



COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on conditions for access to the gas transmission networks

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. INTRODUCTION AND BACKGROUND

On 26th June 2003, the European Parliament and the Council adopted Directive 2003/55/EC concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC. While Directive 98/30/EC, the 1st Internal Market Directive, took the first relatively tentative steps towards the creation of the internal market for gas, the second Directive is expected to provide the necessary structural changes in the regulatory framework to tackle remaining barriers to the completion of the internal market.

The second Internal Gas Market Directive in particular provides for

- The right for all non-household gas customers to freely choose their supplier no later than 1 July 2004 with all customer to have this right by 1 July 2007.
- Third party access to transmission and distribution networks on the basis of published and regulated tariffs;
- The establishment of a regulatory authority in each Member State with a common minimum set of responsibilities;
- Legal unbundling of transmission and large and medium sized distribution companies;
- Access to storage facilities either on a negotiated or regulated basis.

By this, the Directive will provide the basic structural reforms necessary to develop the gas internal market. However, without additional detailed measures regarding the manner in which transmission systems are operated, the objectives set by the Community in this context are unlikely to be met.

2. REASONS JUSTIFYING THE REGULATION

The principle to supplement the internal energy market directives through a regulation detailing basic principles and implementation measures of certain key subjects considered necessary for the well functioning of the internal energy market has already been acknowledged by the Council. It adopted Regulation (EC) 1228/2003 of the European Parliament and Council on conditions for access to the network for cross-border exchanges in electricity. This Regulation provides for common tariff structures (including tariffs for cross-border electricity trade), the provision of information on interconnection capacities and rules regarding congestion management.

Taking into account the differences between electricity and gas, similar rules concerning principles and implementation measures are necessary for the internal gas market, too. This has been recognised by the Commission, Member States, national regulatory authorities, as well as the gas industry and network users. Consequently, the European Gas Regulatory Forum, which meets bi-annually in Madrid, agreed already in February 2002 (5th meeting of the Forum) on a set of guidelines (usually referred to as “Guidelines for Good TPA Practice”) which transmission system operators pledged to respect. These guidelines were non-binding and agreed on a voluntary basis.

The Forum is chaired by the Commission and attended by representatives of national regulatory authorities, Member States, representatives of network operators and users as well as gas consumers. In recent meetings, representatives of Russia participated, too, in the context of the EU-Russia Energy Dialogue. The Forum seeks to develop technical rules relevant to the completion of the internal gas market by consensus.

In a first compliance report presented to the Forum in October 2002, the Commission stated some achievements and progress in complying with the first Guidelines agreed in February 2002. However, it also observed

- a significant lack of compliance with the Guidelines
- a significant degree of uncertainty about compliance with the Guidelines
- significant differences in compliance with the Guidelines and in access conditions in general between individual system operators.

As a consequence, the Commission proposed a more detailed and comprehensive set of guidelines for adoption through the Forum. Between October 2002 (6th meeting of the Madrid Forum) and September 2003 (7th meeting of the Madrid Forum), this revised set of the “Guidelines for Good TPA Practice” (GGP2) has been intensively and extensively discussed. At the 7th meeting of the Forum, it accepted a revised set of Guidelines for Good TPA Practice.

It is important to note that while the second report on compliance with the first set of the Guidelines presented at the 7th meeting of the EU Gas Regulatory Forum in September 2003 indicated a significant improvement in terms of compliance with the Guidelines, there remained an important and unacceptable level of non-compliance. As a consequence, a level playing field in terms of access conditions to the gas transmission network is far from being achieved. The way access conditions are designed predetermines the starting point for competition to develop. Thus, insufficiently developed and asymmetric access conditions are currently detrimental to a well functioning internal European market for natural gas. Implementing the revised Guidelines for Good TPA Practice, as agreed in September 2003, would result in access conditions to the network compatible to the requirements of such a market.

For this reason, it is obvious that the internal market for natural gas can only work effectively, if access conditions to the network across the single market correspond to certain minimum standards on key aspects of Third Party Access. Such standards are essential, in order to ensure a level playing field and allow exploiting business opportunities also for new market entrants and small companies. Conditions on access to the network must not discriminate against different scales of network users, since this could lead to distortion of competition and would in any case prevent gas consumers to equally benefit from the internal market of natural gas.

