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THE EUROPEAN UNION**

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NOTE

from:	General Secretariat
to:	Delegations
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No. Cion prop.:	16260/03 ENER 361 CODEC 1857 - (COM (2003) 741 final)
Subject:	Proposal for a Regulation of the European Parliament and of the Council on conditions for access to the gas transmission networks

Delegations will find attached the text of the operative part of the above proposal as it results from the proceedings of Council on 10 June 2004 as well as a draft preamble incorporating the recitals that are part of the Council agreement.

DRAFT REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on conditions for access to the gas transmission networks

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission¹,

Having regard to the opinion of the European Economic and Social Committee²,

Having regard to the opinion of the Committee of the Regions³,

Acting in accordance with the procedure laid down in Article 251 of the Treaty⁴,

Whereas*

- (1) Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC⁵ has made a significant contribution towards the creation of an internal market for gas. It is now necessary to provide structural changes in the regulatory framework to tackle remaining barriers to the completion of the internal market. Additional technical rules are necessary, in particular regarding tariff principles, transparency, congestion management and balancing.
- (2) *Experience gained in the implementation and monitoring of a first set of Guidelines for Good Practice, adopted by the European Gas Regulatory Forum in 2002 demonstrates that in order to ensure the full implementation of these rules in all Member States, and to provide a*

¹ OJ C [...], [...], p. [...].

² OJ C [...], [...], p. [...].

³ OJ C [...], [...], p. [...].

⁴ OJ C [...], [...], p. [...].

* *The preamble will need further examination with a view to ensuring consistency between the original and the added text.*

⁵ OJ L 176 of 15.7.2003, p. 57.

minimum guarantee for equal market access in practice, it is necessary to provide that they become legally enforceable.

- (3) A second set of common rules, “the Second Guidelines for Good Practice” has been adopted at the meeting of the Forum on 24-25 September 2003. This Regulation should, therefore lay down, on the basis of those Guidelines basic principles and rules regarding network access and third party access services, congestion management, transparency, balancing and the trading of capacity rights.*
- (4) Article 15 of Directive 2003/55/EC allows for a combined transmission and distribution operator. Therefore, the rules set out in this Regulation do not require modification of the organisation of national transmission and distribution systems that are consistent with the relevant provision of Directive 2003/55/EC and in particular Article 15 thereof.*
- (5) High pressure pipelines linking up local distributors to the gas network are included in the scope of this Directive.*
- (6) It is necessary to specify the criteria according to which charges for access to the network are determined, to ensure that they fully comply with the principle of non-discrimination and the needs of a well-functioning internal market and take fully into account the need for system integrity and reflect effectively incurred costs.*
- (7) In calculating tariffs it is important to take account of costs incurred, as well as of the need to provide appropriate return on investments and incentives to construct new infrastructure. In this respect, and in particular if effective pipeline-to-pipeline competition exists, the benchmarking of tariffs will be a relevant consideration.*
- (8) The use of market based arrangements, such as auctions, to determine tariffs has to be compatible with the provisions laid down in Directive 2003/55/EC.*
- (9) A common minimum set of third party access services – regarding notably for example the duration of transportation contracts offered and on an interruptible basis – is necessary to provide a common minimum standard of access in practice throughout the European Union and to allow exploiting the benefits accruing from a well-functioning internal market for gas.*

