



Commission for Energy Regulation

An Coimisiún um Rialáil Fuinnimh

**Transparency Requirements of European Regulation EC1775 and the  
Exemption Authorisation Process**

**Consultation Paper**

**CER/07/083**

## **Executive Summary**

Regulation EC1775/2005 aims to provide a minimum guarantee of equal market access conditions for any network user seeking access to a gas transportation system in the Member States. The minimum transparency requirements are referred to in Article 6 of the regulation and later explained in an additional Explanatory Note published by the European Commission. In brief the essence of these two publications is:

- TSOs shall publish information regarding: the services they offer, the conditions applied to access these services and the technical information of the system
- The information shall be published in a meaningful, quantifiably clear, non-discriminatory and easily accessible manner
- TSOs or the relevant authority shall publish information on tariff derivation, methodology and structure
- TSOs shall publish the technical, contracted and available capacities on a numerical basis for all relevant entry and exit points and for all the services that they provide
- The relevant points on which information must be made public shall be approved by the competent authority following consultation with network users
- TSOs may seek authorisation from the competent authority to refrain from publishing data at certain points on confidentiality grounds
- When examining the application for a confidentiality exemption, the competent authority must take into account the legitimate commercial confidentiality request against the objective of creating a competitive internal gas market
- If an exemption is granted, available capacity shall be published without indicating the numerical data that would contravene confidentiality
- No such authorisation shall be granted where there are more than 3 network users at a point

Regulation EC1775/2005 and therefore these requirements have been legally effective as of the 1<sup>st</sup> July 2006. Consequently, gas users in a member state should be able to access information in any other member state regarding services available, capacity allocation, tariffs, gas quality, gas pressure, risk of interruption and outages.

## **Background**

The objective of Regulation EC1775/2005 is to “tackle remaining barriers to the completion of the internal market in particular regarding the trade of gas”. It relates specifically to the rules regarding; third party access services, principles of capacity allocation mechanisms, congestion management procedures and transparency requirements. It aims to provide a guarantee of equal market access conditions for all parties, from any Member State, seeking entry into a market in another Member State. The intention is to set harmonised principles for third party access services, capacity allocation mechanisms, congestion management and transparency requirements.

Section one of this paper outlines the minimum requirements of transparency that transmission system operators (TSOs) must provide in order to allow access to reliable and indiscriminate information for all network users. The intention of these minimum requirements is to provide an environment whereby network users may assess the market and manage their risk, thereby stimulating liquidity and competition in the internal European Gas Market.

Section two of this paper proposes a process through which an exemption from the publication of certain information at relevant points may be applied for and authorised by the Commission. This is in accordance with further developments outlined in the European Commission’s latest Explanatory Note on Regulation EC1775/2005. The Commission urges interested parties to comment on this process within the provisions of the Explanatory Note.

Please forward any comments regarding Ireland’s compliance with Regulation EC1775 in terms of transparency and on the process for the application and authorisation of an exemption from the publication of information to Jill Murray at: [jmurray@cer.ie](mailto:jmurray@cer.ie) or The Commission for Energy Regulation, The Exchange, Belgard Square North, Tallaght, Dublin 24.

### **1. Definitions and Explanations of Published Information**

Article 6 of Regulation EC1775, published in September 2005, refers to the transparency practices required of all Gas Transmission System Operators (TSO) in the member states. The intention of this Article was explained further and detailed in an Explanatory Note published by the European Commission and presented at the Joint Working Group Madrid Forum meeting on the 29<sup>th</sup> November 2006.

Transparency refers to the processes and mechanisms used to publish information. This infers that everybody can access the information and that publication shall be on a non-discriminatory basis. In order to provide a minimum level of transparency across Member States the documents published by the European Commission set out requirements for:

- user-friendliness of the host systems and the information provided,
- the level of technical information required, and

- the process through which an authorisation to prevent the publication of certain information may be sought and granted.

