



Energy Community Regulatory Board

**GAS MARKET MODELS IN THE ENERGY
COMMUNITY**

Focus on transparency and penalties

**and their Compliance with Articles 6 and 13 of
Regulation (EC) 1775/2005**

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TABLE OF CONTENT

1	INTRODUCTION	4
1.1	BACKGROUND.....	4
1.2	SCOPE.....	5
1.3	METHODOLOGY.....	6
2	TRANSPARENCY REQUIREMENTS AND THEIR IMPLEMENTATION	7
2.1	TARIFFS FOR THIRD PARTY ACCESS.....	7
2.2	IMBALANCE CHARGES.....	9
2.3	CAPACITY ALLOCATION AND CONGESTION MANAGEMENT.....	10
2.4	TECHNICAL INFORMATION AND SERVICES OFFERED.....	11
2.5	INFORMATION ON TECHNICAL, CONTRACTED AND AVAILABLE CAPACITIES.....	14
2.6	PUBLICATION FOR ALL RELEVANT POINTS OF TRANSMISSION SYSTEM.....	17
2.7	CONFIDENTIALITY OF DATA.....	18
2.8	INFORMATION ON BALANCING STATUS.....	19
2.9	INFORMATION ON PLANNED MAINTENANCE PERIODS.....	20
3	PENALTIES	22
3.1	TRANSPOSITION OF ARTICLE 13 OF REGULATION (EC) 1775/2005.....	22
3.2	INSTITUTIONS IMPOSING PENALTIES.....	22
3.3	IMPLEMENTATION OF PENALTIES IN PRACTICE.....	23
4	CONCLUSIONS	25

FIGURES

Figure 1 Publication of imbalance charges	10
Figure 2 Publication of CAM and CMP.....	11
Figure 3 Publication of technical data for all relevant points of the transmission system	18
Figure 4 Authorization for limiting publication for a certain point	19
Figure 5 Online information on balancing status	20
Figure 6 Information on planned maintenance periods	21
Figure 7 Has the RA ever used the provisions related to penalties?.....	24

TABLES

Table 1 Transparency of tariffs and tariff methodologies	8
Table 2 Technical information and services offered.....	12
Table 3 Information on technical, contracted and available capacities.....	15
Table 4 Institutions imposing penalties	23

1 INTRODUCTION

1.1 BACKGROUND

The **Energy Community** extends the European Union's (EU) internal energy market to South East Europe (SEE). By signing the Treaty¹ the signatory parties² agreed to implement the *acquis communautaire* on electricity, gas, environment, competition and renewables³ with a view to realize the objectives of the Treaty and to create a regional gas and electricity market within South East Europe.

By Decision⁴ of the Energy Community Ministerial Council Regulation (EC) 1775/2005⁵ has been made part of the Energy Community *acquis* in December 2007.

The purpose of Regulation (EC) 1775/2005 is to set non-discriminatory rules for access to natural gas transmission systems taking into consideration the specificities of national and regional markets with a view to ensuring the proper functioning of the EU internal gas market.

Non-compliance with the provisions of Regulation (EC) 1775/2005 does not only legally involve a breach of the Energy Community Treaty but more practically is also likely to seriously impede the development of a functioning gas market and security of supply. It has to be re-called that energy market liberalization should not be seen as a standalone goal but the development of a stable regulatory framework, cost-reflective network tariffs and market based energy prices remains a key driver for economic development, social welfare and consumer protection.

Even where the legal obligations of Regulation (EC) 1775/2005 are met, still incompatibility of various national approaches involves a barrier to regional market integration. One should not forget that the very scope of Regulation (EC) 1775/2005 as part of the internal energy market legislation is to establish a *regional* market and barrier free cross border trade⁶. It is well known that especially the detailed implementation of the legal requirements through the regulatory market rules has to pay special attention to avoiding mismatching with neighbouring systems.