- (10) *References to harmonised transportation contracts in the context of non-discriminatory access to the network of transmission system operators do not mean that the terms and conditions of the transportation contracts of a particular system operator must be the same as those of another transmission system operator in that Member State or in another Member State, unless minimum requirements are set which must be met by all transportation contracts.*
- (11) The management of contractual congestion of networks is an important issue in completing the internal gas market. It is necessary to develop common rules that balance the need to free up unused capacity in accordance with the “use-it-or-lose-it” principle with the rights of the holders of the capacity to use it when necessary, while at the same time enhancing liquidity of capacity.
- (12) Although physical congestion of networks is rarely a problem at present in the Community, it may become one in the future. It is important therefore to provide the basic principle for the allocation of congested capacity in such circumstances.
- (13) For network users to gain effective access to gas networks they need information in particular on technical requirements and available capacity to enable them exploiting business opportunities coming up in the framework of the internal market. Common minimum standards on such transparency requirements are necessary. *The publication of such information can be done by different means, including electronic means.*
- (14) Non-discriminatory and transparent balancing systems for gas, operated by transmission system operators, are important mechanisms, particularly for new market entrants which may have more difficulty balancing their overall sales portfolio than companies already established within a relevant market. It is therefore necessary, to lay down rules ensuring that transmission system operators operate such mechanisms in a manner compatible with non-discriminatory, transparent and effective access conditions to the network.
- (15) The trading of primary rights to capacity is an important part of developing a competitive market and creating liquidity. This Regulation should therefore lay down basic rules on that issue.

- (16) *It is necessary to ensure that undertakings acquiring capacity rights are able to sell them to other licensed undertakings in order to ensure an appropriate level of liquidity on the capacity market. This approach, however, does not prevent a system where capacity unused for a given period, determined at national level, is made re-available to the market on a firm basis.*
- (17) National regulatory authorities should ensure compliance with the rules contained in this Regulation and the guidelines adopted pursuant to it.
- (18) In the guidelines annexed to the Regulation, specific detailed rules implementing these principles are defined, on the basis of the second Guidelines for Good Practice. These rules will need to evolve over time. [...]
- (19) *When proposing to amend the Guidelines laid down in the Annex to the Regulation, the Commission has the intention to ensure prior consultation of all relevant parties concerned with the Guidelines, represented by the professional organisations, and of the Member States within the European Gas Regulatory Forum and to request the input of the European Regulators Group for Electricity and Gas.*
- (20) The Member States and the competent national authorities should be required to provide relevant information to the Commission. Such information should be treated confidentially by the Commission. [...]
- (21) This Regulation and the guidelines adopted in accordance with this Regulation shall be without prejudice of the application of the Community competition rules.
- (22) Since the objective of the proposed action, namely the setting of fair rules for access conditions to natural gas transmission systems, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the action, be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity, as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve this objective.

Article 1

Subject matter and scope

1. This Regulation aims at setting non-discriminatory rules for access conditions to natural gas transmission systems taking into account the specificities of national and regional markets with a view to ensuring the proper functioning of the internal gas market.
This shall include setting harmonised principles for tariffs, or the methodologies underlying their calculation, for access to the network, the establishment of third party access services, harmonised principles for capacity allocation and congestion management, the determination of transparency requirements, balancing rules and imbalance charges, and facilitating capacity trading.
2. Member States may establish an entity or body set up in compliance with Directive 2003/55/EC which carries out one or more functions typically attributed to the TSO, which shall be subject to the requirements of this Regulation.

Article 2

Definitions

1. For the purpose of this Regulation, the following definitions shall apply:
 - (1) “transmission” means the transport of natural gas through a network, which mainly contains high pressure pipelines, other than an upstream pipeline network and other than the part of high pressure pipelines primarily used in the context of local distribution of natural gas, with a view to its delivery to customers, but not including supply;
 - (2) “transportation contract” means a contract which the transmission system operator has concluded with a network user with a view to carrying out transmission;
 - (3) “capacity” means the maximum flow, expressed in normal cubic meters per time unit or in energy unit per time unit, to which the network user is entitled in accordance with the provisions of the transportation contract;