### 1.1 User Friendliness

The intention of the Regulation is to provide information in such a manner that network users may explore the internal gas market and assess the commercial potential of the gas markets in each Member State on a non-discriminatory basis. In order to achieve this level of harmony between Member States and allow for independent analysis of the different markets, the Regulation provides that the data should be published in the most basic and untreated format. The intention being that information should be “*meaningful, quantifiably clear and easily accessible*”

### 1.2 Tariffs

As part of the common minimum standards on transparency requirements, the Regulation provides that “*reasonably and sufficiently detailed information on tariff derivation, methodology and structure*” shall be provided by TSOs. This information will ensure that the TSO is compliant with Directive 2003/55/EC, ensuring that all tariffs are non-discriminatory and cost reflective and that all network users are charged a fair and non-discriminatory tariff for the products and services available on the gas system.

With regards to tariff derivation, the TSO must state what financial criteria were used in setting the tariff, how it is being distributed between the different sectors of network users and any adjustment mechanisms that are included to allow for changes on the system, for example changes in demand. The TSO should also provide an outline of the structure of the tariff, delineating the components that are made up of fixed and variable costs. This information may be published by either the TSO or by the national regulatory authority in an accessible, user-friendly manner.

### 1.3 Technical Information

There are a number of specifications outlined in the Regulation regarding the technical information that is to be published by the TSO. The TSO must provide a detailed description of the gas system, including all entry and exit points, ancillary services such as congestion management and anti-hoarding procedures, and factors influencing the availability of services. This provides network users with information to analyse the availability of (firm) capacity on the system and demonstrates to network users that the TSO is optimising the availability of capacity, on a non-discriminatory basis.

The TSO must clearly state the different products and services that are available for network users on the gas system. This includes the conditions for access to these services, such as contracts and financial commitments. Providing this level of information is another mechanism in insuring that access

to the network is provided on a transparent and equal basis for all network users.

To provide further clarity, the Explanatory Note specifically outlines what information should be published at each relevant point<sup>1</sup>. The basis of its explanation is that as much information as possible should be made available to all market participants without inhibiting the commercial position of other market participants. In terms of capacity, the maximum technical, total contracted and available (firm & interruptible) capacities must be outlined on a numerical basis down to daily periods for each relevant point. This should be expressed in the unit of time used in flow definition, i.e. it should always be provided in the same manner as it is sold on the market. The TSO should also provide for the chance of interruption at each of the relevant points and the rationale behind any such disruption.

There is an onus on the TSO to update the data on a regular and rolling basis. It should be adjusted and updated to reflect the changes that take place with respect to the level of capacity and type of capacity on offer, i.e. daily and weekly capacity availability should be updated to reflect actual availability at the time.

In order to give network users a holistic view of the gas system, the TSO should publish both historical data and future predictions for each relevant point. The minimum requirements set by the Regulation provide that information reflecting the maximum and minimum capacity usage for the previous three years and the forecasted available capacity<sup>2</sup> for the following ten years should be published. These figures should be presented in absolute terms to allow for consistent interpretation of the data.

The Regulation does provide criteria for certain relevant points to apply for an exemption from the publication of this level of information. It expressly states that an authorisation exempting a relevant point from the publication of all capacity information may only be done so where: there are less than three shippers at that relevant point and when the information is deemed to be confidential to the network user(s) at that relevant point. Information is described as confidential if it reveals sensitive information on the commercial position of the market participants.

In order for an authorisation to be sanctioned, the Regulation specifies a number of terms and conditions that must be satisfied. Firstly, the competent authority must publish the process of applying for an authorisation, accompanied by the merits by which the authorisation will be examined and

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<sup>1</sup> A relevant point is defined as “all entry points to a network operated by a transmission system operator; all exit points or 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 covering more than 2% of total exit capacity of the network; all points connecting different networks of transmission system operators;...; all points connecting the network of a given transmission system operator to infrastructure necessary for providing ancillary services<sup>1</sup>”.

