for the TSO according to the UK model in order to increase information transparency and ensure the accuracy and timely publication of data. Creating voluntary incentives where the TSOs revenue structure can be adjusted with the consent and according to the needs of the systems users has the potential to provide a satisfactory outcome for all the parties.

4.4. Option 4 - Amending chapter 3 of the transparency annex of Regulation 715/2009

The Commission will adopt more binding legal guidelines amending chapter 3 of the transparency annex of Regulation 715/2009. Following elements should be added in the proposal:

- improved format of publication
- sufficient historical information
- more detailed information on gas quality
- timely publication i.e. real time information
- more frequent publication of information
- detailed information on liabilities and interruptions
- rules on publication of information regarding capacity trading on the secondary market

The new rules should be applied to the transmission systems early in the year 2010.

² Austria, Bulgaria, Czech Republic, Greece, Hungary, Italy, Poland, Romania, Slovakia, Slovenia
³ Spain, Portugal, France

4.5. Option 5 - Stricter national reporting requirements from users and TSOs to the NRAs

Acquiring data from all the systems users and compiling that to an aggregate material that would then be published by an independent agent (e.g. national regulatory authority) could lead to a similar level of transparency as the previously assessed information publication requirements for the TSOs.

In this option the Commission encourages the NRAs to require the TSOs to report more specific information in line with the provisions presented in option 4. and the details of the deals between the TSOs and TSOs and shippers. Furthermore the NRAs require the systems users to report the amounts of gas shipped in different networks. This information is in turn analysed by the NRAs and published to the market actors in a feasible scope.

5. ASSESSMENT OF IMPACTS

Hereunder the different options are analysed with their pros and cons.

5.1. Option 1 - No EU-action

In the first option the systems users continue not to be on a level playing field concerning information transparency. The transmission systems are not utilized up to their maximal capacity and the security of supply in crisis situations continues to be threatened by the lack of information on available capacity and information on network access conditions possibilities. The economic effect is negative on both the market and security of supply, which can have detrimental social effects. Option 1 No Action requires no timetable and is a simple maintenance of the status quo.

5.2. Option 2 - Voluntary agreement by TSOs, system users and NRAs through regional initiatives

After an extensive consultation in the NW region regarding the need for more transparency, in 2007 the sixteen TSOs of the region presented a project plan for the Transmission Transparency Project that committed them in publishing information on capacity availability and gas flows at cross-border interconnection points in the North West Region. All TSOs have published daily capacity availability information at cross-border points, but there are two data types, daily flows and interruptions and daily aggregate day-ahead nominations where the implementation has fallen behind schedule. A presentation on the progress achieved was given in the Madrid Forum in May 2009, but it should be noted that the voluntary approach has not resulted in 100% compliance with the transparency requirements identified in phase 1 of the project.⁴ The success of phase 2 of the project is also questionable since the vast majority of system operators have so far rejected to commit themselves to publish the transparency requirements.

The voluntary regional progress has a positive impact on security of supply and on markets and could be extended to the rest of the EU. The economic effect on the TSOs can be either neutral or negative depending on whether the new transparency requirements are taken into account in their revenue structure. It is however questionable whether the transparency work

⁴ See more detailed discussion on GRI NW Region in IEA Gas Market Review: 116-118

will be feasible through voluntary progress in the regions and especially what would be the timetable for achieving the minimum transparency requirements in such an option.

5.3. Option 3 - Voluntary financial incentives for the TSOs to increase transparency

The UK model of providing the TSO with incentives is based on two separate criteria: An incentive to ensure good website performance and incentive to produce accurate demand forecasts.

The incentives vary from an annual maximum bonus of 100 000 GBP to a fine of 100 000 GBP that the TSO has to pay in case of non compliance with the time limits. This incentive offered gives an indication of the value of increased transparency and indicates that the system users are willing to pay for accurate information.

Similar systems to create incentives for transparency and accurate information could be implemented in other parts of Europe. Security of supply and market functioning are best dealt with through market based solutions and from this point of view the financial incentives are an apt solution. However a number of concerns arise. Firstly incentive regulation is not in place in many EU countries and therefore a thorough revision of the regulatory overview of TSOs is needed. Also, in case TSOs are connected to the vertically integrated companies financial incentives may be less effective. Finally even if financial incentives were agreed upon to provide more transparency in several Member States, in order to guarantee a level playing field across Europe, there would be a need to introduce European wide regulation on the level of minimum transparency requirements to ensure consistency in published data across the EU.

5.4. Option 4 - Amending chapter 3 of the transparency annex of Regulation 715/2009

The economic effect for the users and the market should be positive as amending the Regulation provides with the most certainty to attain a concrete increase in transparency in the short run. Also security of supply will be strengthened by the new provisions. Amending the regulation is feasible through comitology in the scope of one year after the Commission proposal is adopted internally.

The administrative burden and the costs of the publication can be quantified with the help of the EU Standard Cost Model 'SCM' -Manual. The annual costs for increased transparency can be calculated using the number of GTE transmission system members⁵, an assessment of the hours and an average of a professional's salary in the 10 most expensive EU Member States⁶ and the IT infrastructure needed for the new information requirements. Practical experience with implementation of some of the requirements, in particular regarding provision of real-time information in the UK, has also been used as reference information for the calculations.