- (4) "unused capacity" means, for the purposes of Article 5(3)(a), firm capacity which a user has acquired under a transportation contract but which the user has not nominated.
- (5) "congestion management" means management of the capacity portfolio of the transmission system operator with a view to optimal and maximum use of the technical capacity and the timely detection of future congestion and saturation points;
- (6) "secondary market" means the market of the capacity traded otherwise than on the primary market;
- (7) "nomination" means the prior reporting by the network user to the transmission system operator of the actual flow that he wishes to inject into or withdraw from the system;
- (8) "re-nomination" means the subsequent reporting of a corrected nomination;
- (9) "residual balancing" means the physical balancing to ensure system integrity during the balancing period;
- (10) "system integrity" means any situation in respect of a transmission network including necessary transmission facilities in which the pressure and the quality of the natural gas remain within the minimum and maximum limits laid down by the transmission system operator, so that the transmission of natural gas is guaranteed from a technical standpoint;
- (11) "balancing period" means the period within which the off-take of an amount of natural gas, expressed in units of energy, must be offset by every network user by means of the injection of the same amount of natural gas into the transmission network in accordance with the transportation contract or the network code;
- (12) "network users" means a customer or a potential customer of a transmission system operator, and transmission system operators themselves in so far as it is necessary for them to carry out their functions in relation to transmission;
- (13) "interruptible services" mean services offered by the transmission system operator, in relation to interruptible capacity;

- (14) “interruptible capacity” means gas transmission capacity that can be interrupted by the transmission system operator according to the conditions stipulated in the transportation contract;
- (15) “long-term services” mean services offered by the transmission system operator with a duration of one year or more ;
- (16) “short-term services” mean services offered by the transmission system operator with a duration of less than one year;
- (17) “firm capacity” means gas transmission capacity contractually guaranteed as uninterruptible by the transmission system operator;
- (18) “firm services” mean services offered by the transmission system operator in relation to firm capacity;
- (19) “technical capacity” means the maximum firm capacity that the transmission, system operator can offer to the network users, taking account of the system integrity and the operational requirements of the transmission network;
- (20) “contracted capacity” means capacity that the transmission system operator has allocated to a network user by means of a transportation contract;
- (21) “available capacity” means the part of the technical capacity that is not allocated and is still available to the system at that moment;
- (22) “contractual congestion” means a situation where the level of firm capacity demand exceeds the technical capacity;
- (23) “primary market” means the market of the capacity traded directly by the transmission system operator;
- (24) “physical congestion” means a situation where the level of demand for actual deliveries exceeds the technical capacity at some point in time;

2. The relevant definitions contained in Article 2 of Directive 2003/55/EC shall also apply with the exception of the definition of transmission in Article 2(3) of Directive 2003/55/EC.

Article 3

Tariffs for access to networks

1. Tariffs or the methodologies used to calculate the tariffs applied by transmission system operators, approved by the regulatory authorities pursuant to Article 25(2) of Directive 2003/55/EC as well as tariffs published pursuant to Article 18(1) of that Directive shall be transparent, take into account the need for system integrity and its improvement and reflect actual costs incurred whilst ensuring appropriate incentives with respect to efficiency, including appropriate return on investments, and where appropriate taking account of the benchmarking of tariffs by the regulatory authorities. The tariffs or the methodologies used to calculate the tariffs shall be applied in a non-discriminatory manner.

Member States may decide that tariffs may also be determined through market-based arrangements, such as auctions, provided such arrangements and the revenues arising are approved by the regulatory authority.

The tariffs or the methodologies shall facilitate efficient gas trade and competition, while at the same time avoiding cross-subsidies between network users and providing incentives for investment and maintaining or creating interoperability for transmission networks.

2. Tariffs for network access shall not restrict market liquidity or distort trade across borders of different transmission systems. In case differences in tariff structures or balancing mechanisms would hamper trade across transmission systems, and notwithstanding Article 25(2) of Directive 2003/55/EC, transmission system operators shall, in close co-operation with the relevant national authorities, actively pursue convergence of tariff structures and charging principles including in relation to balancing.