<sup>2</sup> The forecasted available capacity will be based on booked capacities as well as capacity calculation by the TSO based on forecasts of the flows.

thereby granted. As part of this process the Regulation stipulates that the TSO must apply for an authorisation, but only at the explicit request of a network user. An authorisation will only be considered at relevant points where there are less than three network users and may only be granted on an annual basis or less. When considering an authorisation, the competent authority must base its decision between finding a balance for legitimate commercial confidentiality and the European objective of creating an internal gas market.

#### 1.4 Ireland's Compliance with Gas Regulation (1775/2005/EC)

The CER has reviewed the level of information available on the Irish system and is satisfied that Bord Gáis Networks presently provides for a large part of the transparency requirements of Regulation 1775/2005. Information relating to; rules for connection to the system, the different transportation services and rules for capacity trading, is accessible by network users on-line on the Bord Gáis Networks website ([www.bordgais.ie/networks](http://www.bordgais.ie/networks)).

In relation to information on the *relevant points*, Bord Gáis Networks are currently working towards providing information regarding technical, contracted and available firm and interruptible capacity as prescribed in the Regulation. However, these provisions are subject to the completion of two on-going projects: the development of short-term capacity products in October 2007 and consultation on an appropriate application process for the authorisation of exemptions from the publication of certain commercially sensitive information. Upon conclusion of these work-streams Bord Gáis Networks will complete their programme to put a system in place allowing network users to access all required information under Regulation 1775/2005 via their website.

The Commission is therefore of the view that Ireland and Bord Gáis Networks, as the national transporter, are largely compliant with the Regulation in the provision of information to the market. However, the Commission welcomes comments from interested parties outlining their views on Ireland's position with regards to transparency, as required in Regulation EC1775.

## **2. Application for an Authorisation of Confidentiality Process**

The Regulation provides that the competent authority will develop and publish the process by which an authorisation limiting the publication of information at a relevant point may be made.

In Ireland's case, the CER proposes that the rule be applied as follows:

- a network user must make it known to BGN that it requires an authorisation to prevent information relating to capacity from being published at a relevant point

- BGN will then apply to the CER requesting authority to refrain from publishing certain data at that relevant point
- any authorisation application must be submitted to the CER 4 months prior to the date of publication to allow for a Commission decision and sufficient time for BGN to collect and present the data
- while this application is being processed by the CER, BGN is not under obligation to publish the data at that relevant point.

An application should outline:

- to what relevant point the authorisation will apply
- on what grounds the authorisation is being sought
- Evidence justifying the commercial sensitivity in publishing the data
- why the authorisation is considered necessary
- the duration of the requested authorisation – short-term or annual.

The CER will make a decision on the authorisation based on the merits for legitimate commercial confidentiality and the objective of creating an internal competitive gas market. The authorisation will be valid for a maximum of one year but may be approved on a shorter-term basis if the CER is of the opinion that a longer-term authorisation would encroach on the internal gas market.

## **Conclusion**

Following on from Directive 2003/55/EC, Article 6 of Regulation EC1775/2005 aims to further enhance the level of transparency in the internal gas market. It provides minimum standards of information that are to be made available by national transmission system operators (TSO) in the European internal gas market. Information detailing the products and services available on the gas system, technical information relating to the relevant points on the system and the capacity available at each relevant point, and a break-down of the derivation of tariffs, are to be published in a user-friendly, widely accessible manner. The Commission is of the view that the larger part of these standards are provided for on the Irish system and that the Bord Gáis Networks is currently working with industry to ensure full compliance with the transparency requirements of Regulation EC1775/2005 in the near future.

Although the Regulation is designed to ensure fair, transparent and non-discriminatory access to information for all parties seeking access to the gas system, network users may seek to limit the level of information published at a specific point. An authorisation to limit the publication of certain information must be granted by the national competent authority for a maximum period of one year. The competent authority may only approve any such authorisation at a point where there are less than three network users transacting and under

the provision that limiting the information will not disproportionately inhibit the progression of the internal market.

The Commission invites parties to submit their views on Ireland's compliance with Article 6 of Regulation EC1775/2005 and on the process through which an exemption from the publication of certain *commercially sensitive* information at a relevant exit point may be sought.