Network users requesting access to the network must be able to rely on a sufficient level of transparency needed to carry out their business, as otherwise business opportunities emerging from short and long term market developments could not be exploited. Effective and efficient congestion management procedures as well as basic rules for secondary markets would be supplementary in this respect and would, in addition, contribute to an efficient use of the network. A certain range of services – flexible in duration and starting dates, firm and interruptible at reasonable tariffs, while standardised to the most possible extent – also

represents an indispensable prerequisite for market participants to reap the potential benefits of the internal market for natural gas.

In order to provide for mechanisms further promoting non-discrimination and competition, which is based on Third Party Access and thus access conditions to the network, basic principles on access charges and balancing rules/balancing charges are necessary. Such principles are also crucial for the creation of a level playing field for all players on the single EU market for natural gas and would facilitate the entry into the market for new players. It is worth underlining again that all stakeholders in the Madrid Forum have accepted a set of rules contained in the revised set of Guidelines for Good TPA Practice, which fully complies with those requirements of conditions for access to the network.

Therefore, it is necessary to ensure that the new Guidelines are fully applied by all transmission system operators across the EU internal market for natural gas. Representatives of all associations representing network users at the 7th EU Gas Regulatory Forum asked the Commission to ensure proper implementation of the Guidelines with a view to guaranteeing the highest possible level of compliance in the light of EU legislation. The rules and principles contained in the Guidelines should therefore form the basis of a new Regulation on conditions for access to gas transmission networks. This Regulation should be equivalent and procedurally the same, as the Regulation on access to the network for cross-border exchanges in electricity.

3. PROCEDURAL ASPECTS

Like the Regulation on access to the network for cross-border exchanges in electricity, this Regulation should provide a set of basic principles to be respected. Detailed implementing rules should be contained in guidelines annexed to the Regulation, which can be modified pursuant to a Committee procedure foreseen in Article 5 and 7 of Council Decision 1999/468/EC¹, usually known as the regulatory Comitology procedure.

It is important in this respect that the Regulation is an instrument that permits these guidelines to be evolved and completed. For example, as recognised at the September 2003 meeting of the European Gas Regulatory Forum, detailed work now needs to progress on the issue of contractual congestion management (“use-it-or-lose-it”) rules. The “regulatory comitology” procedure provides for such a mechanism.

However, the consensus based approach of the European Gas Regulatory Forum needs to be maintained within the context of the regulatory comitology procedure. The Forum should remain the basis for preparing new or revised guidelines. It is therefore appropriate to give legal recognition to this Forum within this Regulation, and to give it a formal consultative role in the preparation and discussion of guidelines.

Similarly, national regulatory authorities play a vital role in preparing any such guidelines. In addition to the leading role played by them in the European Gas Regulatory Forum, it is appropriate that the new European Energy Regulatory Group, established by Commission decision 2003/796/EC of 11 November 2003², also plays a formal consultative role in the preparation of guidelines.

¹ OJ L 184 of 17.7.1999, p. 23.

² OJ L 296 of 14.11.2003, p. 34.

4. TOPICS ADDRESSED

The second set of the “Guidelines for Good TPA Practice”, which were accepted by all participants at the 7th meeting of the EU Gas Regulatory Forum in September 2003, cover the following:

- The criteria according to which charges for access to the network are determined, to ensure that they take fully into account the need for system integrity and reflect effectively incurred costs.
- A common minimum set of third party access services – regarding notably for example the duration of transportation contracts offered and on an interruptible basis.
- Common rules regarding contractual congestion of networks that balance the need to free up unused capacity with the rights of the holders of the capacity to use it when necessary.
- Information in particular on technical requirements and available capacity.
- Rules ensuring that transmission system operators operate balancing systems in a manner compatible with the internal market.
- Common basic requirements regarding the trading of primary rights to capacity.

Consequently, the enforcing provisions of this regulation spell out the underlying principles of

- Charges for access to networks
- Third Party access services
- Capacity allocation mechanism and congestion management procedures
- Transparency requirements
- Balancing and imbalance charges
- Secondary markets

Measures implementing these principles are contained in the guidelines annexed to the Regulation. As mentioned above, a comitology procedure with preceding consultations of the EU Gas Regulatory Forum and the European Regulators Group for Electricity and Gas will ensure updated guidelines in line with the needs of the market.