Article 4

Third Party Access services

1. Transmission system operators shall ensure that they offer services on a non-discriminatory basis to all network users. In particular, where a TSO offers the same service to different customers, it shall do so under equivalent contractual terms and conditions, either using harmonised transportation contracts or a network code approved by the competent authority in accordance with the procedure laid down in Article 25 of Directive 2003/55/EC.
2. Transmission system operators shall provide both firm and interruptible third party access services. The price of interruptible capacity shall reflect the probability of interruption.
3. Transmission system operators shall offer to network users both long and short-term services.
4. Transportation contracts signed with non-standard start dates or with a shorter duration than a standard annual transportation contract shall not result in arbitrarily higher or lower tariffs not reflecting the market value of the service, in accordance with the principles laid down in Article 3(1).
5. Where appropriate, third party access services may be granted subject to appropriate guarantees from network users with respect to the creditworthiness of such users. Such guarantees must not constitute any undue market entry barriers and must be non-discriminatory, transparent and proportionate.

Article 5

Principles of Capacity allocation mechanisms and congestion management procedures

1. The maximum capacity at all relevant points referred to in Article 6(3) shall be made available to market participants, taking into account system integrity and efficient network operation.

2. Transmission system operators shall implement and publish non-discriminatory and transparent capacity allocation mechanisms, which shall
 - (a) provide appropriate economic signals for efficient and maximum use of technical capacity and facilitate investment in new infrastructure;
 - (b) be compatible with the market mechanisms including spot markets and trading hubs while being flexible and capable of adapting to evolving market circumstances;
 - (c) be compatible with the network access systems of the Member States.

3. When transmission system operators conclude new transportation contracts or renegotiate existing transportation contracts, these contracts shall take into account the following principles:
 - a) in the event of contractual congestion, the transmission system operator shall at least offer unused capacity on the primary market on a day-ahead and interruptible basis,
 - b) network users who wish to re-sell or sublet their unused contracted capacity on the secondary market shall be entitled to do so. Member States may require notification or information of the TSO by network users.

4. When capacity contracted under existing transportation contracts remains unused and contractual congestion occurs, transmission system operators shall apply Article 5(3)(a) and (b) unless this would infringe the requirements of the existing transportation contracts. Where this would infringe the existing transportation contracts, transmission system operators shall submit a request to the network user for the use on the secondary market of unused capacity, following consultation with the competent authorities, in accordance with paragraph (3)(a) and (b).

5. In the event that physical congestion exists, non-discriminatory, transparent capacity allocation mechanisms shall be applied by the transmission system operator or, as appropriate, the regulatory authorities.

Article 6

Transparency requirements

1. Transmission system operators shall make public detailed information regarding the services they offer and the relevant conditions applied, together with the technical information necessary for network users to gain effective network access.
2. In order to ensure transparent, objective and non-discriminatory tariffs and facilitate efficient utilisation of the gas network, transmission system operators or relevant national authorities should publish reasonably and sufficiently detailed information on tariff derivation, methodology, and structure.
3. For the services provided, each transmission system operator shall make public information on technical, contracted and available capacities on a numerical basis for all relevant points including entry and exit points on a regular and rolling basis and in a user-friendly standardised manner.
4. The relevant points of a transmission system on which the information must be made public shall be approved by the competent authorities after consultation with network users.
5. Where a transmission system operator considers that it is not entitled for confidentiality reasons to make public all the data required, it shall seek the authorisation of the competent authorities to limit publication with respect to the point or points in question.

The competent authorities shall grant or refuse the authorisation on a case by case basis, taking into account in particular the need to respect legitimate commercial confidentiality and the objective of creating a competitive internal gas market. If the authorisation is granted, available capacity shall be published without indicating the numerical data that would contravene confidentiality.

No such authorisation as referred to in this Article shall be granted where three or more network users have contracted capacity at the same point.

6. Transmission system operators shall always disclose the information required by this Regulation in a meaningful, quantifiably clear and easily accessible way and on a non-discriminatory basis.