¹ The Energy Community has been established by the Treaty establishing Energy Community, signed in October 2005 in Athens and entering into force on 1 July 2006 (Treaty establishing the Energy Community; hereinafter "The Treaty"). Details on the Energy Community and ECRB see www.energy-community.org

² The **Parties** to the Treaty are the European Community, on the one hand, and nine **Contracting Parties**, namely, Albania, Bosnia & Herzegovina, Croatia, former Yugoslav Republic of Macedonia, Moldova, Montenegro, Serbia, Ukraine and UNMIK. As of March 2009, 14 European Union Member States have the status of **Participants**. Georgia, Norway and Turkey take part as **Observers**.

³ For details of the relevant *acquis* see:

http://www.energycommunity.org/portal/page/portal/ENC_HOME/ENERGY_COMMUNITY/Legal/Treaty.

⁴ Decision No. 2007/6/MC-EnC of 18 December 2007 on the implementation of Directive 2005/89/EC, Directive 2004/67/EC and Regulation (EC) 1775/2005, <http://www.energy-community.org/pls/portal/docs/296187.PDF>

⁵ Regulation (EC) No 1775/2005 of the European Parliament and of the Council of 28 September 2005 on conditions for access to the natural gas transmission networks; OJ L 289 of 3.11.2005, p 1 et seqq.

⁶ See as well Article 1 Regulation (EC) 1775/2003.

Consequently a harmonized way of implementing the gas *acquis* remains a key challenge for regulators. Streamlining of regulatory measures and providing a stable regulatory market framework is a key promoter for a number of core objectives of the Treaty – such as market integration, facilitation of investments, competition and security of supply. In the Energy Community such streamlining is focused under the umbrella of the **Energy Community Regulatory Board (ECRB)**⁷. The key objective of the cooperation of energy regulators within the ECRB is to support the harmonized development of regulatory rules in the Energy Community. The ECRB also takes the role of a coordination body between the national regulators with a view to exchanging knowledge and developing common best practice solutions for implementing the Treaty in a harmonized way.

1.2 SCOPE

Monitoring the Contracting Parties' (CP) compliance with the *acquis* by definition of Article 67 (b) Energy Community Treaty is a key activity of the Energy Community Secretariat. However, monitoring of market and stakeholder performance is also a core responsibility of the regulators defined by the Gas and Electricity Directives⁸. Monitoring activities are best undertaken when delivering comparable results. Therefore the ECRB – similar to the practise on European level⁹ – decided on a coordinated status review approach for all Contracting Parties.

In December 2010 ECRB published the **Assessment paper on gas market models in the Energy Community and their compliance with the requirements of Regulation (EC) 1775/2005**¹⁰. This report did not provide a full compliance assessment of all requirements of Regulation (EC) 1775/2005, but focused on the core elements defining the regulatory gas market models. Furthermore, the report assessed a number of additional aspects related to the market framework necessary for a comprehensive understanding of the gas market models. The scope of the analysis was to identify the legal shortcomings related to non-compliance of the existing regulatory models with the *acquis*, to provide an overview of the existing regulatory models and to identify barriers to cross-border trade resulting from different regulatory approaches as well as to develop better understanding of the individual regulatory frameworks with a view to facilitate their harmonisation.

Taking into consideration the outcomes of the mentioned report, the ECRB decided to extend the **analysis by focusing to the enforcement powers of the regulators according to Article 13 of Regulation (EC) 1775/2005** on one side, **and to the transparency requirements of Regulation (EC) 1775/2005 (Article 6 and Annex 3, in combination with other relevant provisions of the Regulation)**, on the other side. The purpose of analyzing penalties applicable to infringements of the provisions of the Regulation is to get the clear picture of the role of different institutions and, especially, regulatory authorities in ensuring proper implementation of the Regulation as well as to investigate whether and how these penalties were imposed. Implementation of transparency provisions of the Regulation is analyzed taking into account information

⁷ The ECRB operates based on Article 58 of the Energy Community Treaty. As an institution of the Energy Community the ECRB advises the Energy Community Ministerial Council and Permanent High Level Group on details of statutory, technical and regulatory rules and should make recommendations in the case of cross-border disputes between regulators. For details see www.ecrb.eu.