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)

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 Commission³,

Having regard to the opinion of the European Economic and Social Committee⁴,

Having regard to the opinion of the Committee of the Regions⁵,

Acting in accordance with the procedure laid down in Article 251 of the Treaty⁶,

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/EC⁷ 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 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

³ OJ C [...], [...], p. [...].

⁴ OJ C [...], [...], p. [...].

⁵ OJ C [...], [...], p. [...].

⁶ OJ C [...], [...], p. [...].

⁷ OJ L 176 of 15.7.2003, p. 57.

network access and third party access services, congestion management, transparency, balancing and the trading of capacity rights.

- (4) 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.
- (5) 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.
- (6) 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.
- (7) 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.
- (8) 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.
- (9) 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.
- (10) 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.
- (11) National regulatory authorities should ensure compliance with the rules contained in this Regulation and the guidelines adopted pursuant to it.
- (12) 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, and be implemented by further rules on issues such as the alleviation of contractual congestion. Thus, the Regulation needs to provide for the adoption of such new rules in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers assigned to the Commission⁸.

⁸ OJ L 184, 17.7.1999, p. 23.

- (13) 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. Where necessary, the Commission should have an opportunity to request relevant information directly from undertakings concerned, provided that the competent national authorities are informed.
- (14) This Regulation and the guidelines adopted in accordance with this Regulation shall be without prejudice of the application of the Community competition rules.
- (15) 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.

HAVE ADOPTED THIS REGULATION :

Article 1
Subject matter and scope

This Regulation aims at setting fair rules for access conditions to natural gas transmission systems taking into account the specificities of national and regional markets. This shall involve principles for charges for access to the network, the definition of necessary services, harmonised principles for capacity allocation and congestion management, the determination of transparency requirements balancing and imbalance charges, and the need of facilitating secondary markets for capacity trading.

Article 2
Definitions

1. For the purpose of this Regulation and of guidelines to be adopted pursuant to this Regulation, the following definitions shall apply:
 - (1) “transmission” shall mean 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 undertaking of the actual flow that he wishes to inject into or withdraw from the system;
- (7) “re-nomination” means the reporting of a corrected nomination;
- (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 or a transmission facility 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 of a transmission system operator who would sign the relevant network code or enter into transportation contracts with transmission system operators for shipping gas; network users may include but are not limited to end-use customers, producers, suppliers, traders and, on condition that it is necessary for transmission system operators to carry out their functions in relation to transmission, transmission system operators,
- (12) “interruptible services” mean services offered by the transmission system operator, based on 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 than one year;
- (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 by the transmission system operator;
- (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, i.e. all technical capacity is contracted as firm;
 - (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 and which qualify as small player, or have only entered the market within 2 years following the entry into force of this Regulation and which qualify as small player;
 - (24) “small player” means a company with a market share of less than 3% of the national gas market, on which it is active;
2. The definitions contained in Article 2 of Directive 2003/55/EC shall also apply.

Article 3
Charges for access to networks

1. Charges applied by transmission system operators for access to networks shall be transparent, take into account the need for system integrity and reflect effectively incurred costs, including appropriate return on investments, and where appropriate taking regard to international benchmarking of tariffs and applied in a non-discriminatory manner.

The charges shall facilitate efficient gas trade and competition, while at the same time avoiding cross-subsidies between network users.
2. Charges for network access shall not restrict market liquidity or distort trade across borders of different transmission systems.

Article 4
Third Party Access services

1. Transmission system operators shall offer third party access services on the same contractual basis to all network users, either using standard transportation contracts or a common 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 relevant regulatory authorities.

3. Transmission system operators shall offer to network users both long and short-term services.
4. Transportation contracts signed outside of a natural gas year with non-standard start dates or with a shorter duration than a standard transportation contract on an annual basis shall not result in arbitrarily higher tariffs.

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, 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;
 - (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, in consultation with the competent authorities, endeavour to free up this capacity, in order for the principles laid down in Article 5(2)(a) and (b) to be applied.
4. In the event that physical congestion exists, non-discriminatory, market-based solutions shall be applied.

Article 6

Transparency requirements

1. Transmission system operators shall publish 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, transmission system operators shall publish information on technical, contracted and available capacities on a numerical basis for all relevant points on a regular and rolling basis and in a user-friendly standardised manner.
3. The relevant points of a transmission system that must be published shall be approved by national regulatory authorities. They shall include at least the most important exit points of a given transmission system the cumulated exit capacity of which accounts at least for 50% of total capacity of the exit points operated by the given transmission system operator.