Article 7

Balancing rules and imbalance charges

1. Balancing rules shall be designed in a fair, non-discriminatory, and transparent manner and shall be based on objective criteria. Balancing rules shall reflect genuine system needs taking into account the resources available to the transmission system operator.
2. In case of non-market based balancing systems, tolerance levels shall be designed in a way that either reflects seasonality or that results in a tolerance level higher than that resulting from seasonality, and that reflects the actual technical capabilities of the transmission system. Tolerance levels shall reflect genuine system needs taking into account the resources available to the transmission system operator.
3. Imbalance charges shall be broadly cost-reflective, whilst providing appropriate incentives on network users to balance their input and off-take of gas. They shall avoid cross-subsidisation between network users and shall not hamper the entry of new market entrants.

Any calculation methodology for imbalance charges as well as the final tariffs shall be made public by the competent authorities or the transmission system operator as appropriate.
4. Transmission system operators may impose penalty charges on network users whose input into and off-take from the transmission system is not in balance according to the balancing rules referred to in paragraph 1.
5. Penalty charges which exceed the actual balancing costs incurred shall be taken into account when calculating tariffs in a way that does not reduce the interest in balancing and shall be approved by the competent authorities.
6. In order to enable network users to take timely corrective actions, transmission system operators shall provide sufficient, well-timed and reliable on-line based information on the balancing status of network user. The level of information provided shall reflect the level of information available to the transmission system operator. Where they exist, charges for the provision of such information shall be approved by the competent authorities and shall be made public by the transmission system operator.

6. Member States shall ensure that transmission system operators endeavour to harmonise balancing regimes and streamline structures and levels of balancing charges in order to facilitate gas trade.

Article 8

Capacity rights trading

Each transmission system operator shall take reasonable steps to allow and facilitate capacity rights to be freely tradable. Each such operator shall develop harmonised transportation contracts and procedures on the primary market to facilitate secondary trade of capacity and recognise the transfer of primary capacity rights where notified by network users. The harmonised transportation contracts and procedures shall be notified to the regulatory authorities.

Article 9

Guidelines

1. Where appropriate, guidelines providing the minimum degree of harmonisation required to achieve the aim of this Regulation shall specify:
 - (a) details of third party access services including the character, duration and other requirements of these services, in accordance with Article 4;
 - (b) details of the principles underlying capacity allocation mechanisms and on the application of congestion management procedures in case of contractual congestion, in accordance with Article 5;
 - (c) details on the definition of the technical information necessary for network users to gain effective access to the system and the definition of all relevant points for transparency requirements, including the information to be published at all relevant points and the time schedule according to which this information shall be published, in accordance with Article 6;
2. Guidelines on the issues listed in paragraph 1 are laid down in the Annex. They may be amended by the Commission; this shall be done in accordance with the procedure referred to in Article 14(2).

3. The application and amendment of Guidelines adopted pursuant to this Regulation shall reflect differences between national gas systems, and shall therefore not require uniform detailed terms and conditions of third party access at Community level. They may, however, set minimum requirements to be met to achieve non-discriminatory and transparent network access conditions necessary for an internal gas market, which may then be applied in the light of differences between national gas systems.

Article 10

Regulatory authorities

When carrying out their responsibilities under this Regulation, the regulatory authorities of the Member States established under Article 25 of Directive 2003/55/EC shall ensure compliance with this Regulation and the guidelines adopted pursuant to Article 9.

Where appropriate they shall cooperate with each other and with the Commission.

Article 11

Provision of information and confidentiality

Member States and the regulatory authorities shall, on request, provide to the Commission all information necessary for the purposes of Article 9.

The Commission shall fix a reasonable time limit within which the information is to be provided, taking into account the complexity of the information required and the urgency with which the information is needed.

Article 12

Right of Member States to provide for more detailed measures

This regulation shall be without prejudice to the rights of Member States to maintain or introduce measures that contain more detailed provisions than those set out in this Regulation and the guidelines referred to in Article 9.

Article 13

*Penalties**

1. Without prejudice to paragraph 2, the Member States shall lay down the rules on penalties applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission by 1 July 2006** at the latest and shall notify it without delay of any subsequent amendment affecting them.
2. Penalties provided for pursuant to paragraph 1 and decisions taken pursuant to paragraph 2 shall not be of a criminal law nature.

