



## Second Reading of the Gas Transmission Regulation (COM (2003) 741 – C5-0644/2003 – 2003/0302 (COD))

### European Federation of Energy Traders views

The European Federation of Energy Traders ([www.efet.org](http://www.efet.org)) represents over 70 companies that trade gas and electricity in Europe. Our members include many important users of Europe's energy networks.

EFET believes that this Gas Transmission Regulation, based on the guidelines accepted at the 7<sup>th</sup> European Gas Regulatory Forum in Madrid ("[Madrid Forum](#)"), is urgently needed to enable gas competition to develop, to reduce operational risks and strengthen overall security of gas supply. A clear regulatory framework is needed to provide sufficient harmonisation of access to intra-community gas pipelines. The Madrid Forum has also highlighted the importance of entry-exit arrangements for network access and tariffs.

EFET notes that the Council has included some of the Parliament's 1st reading amendments that undoubtedly improve the text, but at the same time the Council has significantly reduced the scope of the Regulation. However, we do not wish to delay adoption by reintroducing topics at this stage.<sup>1</sup>

During the 2<sup>nd</sup> Parliamentary reading, EFET asks that consideration is given to the following main issues:

- The importance of using the term **transparent efficiently incurred costs**, in the calculation of transmission tariffs and balancing charges. (Recital 6, Recital 7, Art. 3.1, Art. 7.5). Monopoly network operators must have the right incentives so that customers do not bear the costs of inefficient operations. A regulated Transmission System Operator (TSO) should not be allowed to pass on to customers all its actual costs if some of the costs have been inefficiently incurred by the TSO.
- Industry has accepted at the Madrid Forum that Transmission System Operators must take responsibility for **interoperability** and enter into **Interconnection Agreements** and **Operational Balancing Agreements** (Art. 2.1.24a, Art. 2.1.24b, Art. 4.4a). In practice there are cases where these agreements are still lacking or the arrangements are kept secret. The Parliament recommended in the 1<sup>st</sup> reading that these Agreements should be required by in the Regulation. They have slipped out of the Council text and need to be re-instated.

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<sup>1</sup> Topics deleted in Article 9 include details of tariff methodology, imbalance charges and secondary market.

- Avoiding **capacity hoarding** and **network congestion** (Art. 5.4) is another essential area where the Council text can be made simpler and more effective. It needs to address clearly the problem of **long term contractual congestion** that occurs particularly across intra-Community borders.
- In the first reading the Parliament was concerned that TSOs must not place unreasonable **balancing requirements** on the network users. Users must be provided with the information from the TSO and the means to take corrective action within any required balancing period. Article 7.1a has been omitted from the Council Text and should be re-instated.
- The Parliament was keen to stress the importance of **consultation with users and customers**, by putting this in the main text (14.1a). This has been omitted from the Council Text and should be re-instated.
- The 'Madrid' guidelines on which the Regulation is based contained a medium term implementation date of 1<sup>st</sup> July 2004 and a final implementation date of 1st July 2005 by which time all the actions in the guidelines should have been completed. Any further undue slippage in the **implementation dates** for the Regulation (Annex 1 para 5, Annex 3.3 para 8) must be avoided.

Following the Parliamentary rules of procedures, EFET believes that these issues can be addressed by the following amendments.

EFET Gas Committee  
19 November, 2004

**Proposed amendments to the Gas Transmission Regulation  
(COM(2003) 741 – C5-0644/2003 – 2003/0302 (COD))  
at 2<sup>nd</sup> Reading**

Text proposed by the Council

Amendments

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**Amendment  
Recital 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 **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.

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 **transparent, efficiently incurred** costs whilst ensuring appropriate return on investments and where appropriate the benchmarking of tariffs by the regulatory authorities.

*Justification*

*It would be simpler to say efficiently incurred costs. This reflects the text in the 7<sup>th</sup> Madrid Forum Guidelines for Good Practice. Transparency in regulated costs is achieved by publishing cost information and its assessment in a clear and understandable format.*

*This amendment refers to new Council text.*

**Amendment  
Recital 7**

In calculating tariffs it is important to take account of **actual** 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.

In calculating tariffs it is important to take account of **efficiently incurred** costs, as well as of the need to provide appropriate return on investments and incentives to construct new infrastructure. In this respect, the benchmarking of tariffs **may** be a relevant consideration.

*Justification*

*This amendment refers to new Council text*

**Amendment**

**Article 2, paragraph 1, point 24a (new), linked with Article 4a**

[deleted]

***“interconnection agreements” means agreements between interconnected transmission system operators that are designed to ensure the interoperability of the interconnection point and may cover, energy specification (including pressure, temperature and chemical gas specifications) and, change of flow rates and the operation of the interconnection point.***

*Justification*

*TSOs should seek to avoid and where necessary remove any barriers to gas trade across borders and between transmission systems. Based on Madrid Forum wording.*

*This reinstates the amendment adopted by the European Parliament at 1st reading.*

**Amendment**

**Article 2, paragraph 1, point 24b (new), linked with Article 4a**

[deleted]

***“operational balancing agreements” means agreements between interconnected transmission system operators that are designed to ensure the interoperability of the interconnection such that network users are allocated their full nomination, unless there is a significant net shortfall or excess.***

*Justification*

*TSOs should seek to avoid and where necessary remove any barriers to gas trade across borders and between transmission systems. Based on Madrid Forum that recognised that operational balancing agreements are necessary to facilitate cross-border trade.*

*This reinstates the amendment adopted by the European Parliament at 1<sup>st</sup> reading, but with a shorter wording.*

### **Amendment Article 3, paragraph 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.

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 **transparent, efficiently incurred costs**, 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 **and** 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.