The total cost of the new transparency requirements consist of the costs for improvement of the format of publication, gathering and maintaining the historic information, the costs of providing information on interruptions, the costs of providing real-time flow data and costs of the creation of a platform for secondary market information. The total costs for the first year

⁵ 34 TSOs

⁶ According to the EU SCM model the average of a professionals salary in Denmark, Germany, Ireland, France, Italy, Luxemburg, Austria, Netherlands, UK and Sweden is 44,66 euros an hour.

in euros per TSO is approximately 340 000 euros and 11,4 million euros European wide. When the initial IT, translation and planning costs are extracted, the future annual running cost should be around 50 000 – 60000 euros per TSO and around 2 million on the European level.⁷

5.5. Option 5 - Stricter national reporting requirements from users and TSOs to the NRAs

Introducing reporting requirements to the national regulators would require excessive efforts from the market participants. The costs of compliance with this kind of additional transparency legislation are hard to assess, as they depend very much on the detailed requirements, but it would add costs to those of the TSO as described above because the NRA would have to aggregate, check and publish such information. The additional regulatory costs of more transparency could result from the increased need for resources (human, financial) to monitor compliance of transparency requirements and of the additional analysis from the NRAs side. Additional costs for the regulator could also be incurred due to the publication (e.g. on internet) of the market information. The cost of work per hour is assessed on the same basis as under option 4.

In total the costs for introducing these reporting requirements are estimated at over 10 million euros annually for the NRAs and 1, 4 million euros for the system users, i.e. more than in case of policy option 4. On top of this amount also the increased costs of the TSOs need to be taken into account. If half of the costs presented in option 4 would also be counted in inoption 5, the overall costs, especially in the long run, rise significantly above the administrative cost burden of option 4.

The inefficiencies by making the national regulator responsible for data publication instead of the party who is closest to the information (i.e. the TSO) and who is also the service provider to those who need the information, adds significant costs to this option without any clear benefits. Moreover, the NRA will not be able to add additional services regarding the provision of information to the market whenever it feels that there is demand for such service, since it does not possess the information itself. Also, the costs of publication by the NRA are socialised since they are taken from the state budget, whereas such costs would be put on gas shippers and eventually gas consumers, i.e. those who benefit from the publication of the information, if these costs would be incurred by TSOs and included in the network tariffs.

6. COMPARISON OF OPTIONS

The following table compares the options:

⁷ EU 27 Gross inland energy consumption of Natural Gas in 2007/1000 tonnes of oil equivalent: http://epp.eurostat.ec.europa.eu/portal/page/portal/energy/data/main_tables

	Economic effect	Security of Supply	Functioning Markets	Econ/Social/Env. effects	Time table	Probability Feasibility	SME	Administrative costs/€
Option 1. No action	TSO 0 NRA - Market --	--	--	Econ -- Soc 0 Env -0	Short term	Probable Feasible	-	
Option 2. Voluntary Regional Initiatives	TSO - Market +	+	+	Econ + Soc 0 Env 0	Long term	Not likely to succeed voluntarily in the scope required	Indirect +	Non applicable: No legal obligation to provide information
Option 3. Voluntary Financial incentives	TSO ++ NRA 0 Market 0	++	++	Econ + Soc 0 Env 0	Long term	Not feasible and would require European wide regulation	Indirect +	Non applicable: The cost are born by the systems users
Option 4. Revision of 715/2009	TSO 0 NRA+ Market++	++	++	Econ ++ Soc 0 Env 0	Short term	Feasible through comitology	Creates business Opportunities for IT companies	11,4 M first year, around 2 M per consecutive years
Option 5. Reporting to the NRAs	TSO - NRA -- Market -	++	+	Econ + Soc 0 Env 0	Short term	Feasible, not probable	Indirect +	14-18 M first year and around 4-5 M per consecutive years

Based on the policy goals set above, namely that market functioning and security of supply should be enhanced and that suppliers and consumers should benefit from the measures, and taking into account that improvements are needed as soon as possible, option 4 is the preferred policy option.

The rules in the USA regarding network transparency also support the policy choice above, as the provision of information on the networks is an obligation, defined through detailed rules, on transmission network operators.

The policy choice is also confirmed by the statements in the IEA's natural gas market report 2009 that states explicitly that more transparency is needed for gas networks in a harmonised way: "There have been improvements on gas data transparency in Europe, both on pipeline flows and storage levels. However, there remains much missing data in particular in Eastern Europe, as well as a lack of harmonisation between the different transmission system operators (TSOs). Lack of this data undermines Europe's security of gas supply, in the short

term, as it impedes the ability of the market to move gas to where it may needed and in the longer term through weakening essential market signals."⁸

7. MONITORING AND EVALUATION

The core indicators of progress concerning increased transparency are:

- The availability of information on the TSO websites
- Increased use of network capacity
- Improved interoperability between systems, in particular compatibility of capacity offers
- Wider variety of capacity products incl. interruptible capacity available on the market
- Increased secondary trading of capacity
- Number of active shippers and traders on the market

The outline for monitoring and evaluation is arranged through the NRAs and the feedback from the stakeholders biannually in the Madrid Forum for gas.

⁸ IEA Natural Gas Market Review 2009, p115