[...]

Article 14

Committee

1. The Commission shall be assisted by the Committee set up by Article 30 of Directive 2003/55/EC.
2. Where reference is made to this paragraph, Article 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

3. The Committee shall adopt its rules of procedure.

* In the Danish version, the term "sanktioner" should be used.

In the Dutch version, the term "sancties" should be used.

** Changed in line with the changed date of entry into force in Art. 17.

Article 15
Commission Report

The Commission shall monitor the implementation of this Regulation. In its report under Article 31(3) of Directive 2003/55/EC, the Commission shall also report on the experience gained in the application of this Regulation. In particular the report shall examine to what extent the Regulation has been successful in ensuring non-discriminatory and cost-reflective network access conditions for gas transmission networks in order to contribute to customer choice in a well functioning internal market and to long-term security of supply. If necessary, the report shall be accompanied by appropriate proposals and/or recommendations.

Article 16
Derogations and exemptions

This Regulation shall not apply to

- (a) natural gas transmission systems situated in Member States for the duration of derogations granted under Article 28 of Directive 2003/55/EC.
- (b) Member States which have been granted derogations under Article 28 of Directive 2003/55/EC may apply to the Commission for a temporary derogation from the application of this Regulation, for a period of up to two years from the date at which the derogation referred to in paragraph (a) expires.
- (c) Interconnectors between Member States and significant increases of capacity in existing infrastructures and modifications of such infrastructures which enable the development of new sources of gas supply as referred to in Article 22(1) and (2) of Directive 2003/55/EC which are exempted from the provisions of Articles 18, 19, 20 and 25(2), (3) and (4) of that Directive as long as they are exempted from the provisions referred to in this subparagraph;
- (d) natural gas transmission systems which have been granted derogations under Article 27 of Directive 2003/55/EC.

Article 17

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

It shall apply from 1 July 2006 with the exception of Article 9(2), 2nd sentence, which shall apply from 1 January 2007.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, [...]

For the European Parliament

The President

For the Council

The President

[...] [...]

GUIDELINES ON**THIRD PARTY ACCESS SERVICES,****PRINCIPLES UNDERLYING CAPACITY ALLOCATION MECHANISM AND CONGESTION MANAGEMENT PROCEDURES AND THE APPLICATION OF CONGESTION MANAGEMENT PROCEDURES IN CASE OF CONTRACTUAL CONGESTION, AND****THE DEFINITION OF THE TECHNICAL INFORMATION NECESSARY FOR NETWORK USERS TO GAIN EFFECTIVE ACCESS TO THE SYSTEM AND THE DEFINITION OF ALL RELEVANT POINTS FOR TRANSPARENCY REQUIREMENTS, INCLUDING THE INFORMATION TO BE PUBLISHED AT ALL RELEVANT POINTS AND THE TIME SCHEDULE ACCORDING TO WHICH THIS INFORMATION SHALL BE PUBLISHED****1. THIRD PARTY ACCESS SERVICES**

- (1) Transmission system operators shall offer firm and interruptible services down to a minimum period of one day.
- (2) Harmonised transportation contracts and common network code shall be designed in a manner that facilitates trading and re-utilisation of capacity contracted by network users without hampering capacity release.
- (3) Transmission system operators shall develop network codes and harmonised contracts following proper consultation with network users.
- (4) Transmission system operators shall implement standardised nomination and re-nomination procedures, once agreed within EASEE-gas. They shall develop information systems and electronic communication means to provide adequate data to network users and to simplify transactions, such as nominations, capacity contracting and transfer of capacity rights between network users.
- (5) Transmission system operators shall harmonise formalised request procedures and response times according to best industry practice with the aim of minimising response times. They shall provide for on-line screen based capacity booking and confirmation systems,

nominations and re-nominations procedures no later than 1 July 2006* if such procedures have been agreed within EASEE-gas.