#### *Justification*

*It would be much clearer to use the wording "efficiently incurred costs" from the Madrid Forum and as proposed by the European Parliament in its 1<sup>st</sup> reading amendments. The Council text this amendment replaces is weaker and might not ensure that final tariffs reflected efficient costs. Transparency in regulated costs is also important.*

Both the tariffs and the methodologies should facilitate gas trade.

The first part of this amendment reinstates a Parliamentary amendment, while the second part amends new Council text.

**Amendment  
Article 4, paragraph 4a (new)**

[deleted]

***Transmission service operators shall ensure interoperability between different systems inter alia by entering into both standardised interconnection agreements and standardised operational balancing agreements at any interface.***

*Justification*

*Despite the fact that the gas industry has accepted that interconnection agreements and operational balancing agreements at the interface of transmission systems are essential, their implementation is both inconsistent and non-transparent. This proposed wording was agreed by the industry in the Madrid Forum and should be inserted. These agreements are vital to ensure interoperability of transmission systems at their border points, reduce operational risks for suppliers and enable consumers to benefit from the internal market.*

*This reinstates an amendment agreed by the Parliament at 1st reading. A compromise amendment would be to place the above wording and the definition of interconnection agreements and operational balancing agreements in the Annex between Article 1.8 and 1.9.*

**Amendment  
Article 5, paragraph 4**

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

3. When capacity contracted under existing transportation contracts remains unused, and contractual congestion occurs, ***[ ]*** transmission system operators shall, following consultation with the competent authorities, ***make this capacity available,*** in accordance with paragraph 3a. Competent authorities ***shall investigate any prolonged and significant contractual congestion.***

### *Justification*

*Unused capacity in existing long term arrangements must be made available in the case of congestion otherwise there is an undue barrier to competition and serious consequences for security of supply. This was agreed in the Madrid Forum's Guidelines for Good Practice.*

*Contracts that foreclose the market by not allowing transfer of unused capacity are the main problem and it would be illogical to exempt them in this clause.*

*The first part of this amendment reinstates text simplified from a parliamentary amendment agreed at 2<sup>nd</sup> reading. The second part makes the new Council text more practical, requiring the competent authority to investigate longer-term problems.*

### **Amendment Article 7, paragraph 1a(new)**

**1a. There must be no requirement on network users to balance their inputs and outputs over a shorter period than is possible by using a market based balancing system. In the transition to achieving this, the Member State shall ensure that a regulated service is provided on a temporary basis to facilitate new entry.**

### *Justification*

*Market-based mechanisms can develop only once there are sufficient new market entrants. Transitional balancing arrangements will be needed.*

*This is based Parliamentary amendment 27 from 1<sup>st</sup> reading – but allows the Member State more flexibility in how this paragraph is implemented.*

### **Amendment Article 7, paragraph 5**

Penalties which exceed the **actual** balancing costs shall be re-distributed to the network users on a non-discriminatory basis. The method for re-distributing those costs shall be approved by the relevant national authorities.

Penalties which exceed **the transparent, efficiently incurred** balancing costs shall be re-distributed to the network users on a non-discriminatory basis. The method for re-distributing those costs shall be approved by the relevant national authorities.

### *Justification*

*Transmission System Operators should be incentivised to run their networks as efficiently as possible as recognised in the Madrid Forum.*

*This amendment refers to new Council text.*

**Amendment  
Article 14, Paragraph 1a (new)**

***The Committee shall consult with  
and take due consideration of the  
views of network users and gas  
consumers.***

*Justification*

*The network users are the customers of the TSOs and the needs of network users are therefore fundamental for improving the conditions of access to transmission networks. The consultation of network users and consumers should therefore be in the main text of the Regulation.*

*This reinstates a 1<sup>st</sup> reading amendment rejected by the Council.*

**Amendment  
Annex, section 1, paragraph 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.

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 **30 September 2005**.

*Justification*

*This deadline should coincide with the start of the Gas Year. Further delay to the final implementation date (1 July 2005) already accepted by TSOs in the Madrid Forum should be minimised. The reference to the voluntary association EASEE-Gas may be an undue constraint and should be deleted.*

*This amendment refers to new Council text.*

**Amendment  
Annex, section 3.3, paragraph 8**

Where transmission system operators are unable to publish information in

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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.

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 **for implementation** not later than **30 September 2005** at the latest.

*Justification*

*This deadline should coincide with the start of the Gas Year. Further delay to the implementation date already accepted by TSOs in the Madrid Forum should be minimised.*

*This amendment refers to new Council text.*