⁸ Article 25.1 Gas Directive 2003/55/EC and Article 23.1 Electricity Directive 2003/54/EC.

⁹ On European level the European Regulators Group for Electricity and Gas (ERGEG) prepared a series of compliance reports for the gas and electricity sector.

¹⁰ Please see more at

http://www.ecrb.eu/portal/page/portal/ECRB_HOME/ECRB_DOCUMENTS/ECRB%20REPORTS%20%20DOCUMENTS/Gas%20Market%20Models_approved%2016th%20ECRB.pdf

necessary for gaining effective network access and using capacity on specific gas markets, but also in the context of capacity allocation, congestion management, balancing and tariffs.

1.3 METHODOLOGY

The present assessment paper is based on **information and data provided by the national regulators** and has been collected via the ECRB Gas Working Group.

The analysis of the present report is limited to those jurisdictions for which input has been provided by the competent regulatory authorities, namely:

- Albania, Bosnia and Herzegovina, Croatia, former Yugoslav Republic of Macedonia, Serbia, UNMIK;
- Turkey¹¹;
- Italy and Slovenia.

For proper understanding of the results provided in this report it is also relevant to know that the **gas market development stages in SEE vary significantly**. Contracting Parties are on average much less developed – their markets range from non-existent (Montenegro, UNMIK) to only starting (Albania, the former Yugoslav Republic of Macedonia, Bosnia and Herzegovina) or intermediate (Croatia, Serbia). The EU countries in SEE are mostly well on their way and mature (Romania, Austria, Hungary, Italy), with Slovenia, Bulgaria and Greece partly lagging behind¹². For the differences monitored it can be noted that:

- This to some extent can be an explanation for compliance leaks in jurisdiction with only little developed gas markets.
- Information displayed for Albania and UNMIK exclusively refers to the legal status in these two jurisdictions. Lacking a gas market so far, a practical analysis of the implementation of the existing legislation on gas can not be undertaken.

Concerning transparency analysis, the regulatory authority of Slovenia did not complete the relevant questionnaire but generally stated that all provisions of Regulation (EC) 1775/2005 have been properly implemented.

For the purpose of this report also **compliance with the provisions of the Commission staff working document on transparency requirements**¹³ has been analyzed.

¹¹ The input provided for transparency, but not for penalties.

¹² Details on the gas markets in SEE can be found in ECRB discussion paper "Regulatory Framework for the Development of the Energy Community Gas Ring", <http://www.energy-community.org/pls/portal/docs/558196.PDF>

¹³ SEC(2007), Brussels, 27.11.2007 ; http://ec.europa.eu/energy/gas_electricity/interpretative_notes/doc/sec_2007_1620.pdf

2 TRANSPARENCY REQUIREMENTS AND THEIR IMPLEMENTATION

Regulation (EC) 1775/2005 on conditions for access to the natural gas transmission networks defines not only the foundation of necessary requirements for reaching a transparent gas market, but also a comprehensive list of technical information needed for network users to gain effective access to the system.

Furthermore, Commission staff working document on transparency requirements provides explanations of relevant provisions of the Regulation including some additional requirements of non-obligatory nature, but certainly important for achieving transparency of the market. Against this background, the findings below refer also to certain provisions of the mentioned Commission staff working document on transparency requirements.

2.1 TARIFFS FOR THIRD PARTY ACCESS

Publication of transmission network tariffs or the methodology for their calculation is the basic requirement of Articles 3 and 6 of Regulation (EC) 1775/2005. Furthermore, transmission system operators or other relevant authorities are obliged to publish *reasonably and sufficiently detailed information on tariff derivation, methodology and structure*. According to the Commission staff working document on transparency requirements, sufficiently detailed information on derivation and methodology means that the tariff principles and information on financial criteria applied have to be clearly defined and published. Finally, in case the regulatory authority approves tariff methodologies, but not the final tariffs, the tariff methodology has to be developed in a way allowing system users to calculate tariff on their own.