- (6) Transmission system operators shall not separately charge network users for information requests and transactions associated with their transportation contracts and which are carried out according to standard rules and procedures.
- (7) Information requests that require extraordinary or excessive expenses such as feasibility studies may be charged separately, provided the charges can be duly substantiated.
- (8) Transmission system operators shall co-operate with other transmission system operators in co-ordinating the maintenance of their respective networks in order to minimise any disruption of transmission services to network users and transmission system operators in other areas and in order to ensure equal benefits with respect to security of supply including in relation to transit.
- (9) Transmission system operators shall publish at least once a year, by a predetermined deadline, all planned maintenance periods that might affect network users' right from transportation contracts and corresponding operational information with adequate advance notice. This shall include publishing on a prompt and non-discriminatory basis any changes to planned maintenance periods and notification of un-planned maintenance, as soon as that information becomes available to the TSO. During maintenance periods, TSOs shall publish regularly updated information on the details of and expected duration and effect of the maintenance.
- (10) Transmission system operators shall maintain and make available to the competent authority upon request a daily log of the actual maintenance and flow disruptions that have occurred. Information shall also be made available on request to those affected by any disruption.

* Changed in line with the changed date of entry into force in Art. 17.

2. PRINCIPLES UNDERLYING CAPACITY ALLOCATION MECHANISM AND CONGESTION MANAGEMENT PROCEDURES AND APPLICATION OF CONGESTION MANAGEMENT PROCEDURES IN CASE OF CONTRACTUAL CONGESTION

2.1. PRINCIPLES UNDERLYING CAPACITY ALLOCATION MECHANISM AND CONGESTION MANAGEMENT PROCEDURES

- (1) Capacity allocation mechanism and congestion management procedures shall facilitate the development of competition and liquid trading of capacity and shall be compatible with market mechanisms including spot markets and trading hubs. They shall be flexible and capable of adapting to evolving market circumstances.
- (2) These mechanisms and procedures shall take into account the integrity of the system concerned as well as security of supply.
- (3) These mechanisms and procedures shall neither hamper the entry of new market participants nor create undue barriers to enter the market. They shall not prevent market participants, including new market entrants and companies with a small market share, from competing effectively.
- (4) These mechanisms and procedures shall provide appropriate economic signals for efficient and maximum use of technical capacity and facilitate investment in new infrastructure.
- (5) Network users shall be advised about the type of circumstance that could affect the availability of contracted capacity. Information on interruption should reflect the level of information available to the transmission system operator.
- (6) In case difficulties in meeting contractual delivery obligations should arise due to system integrity reasons, transmission system operators should notify network users and seek a non-discriminatory solution without delay.

Transmission system operators shall consult network users regarding procedures prior to their implementation and agree them with the regulatory authority.

2.2. CONGESTION MANAGEMENT PROCEDURES IN CASE OF CONTRACTUAL CONGESTION

- (1) In the event that contracted capacity goes un-used, transmission system operators shall make this capacity available on the primary market on an interruptible basis via contracts of differing duration, as long as this capacity is not offered by the relevant network user (capacity holder) on the secondary market at a reasonable price.

- (2) Revenues from released interruptible capacity shall be split according to rules laid down or approved by the relevant regulatory authority. These rules shall be compatible with the requirement of an effective and efficient use of the system.
- (3) A reasonable price for released interruptible capacity may be determined by the relevant regulatory authorities taking into account the specific circumstances prevailing.
- (4) Where appropriate, transmission system operators shall make reasonable endeavours to offer at least parts of the unused capacity to the market as firm capacity.