4. Where a transmission system operator considers that he is not entitled for confidentiality reasons to publish all the data required, he shall seek the agreement of the national regulatory authority to limit publication for the point or points in question.

The national regulatory authority shall grant or refuse the agreement, taking into account the need to respect legitimate commercial confidentiality and the objective of creating a competitive internal gas market. In such circumstances available capacity shall be published without indicating the numerical data that would contravene confidentiality.

No exemption from the obligation to publish shall be possible where three or more network users have contracted capacity at the same point.

Article 7 *Balancing 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 at least be designed in a way that reflects seasonality and 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. Balancing 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.

Balancing charges shall be published.

4. Transmission system operators may collect penalties from network users whose input into and off-take from the transmission system is not in balance according to the balancing rules laid down in paragraph 1.
5. Penalties which exceed the effectively 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.
6. Transmission system operators, provided that they have obtained or can be reasonably expected to obtain the relevant information, shall provide sufficient, well-timed and reliable on-line based information on the balancing status of network users that is necessary to enable network users to take timely corrective actions. Charges for the provision of such information shall be approved by the national regulatory authority and published.

The level of information provided shall reflect the level of information available to transmission system operators.

Article 8
Secondary markets

Transmission system operators shall take reasonable steps to allow and facilitate capacity rights to be freely tradable between registered network users in 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 approved by the national regulatory authority

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) shall be 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 guidelines on the issues listed in paragraph 1(a), (e) and (f).

Article 10
Regulatory authorities

When carrying out their responsibilities under this Regulation, the regulatory authorities of the Member States 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

1. 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.

2. If the Member State or the regulatory authority concerned does not provide this information within the given time-limit pursuant to paragraph 1, the Commission may request all information necessary for the purpose of Article 9 directly from the undertakings concerned.

When sending a request for information to an undertaking, the Commission shall at the same time forward a copy of the request to the regulatory authorities of the Member State in whose territory the seat of the undertaking is situated.

In its request for information, the Commission shall state the legal basis of the request, the time limit within which the information is to be provided, the purpose of the request and also the penalties provided for in Article 13(2) for supplying incorrect, incomplete or misleading information. The Commission shall fix a reasonable time limit taking into account the complexity of the information required and the urgency with which the information is needed.

3. The owners of the undertakings or their representatives and, in the case of legal persons, the persons authorised to represent them by law or by their instrument of incorporation, shall supply the information requested. Lawyers duly authorised to act may supply the information on behalf of their clients, in which case the client shall remain fully responsible if the information supplied is incomplete, incorrect or misleading.
4. Where an undertaking does not provide the information requested within the time-limit fixed by the Commission or supplies incomplete information, the Commission may by decision require the information to be provided. The decision shall specify what information is required and fix an appropriate time-limit within which it is to be supplied. It shall indicate the penalties provided for in Article 13(2). It shall also indicate the right to have the decision reviewed by the Court of Justice of the European Communities.

The Commission shall at the same time send a copy of its decision to the regulatory authorities of the Member State within the territory of which the residence of the person or the seat of the undertaking is situated.

5. The Commission shall use the information collected pursuant to this Regulation only for the purposes of Article 9.

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. 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).

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.

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 13 of Regulation (EC) No 1228/2003 on conditions for access to the network for cross-border exchanges in electricity.⁹
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.

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.

⁹ OJ L 176 of 15.7.2003, p. 1.

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
[...]

Annex

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) Standard 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 implement standardised nomination and re-nomination procedures and units of measurement, 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.
- (4) 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 agreed within EASEE-gas no later than 1 July 2005.
- (5) 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.
- (6) Information requests that require extraordinary or excessive expenses such as feasibility studies may be charged separately, provided the charges can be duly substantiated.
- (7) 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.

- (8) 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.
- (9) Transmission system operators shall maintain and make available to the regulatory 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.

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 may 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.

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 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) 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 in national language(s) and at the same time in English 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 standard transportation contracts and other relevant documents;
- (c) The standard 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 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 covering at least 50% of total exit capacity of the network of a given transmission system operator

- (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 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 2005 at the latest.

LEGISLATIVE FINANCIAL STATEMENT

Policy area(s): Energy and Transport

Activity(ies): Energy Industry and Internal Market

TITLE OF ACTION: Proposal for a Regulation of the European Parliament and of the Council on conditions for access to the gas transmission network.

