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| from: | General Secretariat |
| to: | Delegations |
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| 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 herewith a revised version of the Articles of the above proposal, drawn up by the Presidency in the light of delegations' comments.

New wording is marked in **bold**.

Presidency suggestion

concerning the Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on conditions for access to the gas transmission networks

(Text with EEA relevance)

...¹

Article 1

Subject matter and scope

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 the functioning of secondary markets for capacity trading.

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 high pressure network or a regional pipeline network, which mainly contains high pressure pipelines, other than an upstream pipeline network 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) “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;
 - (5) “secondary market” means the market of the capacity traded otherwise than on the primary market;
 - (6) “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;
 - (7) “re-nomination” means the subsequent reporting of a corrected nomination;

¹ The preamble will be examined at a later stage.

- (8) “residual balancing” means the physical balancing to ensure system integrity during the balancing period;
- (9) “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;
- (10) “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;
- (11) “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;
- (12) “interruptible services” mean services offered by the transmission system operator, **in relation to** interruptible capacity;
- (13) “interruptible capacity” means gas transmission capacity that can be interrupted by the transmission system operator according to the conditions stipulated in the transportation contract;
- (14) “long-term services” mean services offered by the transmission system operator with a duration of one year or more [...];
- (15) “short-term services” mean services offered by the transmission system operator with a duration of less than one year;
- (16) “firm capacity” means gas transmission capacity contractually guaranteed as uninterruptible by the transmission system operator;
- (16a) “firm services” mean services offered by the transmission system operator **in relation to** firm capacity;
- (17) “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;
- (18) “contracted capacity” means capacity that the transmission system operator has allocated to a network user by means of a transportation contract;
- (19) “available capacity” means the part of the technical capacity that is not allocated and is still available to the system at that moment;
- (20) “contractual congestion” means a situation where the level of firm capacity demand exceeds the technical capacity;
- (21) “primary market” means the market of the capacity traded directly by the transmission system operator;
- (22) “physical congestion” means a situation where the level of demand for actual deliveries exceeds the technical capacity at some point in time;
- (23) “new market entrants” means undertakings that are not yet active in gas supply in the Member State concerned or have only entered the market within 2 years from the date on which they conclude their first gas sales contract within the Member State concerned and which have a market share of less than 3% of the national gas market on which they are active, and are not affiliated with or owned by an existing gas undertaking [...];

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. Notwithstanding Article 25(2) of Directive 2003/55/EC, tariffs **or the methodologies** applied by transmission system operators for access to networks shall be transparent, take into account the need for system integrity and its improvement and reflect actual costs incurred, including appropriate return on investments, and where appropriate taking account of the benchmarking of tariffs by the regulatory authorities, and shall be applied in a non-discriminatory manner. **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.

2. Tariffs for network access shall not restrict market liquidity or distort trade across borders of different transmission systems.

Article 4

Third Party Access services

1. Each transmission system operator shall offer third party access services on the same contractual basis to all network users, either using standard transportation contracts or a network code.
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, if not otherwise laid down by the regulatory authorities.
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 tariffs not reflecting the market value of the service.

Article 5

Principles of Capacity allocation mechanisms and congestion management procedures

1. Transmission system operators shall implement and publish non-discriminatory and transparent capacity allocation mechanisms.
2. When transmission system operators conclude new transportation contracts or renegotiate existing transportation contracts, these contracts shall take into account the following principles, which shall apply in cases of contractual congestion:
 - a) the transmission system operator shall offer unused capacity on the primary market **on a day-ahead and interruptible basis**;
 - b) network users who wish to re-sell their unused contracted capacity on the secondary market shall be entitled to do so.
3. When capacity contracted under existing transportation contracts remains unused and contractual congestion occurs, transmission system operators shall apply Article 5(2)(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 (2)(a) and (b).

4. 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 public² 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. 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.

² The Presidency suggests the addition of a recital which would state that making public information can also be done by electronic means.

3. The relevant points of a transmission system the information on which must be made public shall be approved by the competent authorities. [...] ³
4. 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. **As a general rule, legitimate confidentiality interests exist when less than three network users have contracted capacity at a given point.**

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.

Imbalance charges **or the calculation methodologies for imbalance charges** 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 with its booked contracted capacity according to the balancing rules referred to in paragraph 1.
5. Penalties which exceed the actual balancing costs incurred shall be re-distributed to the network users on a non-discriminatory basis. The method for re-distributing those costs shall **be formulated in a way which will 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. Charges for the provision of such

³ The deleted text will go to point 3.2.(b) of the Annex which would read as follows:
"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."

information shall be approved by the competent authorities and shall be made public by the transmission system operator.

Article 8
Secondary markets

Each transmission system operator shall take reasonable steps to allow and facilitate capacity rights to be freely tradable [...] on a secondary market. They shall develop standardised 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 standardised 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 tariff methodology, in accordance with Article 3;
 - (b) details of third party access services including the character, duration and other requirements of these services, in accordance with Article 4;
 - (c) 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;
 - (d) 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;
 - (e) details on balancing rules and imbalance charges, in accordance with Article 7;
 - (f) details on secondary markets, in accordance with Article 8.
2. Guidelines on the issues listed in paragraph 1(b), (c) and (d) are laid down in the Annex. They shall be amended by the Commission in accordance with the procedure referred to in Article 14(2).

3. The Commission shall in accordance with the procedure referred to in Article 14(2), adopt and amend guidelines on the issues listed in paragraph 1 (a), (e) and (f).]⁴

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 2005] at the latest and shall notify it without delay of any subsequent amendment affecting them.
2. The Commission may by decision impose on undertakings fines not exceeding 1% of the total turnover in the preceding business year where, intentionally or negligently, they supply incorrect, incomplete or misleading information in response to a request made pursuant to Article 11(2) or fail to supply information within the time-limit fixed by a decision adopted pursuant to the first subparagraph of Article 11(4).

⁴ In the light of discussions it is clear that amendments will have to be made to Article 9, particularly in relation to the scope and details of the proposed comitology powers. The Presidency is still reflecting on how best to formulate such an amendment. Similarly, the Presidency is reflecting on how best to amend the Annex.

In setting the amount of a fine, regard shall be had to the gravity of the failure to comply with the requirements of the first subparagraph.

3. Penalties provided for pursuant to paragraph 1 and decisions taken pursuant to paragraph 2 shall not be of a criminal law nature.

Article 13a

Consultative Forum

When establishing or amending the guidelines referred to in Article 9, the Commission shall ensure consultation of all relevant parties concerned with these Guidelines. Such parties would be represented by the European Group of Regulators, the natural gas industry including the transmission system operators, natural gas traders, wholesalers, retailers and consumers of natural gas. These parties shall be represented by professional organisations and shall meet under the chairmanship of the Commission.

Article 14

Committee

1. The Commission shall be assisted by the Committee set up by Article 30 of Directive 2003/55/EC.⁵
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.

Article 15

Commission Report

The Commission shall monitor the implementation of this Regulation. It shall submit to the European Parliament and the Council no more than three years after the entry into force of this Regulation a report on the experience gained in its application. 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 15a

Derogations and exemptions

This Regulation shall not apply to

- (a) natural gas transmission systems situated in Member States qualifying as emergent or isolated markets under Article 28 of Directive 2003/55/EC;**
- (b) interconnectors between Member States in the sense of Article 22(1) and (2) of Directive 2003/55/EC and exempted from the provisions of Articles 18, 19, 20 and 25(2), (3) and (4) of Directive 2002/55/EC for the duration of the exemption.**

Article 16
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 2005].

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

[...] [...]