3. DEFINITION OF THE TECHNICAL INFORMATION NECESSARY FOR NETWORK USERS TO GAIN EFFECTIVE ACCESS TO THE SYSTEM AND THE DEFINITION OF ALL RELEVANT POINTS FOR TRANSPARENCY REQUIREMENTS, INCLUDING THE INFORMATION TO BE PUBLISHED AT ALL RELEVANT POINTS AND THE TIME SCHEDULE ACCORDING TO WHICH THIS INFORMATION SHALL BE PUBLISHED

3.1. DEFINITION OF THE TECHNICAL INFORMATION NECESSARY FOR NETWORK USERS TO GAIN EFFECTIVE ACCESS TO THE SYSTEM

Transmission system operators shall publish at least the following information about their systems and services:

- a) A detailed and comprehensive description of the different services offered and their charges;
- b) The different types of transportation contracts available for these services and as applicable, the network code and/or the standard conditions outlining the rights and responsibilities for all network users including harmonised transportation contracts and other relevant documents;
- c) The harmonised procedures applied when using the transmission system including the definition of key terms;
- d) Provisions on capacity allocation, congestion management and anti-hoarding and re-utilisation procedures;

- e) The rules applicable for capacity trade on the secondary market vis-à-vis the transmission system operator;
- f) If applicable, the flexibility and tolerance levels included in transportation and other services without separate charge and as well as any flexibility offered in addition to this and the corresponding charges;
- g) A detailed description of the gas system of the transmission system operator indicating all relevant points interconnecting its system with that of other transmission system operators and/or gas infrastructure such as LNG and infrastructure necessary for providing ancillary services as defined by Article 2(14) of Directive 2003/55/EC;
- h) Information on gas quality and pressure requirements;
- i) The rules applicable for connection to the system operated by the TSO;
- j) Any information, in a timely manner, on proposed and/or actual changes to the services or conditions, including the items listed in points a) to i).

3.2. DEFINITION OF ALL RELEVANT POINTS FOR TRANSPARENCY REQUIREMENTS

Relevant points shall include at least:

- (a) All entry points to a network operated by a transmission system operator
- (b) The most important exit points and exit zones covering at least 50% of total exit capacity of the network of a given transmission system operator, including all exit points or exit zones covering more than 2% of total exit capacity of the network.
- (c) All points connecting different networks of transmission system operators
- (d) All points connecting the network of a transmission system operator with an LNG terminal
- (e) All essential points within the network of a given transmission system operator including points connecting to gas hubs. All points are considered essential which, based on experience, are likely to experience physical congestion.

- (f) All points connecting the network of a given transmission system operator to infrastructure necessary for providing ancillary services as defined by Article 2(14) of Directive 2003/55/EC.

3.3. INFORMATION TO BE PUBLISHED AT ALL RELEVANT POINTS AND THE TIME SCHEDULE ACCORDING TO WHICH THIS INFORMATION SHOULD BE PUBLISHED

- (1) At all relevant points, transmission system operators shall publish the following information about the capacity situation down to daily periods on the Internet on a regular/rolling basis and in a user-friendly standardised manner:
 - a) the maximum technical capacity for flows in both directions
 - b) the total contracted and interruptible capacity
 - c) the available capacity
- (2) For all relevant points, transmission system operators shall publish available capacities for a period of at least 18 months ahead and shall update this information at least every month or more frequently, if new information becomes available.
- (3) Transmission system operators shall publish daily updates of availability of short-term services (day-ahead and-week ahead) based, inter alia, on nominations, prevailing contractual commitments and regular long-term forecasts of available capacities on an annual basis for up to 10 years for all relevant points.
- (4) Transmission system operators shall publish historical maximum and minimum monthly capacity utilisation rates and annual average flows at all relevant points for the past three years on a rolling basis.
- (5) Transmission system operators shall keep a daily log of actual aggregated flows for at least three months.
- (6) Transmission system operators shall keep effective records of all capacity contracts and all other relevant information in relation to calculating and providing access to available capacities, to which relevant national authorities shall have access to fulfil their duties.

- (7) Transmission system operators shall provide user-friendly instruments for calculating tariffs for the services available and for verifying on-line the capacity available.
 - (8) Where transmission system operators are unable to publish information in accordance to paragraph 1, 3 and 7, they shall consult with their relevant national authorities and set up an Action Plan for implementation as soon as possible, but not later than 31 December 2006* at the latest.
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* Changed in line with the changed date of entry into force in Art. 17.