



Position Paper on the Draft Explanatory note of DG Energy & Transport on Article 6 and Annex 3 of Regulation (EC) No 1775/2005 -Transparency -

The Commission services of DG Energy & Transport have presented a draft explanatory note on transparency requirements pursuant to Article 6 and Annex 3 of Regulation (EC) No 1775/2005.

It is essential for a well-functioning market that information is provided on a transparent and non-discriminatory manner. Article 6 and Annex 3 of the Regulation therefore set the minimum requirements TSOs should fulfil. Whilst some of the provisions are explicit and clear and therefore need not to be explained, others require further explanation. To give this further explanation is the purpose of the Explanatory note of the Commission services. **GEODE** appreciates the document to be an important working basis for the interpretation of Article 6 and Annex 3 and complies with most of the comments.

I. Scope of the Regulation

GEODE shares the view that the definition of “transmission” does not cover local distribution systems. The scope of the Regulation is not to regulate local distribution system operators, irrespective of the fact that they should provide the relevant information in a transparent and non-discriminatory manner as well. **GEODE** furthermore shares the view that the scope of the Regulation is not limited to cross-border trade, but also includes high-pressure systems at regional scale.

With regard to the high-pressure systems at regional scale experience in Germany shows that the classification of high-pressure systems as regional opposite to local can be difficult. Therefore criteria of differentiation should be clarified.

II. Technical Information

1. **GEODE** agrees that the best way to guarantee that the relevant information is made available to all interested parties at the same time and in the same manner is by publication on a publicly accessible website where the

information can be required free of charge as long as such requests do not require extraordinary or excessive expenses.

2. The description of the gas system provides important information for the network users to analyse the availability of capacity and to verify that the TSO optimises the availability of capacity in a non-discriminatory manner. **GEODE** therefore coincides that the detailed description of the gas system pursuant to Annex 3.1(g) of the Regulation should at least consist of information on the pipeline system and all its entry and exit points, availability of ancillary services and factors influencing the availability of transport services.
3. As the Commission services point out correctly, gas quality and pressure are two important aspects of a safe and continuous network operation. Therefore the entry and exit specification conditions have to be defined clearly for all the relevant points as defined in Annex 3.2 of the Regulation and Paragraph 6 of the Explanatory note. Furthermore **GEODE** agrees that the TSO has to provide information on the risks emanating from fluctuation in gas quality and pressure, the liability in such a case and which measures will be taken by the TSO on what costs to guarantee continuation of flows.

III. Tariff Information

To ensure that the network users are charged in a fair and non-discriminatory way and to enable them to verify the charged tariffs pursuant to Article 6.2 of the Regulation sufficiently detailed information on tariff derivation, methodology and structure has to be published by the TSO. The given information must clarify that there is no element of negotiation, of arbitrary treatment or of discounts in the charging. Only with maximum transparency can be guaranteed that tariff calculation actually is cost orientated.

GEODE therefore coincides that at least fixed and variable tariff elements as well as the principles or methodology underlying the access tariffs must be clearly defined and published.

In addition transparent tariff information must also include that changes will be published well in advance.

IV. Capacity

1. It is essential that capacity information is published in a manner ensuring that the value of information on capacity is the same to network users who have

contracted capacity and those who have not. **GEODE** therefore shares the view that the information on capacity should always be provided in the same way as it is sold on the market and in line with the balancing regime.

GEODE suggests imposing a duty to publish available capacity as soon as TSOs obtain the information of availability to ensure that capacity is offered non-discriminatory not only to former contractors. The publication of used capacity and booked capacity (both in total figures) is embraced by **GEODE**, since it will help to determine if capacity hoarding can be minimised. However, also the method of capacity calculation by the TSOs should be included, so it can be reconstructed by all users.

Also contracted capacity needs to be published to enable competitors to evaluate the market and their options. Where the publication of contracted capacity conflicts with confidentiality a solution with the National regulatory authority needs to be sought.