1. BUDGET LINE(S) + HEADING(S)

06 01 02 11 04 – Studies and consultations

2. OVERALL FIGURES

Total allocation for action (Part B):

2.1. Period of application:

annual

2.2. Overall multiannual estimate on expenditure:

a) Schedule of commitment appropriations/payment appropriations (financial intervention) (*see point 6.1.1*)

Non applicable

€ million (to 3rd decimal place)

	2004	2005	2006	2007	2008	Total
Commitments						
Payments						

b) Technical and administrative assistance and support expenditure(*see point 6.1.2*)

Non Applicable

Commitments						
Payments						

Subtotal a+b						
Commitments						
Payments						

c) Overall financial impact of human resources and other administrative expenditure (see points 7.2 and 7.3)

Commitments/ payments	0,441	0,441	0,441	0,216	0,216	
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TOTAL a+b+c						
Commitments/Payments	0,441	0,441	0,441	0,216	0,216	

Compatibility with the financial programming and the financial perspective

Proposal compatible with the existing financial programming

This proposal will entail reprogramming of the relevant heading in the financial perspective

This may entail application of the provisions of the Interinstitutional Agreement.

2.3. Financial impact on revenue¹⁰:

No financial implications (involves technical aspects regarding implementation of a measure)

OR

Financial impact – the effect on revenue is as follows:

Note: All details and observations pertaining to the method of calculating the effect on revenue should be included in a separate annex.

€ million (to 1 decimal place)

		Prior to action (Year n-1)	Situation following action					
Budget line	Revenue		Year n	n+1	n+2	n+3	n+4	n+5
	a) Revenue in absolute terms							
	b) Change in Revenue	Δ						

(Please state each budget line involved, adding the appropriate number of rows to the table if there is an effect on more than one budget line)

¹⁰ For further information see a separate guidance paper.

3. BUDGET CHARACTERISTICS

Type of expenditure		New	EFTA participation	Participation applicant countries	Heading Financial Perspective
Comp/ Non-comp Non-Comp	Non-diff	Yes	Yes	No	No 3

4. LEGAL BASIS

The Treaty establishing the European Community, in particular Article 95.

5. DESCRIPTION AND GROUNDS

5.1. Need for Community intervention ¹¹

5.1.1. Objectives pursued

The Gas Directive progressively opens up national gas markets to competition. However, in order to create a real integrated internal market, effective trading rules are necessary, and notably a harmonised approach on cross-border tariffication for transmission tariffs and commonly implemented mechanisms for dealing with capacity allocation and congestion at borders.

In order to deal with this, the Commission launched the “Madrid process”, a Forum composed of the Commission, national Regulators, Member States and industry. Much progress has been made, in particular the agreement of Guidelines for Good Practice at the most recent Forum.

It is now crucial to ensure that these guidelines are fully implemented by Member States and that they can be modified as experience is collected. To deal with this the Commission proposes a Regulation which (a) sets out the basic principles of access conditions to the gas transmission network and (b) permits the Commission, subject to a comitology procedure (The comitology Committee already established by Regulation No 1228/2003 will be used), to adopt binding guidelines on the precise mechanism according to which the harmonised rules should be applied. Thus, the Commission takes on new executive responsibilities.

The objectives pursued by the Regulation are, therefore, the rapid entry into force of cost-reflective mechanisms on charges for access to networks, a common minimum set of Third Party Access services, common rules regarding contractual congestion, information and balancing requirements as well as rules for free trading of primary capacity rights to network capacity. It is expected that the Regulation may enter into force in late 2004/early 2005.

¹¹ For further information see a separate guidance paper.

The objectives pursued by this financial action is to provide the Commission with the means to effectively carry out these new responsibilities.

5.1.2. Measures taken in connection with ex ante evaluation

a) Explain how and when the ex ante evaluation was conducted (author, timing, and where the reports are available) or how the corresponding information was gathered

The Commission's ongoing "benchmarking" exercises have revealed the difficulties associated with cross border competition for gas and the dominance of most national incumbents. Without trade, then the objective of consumer choice in the gas industry will not be achieved. This analysis was backed up by a survey of large customers. Many respondents were unhappy with progress in market opening and access conditions to the network and considered that a lack of opportunity to look to other Member States for a supplier contributed to the perceived poor performance. For these reasons the Commission proposes a new Regulation on access conditions across the EU, which foresees the above-mentioned Regulatory Committee of Member States.