The table below presents the answers of the regulatory authorities related to the transparency of tariffs and tariff methodologies.

Table 1 Transparency of tariffs and tariff methodologies

	Albania	Bosnia and Herzegovina	Croatia	FYR of Macedonia	Moldova	Serbia	UNMIK	Turkey	Italy
Are the tariffs for TPA or the methodologies published?	n.a. (but natural gas law obliges TSO and RA to do this)	yes, in BIH-RS	yes	yes	yes	yes	n.a.	yes	yes
Who publishes the tariffs for TPA?	n.a. (TSO and RA according to the law)	RA in BIH- RS	RA, TSO and Government	RA	RA	RA and TSO	n.a. (but natural gas law obliges TSO and RA to do this)	RA	RA
Who publishes the methodology for TPA?	n.a. (TSO and RA according to the law)	RA in BIH- RS	RA and TSO	RA	RA	RA	n.a. (natural gas law obliges TSO and RA to do this)	RA	RA
Are reasonably and sufficiently detailed information on tariff derivation, methodology and structure published?	n.a.	no	yes	yes	yes	yes	n.a.	no	yes
Are at least the fixed and variable tariff elements published?	n.a.	no	yes	no	yes	yes	n.a.	yes	yes
Is the tariff methodology published by describing the RAB, OPEX, depreciation and cost of capital?	n.a.	no	yes	yes	yes	yes	n.a.	no	yes
Who publishes reasonably and sufficiently detailed information on tariff derivation, methodology and structure?	n.a. (natural gas law obliges TSO and RA to do this)	n.a.	RA	RA	RA	RA and Government	n.a. (natural gas law obliges TSO and RA to do this)	RA	RA
In case only tariff methodology, but not the resulting tariff is approved by the regulator, does the methodology allow system users to establish actual tariffs?	n.a.	n.a.	no	n.a.	n.a.	yes	n.a.	no	n.a.

The information provided in the table above leads to the general conclusion that **in the majority of analyzed gas markets** (i.e. not taking into consideration Albania and UNMIK) the **transparency requirements related to tariffs and tariff methodologies comply with provisions of Regulation (EC) 1775/2005**. More in detail:

- With the exception of Bosnia and Herzegovina, the transmission network tariffs or the methodologies for their calculation are published in all analyzed markets¹⁴. The responsibility to publish tariffs is usually with the regulatory authority, but also with TSO in Serbia and Croatia and also with the Government in Croatia. The tariff methodologies are published by the regulatory authorities (and by TSO in Croatia).
- The information on tariff derivation, methodology and structure vary among investigated markets: in Croatia, Moldova, Serbia, Turkey and Italy fixed and variable tariff elements are published. With the exception of Bosnia and Herzegovina and Turkey, the main financial elements of tariff methodology, such as regulatory asset base, operating expenditures, depreciation and cost of capital are published in all markets. All information on tariff derivation and structure in analyzed markets is published by the regulators (and by Government in Serbia).
- In case the regulator approves the tariff methodology, but not the resulting tariffs, the methodology allows transmission system users to establish actual tariffs only in Serbia. It is not possible in Croatia and Turkey. In the other investigated markets the regulatory authority also approves transmission tariffs.