Furthermore the information on technical, contracted and available capacity should be published in absolute figures.

2. As the Commission service points out regarding interruptible capacity it is important for the network users to be able to define the chance of interruption. To enable the network users best to estimate the risk of interruption, information thereon should be provided by publishing the historical data (including reasons) of system interruptions and defining the contractual parameters related to the interruptible capacity.
3. **GEODE** agrees that with respect to long term information TSOs should publish available capacity for all years in which capacity is contracted up to the first year where all capacity is available for booking by network users.
4. The trading of capacity rights on the secondary market bears a risk of discrimination and market distortion and therefore has to be organised in the maximum transparent manner possible. **GEODE** is convinced that the best way to guarantee transparency would be a single web based trading platform which the shippers are obliged to use for their secondary market trading and that is operated by the TSO. As the Explanatory note does not contain any regulation regarding the transparency on the secondary market trading at this point it needs respective clarification. Generally all measures applied to create transparency on the primary market could be useful for a transparent secondary market as well.

V. Relevant Points

1. The definition of the “relevant points” with regard to which transparency is required is one of the key issues. Annex 3.2 of the Regulation contains a detailed list of points of the gas system upon which information shall be provided. However, this list is not exhaustive. The explanatory note should point this out explicitly to encourage TSO to improve transparency comprehensively.
2. Furthermore the classification in Annex 3.2 (b) of the Regulation, dealt with in Paragraph 6.(36) of the Explanatory note should be seen as a recommended value. Other exit points not reaching the guidance level can still be relevant in individual cases. Therefore TSOs need to examine closely which points are essential for the functioning of the market and therefore need to be considered in transparency issues as well.
Here it should be clarified that “virtual points” pursuant to Paragraph 6 (36) do only include virtual trading points but not virtual entry- and exit points as this unnecessarily increases costs for shifting capacities from one accounting grid to another.
3. In addition according to Paragraph 6.(38) points within the system can be “relevant points” as well. **GOEDE** basically consents with this view but it has to be straightened out that subsystems should not be the rule but rather the exception. Subsystems lead to a fragmentation of the market and therefore contravene the objectives of the Regulation. Thus subsystems should only be allowed where compulsory.
4. **GOEDE** explicitly agrees with the clarification in Paragraph 6.(39) that Annex 3.2(f) of the Regulation includes entry- and exit points connecting the network of a TSO with storage facilities.

VI. Confidentiality

GOEDE shares the view that with regard to the fact that information is a key factor in the development of the free market confidentiality should only exceptionally prevail over transparency. As information about available, firm and interruptible capacity never contravenes confidentiality it always has to be published. The Commission services rightly points out that booked capacity is very unlikely to reveal commercially relevant information. Therefore the cases where information on booked capacity is classified as confidential have to remain absolute exceptional. This applies to technical capacity as well.

However, details on contracted capacity can be sensitive, e.g. in the case indicated in Article 6.5 of the Regulation. Still information should generally be

made available unless the competent authority decides otherwise on the explicit request from the shipper on a case-by-case basis. Therefore it is the responsibility of the competent authority to find a balance between legitimate commercial confidentiality and the objective of creating an internal gas market.

VIII. Conclusion

In conclusion **GEODE** appreciates the Draft Explanatory note as a good and helpful comment and coincides with the Commission services in most points.

Furthermore, **GEODE** would like to make a few additional annotations:

- Tariff calculation needs to be made as transparent as possible by publishing the basis of calculation in a comprehensible way.
- **GEODE** emphasises that the trading of capacity rights on the secondary market has to be as transparent and non-discriminatory as on the primary market and should therefore address the same requirements. The best way to guarantee this would be a single web based trading platform which the shippers are obliged to use for their secondary market trading and that is operated by the TSO.
- The list of “relevant points” is not exhaustive and needs in some points further clarification.
- Questions of confidentiality should be solved by the competent national regulatory authority.