To prepare the adoption of the proposed Regulation, the Commission set up the Madrid Forum. This has now met 7 times. The Forum recently agreed voluntary Guidelines for Good Practice for , in particular, gas transmission companies to adhere to, as discussed above.

b) Describe briefly the findings and lessons learnt from the ex ante evaluation.

The discussions at the Madrid Forum, as well as the reaction to the Commission's other work on this subject, has shown that the introduction of effective rules on cross-border gas transmission is fundamental for the creation of a real internal market for gas. It has also shown that the development of such rules is technically extremely complex, and controversial. Furthermore, once a robust methodology is determined, calculation of costs relating to cross-border trade will be difficult and time-consuming. In this light, a Regulation has been viewed as necessary to deal with the issues effectively.

5.1.3. Measures taken following ex post evaluation

It is believed that a detailed review of the effectiveness of the approach set out in the Regulation in developing common rules, as well as the effectiveness of the financial actions taken by the Commission to support this effort, should take place two years after the entry into force of the Regulation.

5.2. Actions envisaged and arrangements for budget intervention

The adoption of common rules on cross-border gas transmission would lead to increased competition throughout the EU and thus lower gas prices, thus benefiting all consumers, both domestic and industrial. The financial actions envisaged are to prepare the entry into force of such rules, and are thus highly technical and specific in nature, and would thus be of interest to national regulators, Member States, the European Parliament and relevant industry.

The specific objectives of the Regulation are the entry into force, by end 2005 of a harmonised system for cross-border transmission tariffication based on principles of simplicity, cost-reflectiveness and non-discrimination. Also they are the entry into force of common rules on capacity allocation at the adoption of the Regulation and, if necessary in the light of experience, their revision. The specific objectives of the financial actions are thus to (i) complete appropriate studies leading to the entry into force of a detailed guidelines on tariffication by September 2005, (ii) the revision of the current Guidelines for Good practice, on the basis of necessary study, by

end 2005. Thereafter, the specific objective is the ongoing revision of these guidelines, if necessary, on the basis of additional studies on an annual basis.

- The concrete measures to be taken to implement the action:

The launch of studies leading to the adoption and agreement of guidelines on cross-border tariffication (to March 2005); second the adoption of a decision on actual tariffs (end 2005) and third the re-examination of guidelines of good practice on the basis of necessary study work (end 2005).

To achieve these objectives the following financial actions are envisaged:

Action 1 : in order to develop detailed guidelines with respect to tariffication, considerable preparatory work is necessary, often technical (engineering) and financial (accounting) in nature. This also applies to the question whether and how the guidelines contained in the Regulation on congestion management are amended. To achieve this, it is cost effective to prepare the guidelines through expert studies.

The expected outcome is the entry into force, and subsequent maintenance and refinement of a system of cross-border tariffication for gas and evolving guidelines on good practice for gas transmission leading to a consistent EU wide approach.

Member States alone cannot resolve these issues: to develop an effective tariffication system a harmonised approach is imperative and cannot be developed at national level. Such a proposal is therefore wholly in line with the subsidiarity principle, and indeed is made necessary by it.

However, Member States' regulatory authorities need to be involved in this process. The Commission would therefore take these decisions after consultation of a committee made up of representatives of Member States, created in accordance with Council Decision 1999/468/EC laying down the procedures for the exercise of implementing powers conferred on the Commission ("Comitologie").

5.3. Methods of implementation

Much of this work will be carried out internally by the Commission; preparing the final text of guidelines, ensuring their adoption through the comitology procedure, and adopting decisions on actual tariff levels. However, in preparing this work it will be necessary to have recourse to external studies providing economic, accounting and technical expertise;

6. FINANCIAL IMPACT

6.1. Total financial impact on Part B - (over the entire programming period)

Not applicable

(The method of calculating the total amounts set out in the table below must be explained by the breakdown in Table 6.2.)

6.1.1. *Financial intervention*

Commitments in € million (to the 3rd decimal place)

	2004	2005	2006	2007	2008		Total
Breakdown							
Etc.							

6.1.2. *Technical and administrative assistance, support expenditure and IT expenditure (Commitment appropriations)*

Non Applicable

	Year N	N + 1	N + 2	N + 3	N + 4	N + 5 and subs. Years	Total
1) Technical and administrative assistance							
a) Technical assistance offices							
b) Other technical and administrative assistance: - intra muros : - extra muros : <i>of which for construction and maintenance of computerised management systems</i>							
Subtotal 1							
2) Support expenditure							
a) Studies							
b) Meetings of experts							
c) Information and publications							
Subtotal 2							
TOTAL							

6.2. Calculation of costs by measure envisaged in Part B (over the entire programming period)¹²

(Where there is more than one action, give sufficient detail of the specific measures to be taken for each one to allow the volume and costs of the outputs to be estimated.)

Not applicable

Commitments in € million (to the 3rd decimal place)

Breakdown	Type of outputs (projects, files)	Number of outputs (total for years 1...n)	Average unit cost	Total cost (total for years 1...n)
	1	2	3	4=(2X3)
TOTAL COST				

If necessary explain the method of calculation

7. IMPACT ON STAFF AND ADMINISTRATIVE EXPENDITURE

7.1. Impact on human resources

Types of post	Staff to be assigned to management of the action using existing and/or additional resources		Total	Description of tasks deriving from the action
	Number of permanent posts	Number of temporary posts		
Permanent officials or Temporary staff	A B C	2		<i>1. Preparation of guidelines on cross-border tariffication and cross border gas transmission.</i>
Other human resources				
Total		2		

¹² For further information see a separate guidance paper.

7.2. Overall financial impact of human resources

Type of human resources	Amount €	Method of calculation *
Officials	216.000	2*108.000 €
Temporary staff		
Other human resources (give budget line)		
Total	216.000	

The amounts are total expenditure for twelve months.

Other administrative expenditure deriving from the action

Budget line (number and heading)	Amount €	Method of calculation
Overall allocation (Title A7)		
A0701 – Missions		
A07030 – Meetings		
A07031 – Compulsory committees ⁽¹⁾	225.000	One study per year is necessary in order to prepare the adoption and/or amendment of the guidelines: per study 250 man/days à 900€ (average rate of experts) = 225.000€
A07032 – Non-compulsory committees ⁽¹⁾		
A07040 – Conferences		
A0705 – Studies and consultations		
... Other expenditure (state which)		
Information systems (A-5001/A-4300)		
Other expenditure - Part A (state which)		
Total	225.000	

The amounts are total expenditure for twelve months.

⁽¹⁾ Specify the type of committee and the group to which it belongs.

I.	Annual total (7.2 + 7.3)	441.000€
II.	Duration of action	not limited
III.	Total cost of action (I x II)	441.000€/year

The requirements in terms of human and other administrative resources are to be met within the resources made available to DG TREN in the framework of the annual allocation process.

FOLLOW-UP AND EVALUATION

7.3. Follow-up arrangements

(Adequate follow-up information must be collected, from the outset of each action, on the inputs, outputs and results of the intervention. In practice this means i.) Identification of indicators for inputs, outputs and results ii.) Putting in place methods for the collection of data.

The result of the measures foreseen in the draft Regulation will be assessed in the light of the future development of intra-Community trade in gas, as of the relevant Eurostat Statistics.

7.4. Arrangements and schedule for the planned evaluation

(Describe the planned schedule and arrangements for interim and ex post evaluations to be carried out in order to assess whether the intervention has achieved the objectives set. In the case of multi-annual programmes, at least one thorough evaluation in the life cycle of the programme is needed. For other activities an ex post or mid-term evaluation should be carried out at a periodicity not exceeding six years).

Two years following the entry into force of the Regulation it is intended to carry out an internal evaluation of the success in adopting the necessary guidelines and rules permitting a tariffication and harmonised congestion management system to enter into force. The success of this system will be evaluated in terms of its ability to reduce transaction costs for gas consumers. The use and value of the study work carried out in achieving this will also be evaluated as well as the accuracy of the audit work carried out on calculations of individual country tariffs and the cost-effectiveness of the approach.

8. ANTI-FRAUD MEASURES

(Article 3(4) of the Financial Regulation: "In order to prevent risk of fraud or irregularity, the Commission shall record in the financial statement any information regarding existing and planned fraud prevention and protection measures.")

Reimbursement of experts and payment of experts for studies carried out will be made in compliance with applicable financial rules.