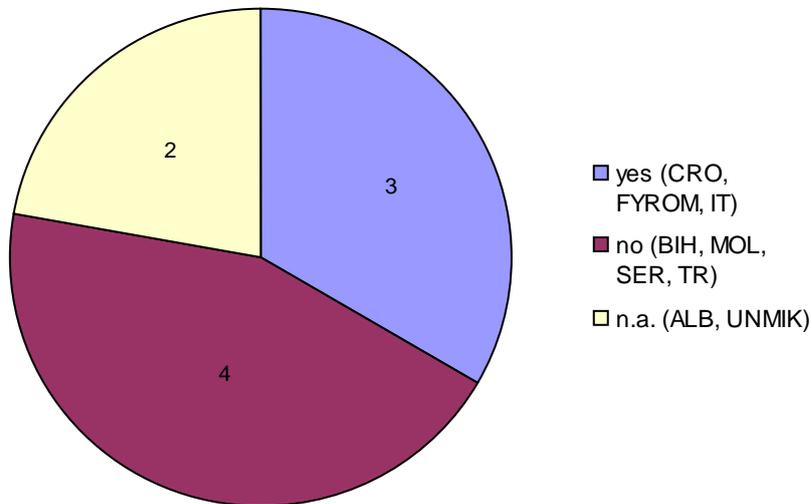
2.2 IMBALANCE CHARGES

Beside final transmission tariffs, Article 7 Regulation (EC) 1775/2005 also requires imbalance charges to be made public by the competent authorities or the TSOs.

The analysis shows that in more than a half of the investigated gas markets (4 out of 7, where applicable) **the calculation methodology for imbalance charges is published by the competent authorities** (please see the figure 1 below). Where applicable, the methodologies for calculation of imbalance charges are published by different institutions: in Croatia the methodology and calculation of imbalance charges is published by the relevant ministry, in the Ordinance on the natural gas market organization, in the former Yugoslav Republic of Macedonia the methodologies are published by the TSO, in Italy by both the regulator and the relevant ministry. Although lacking a gas market, in Albania and UNMIK the legislation obliges TSOs and the regulatory authority (only in UNMIK) to publish all relevant information related to imbalance charges once they become applicable.

¹⁴ In Bosnia and Herzegovina- Republika Srpska the tariff methodology is published by the regulator but the tariffs have not been calculated so far.

Figure 1 Publication of imbalance charges



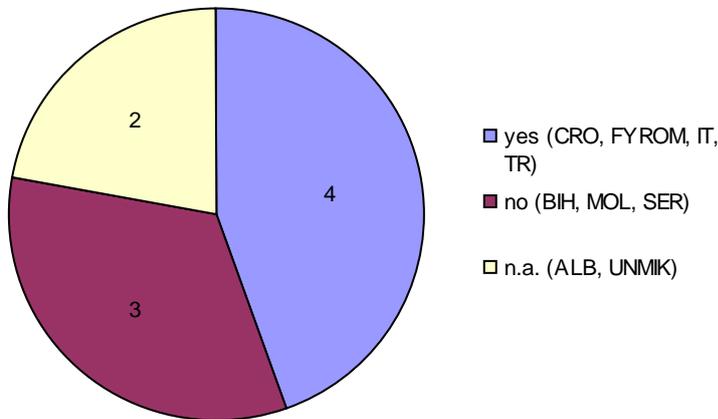
2.3 CAPACITY ALLOCATION AND CONGESTION MANAGEMENT

Transparent capacity allocation mechanisms, including those applied in the event physical congestion exists, are the precondition for non- discriminatory and efficient third party access and undisturbed (cross- border) gas flows. The minimum set of capacity allocation related requirements is provided in the Article 5 Regulation (EC) 1775/2005.

Non- discriminatory and transparent capacity allocation mechanisms and congestion management procedures are published in majority of analyzed markets, where applicable (Croatia, the former Yugoslav Republic of Macedonia, Italy and Turkey), but not in Bosnia and Herzegovina, Moldova and Serbia. The gas related legislation of Albania and UNMIK includes the relevant provisions on transparency of capacity allocation mechanisms. In Moldova a regulation on conditions for access to the natural gas transmission networks has been drafted and will be obligatory published before applying.

The information on public availability of capacity allocation mechanisms is presented in the Figure 2 below.

Figure 2 Publication of CAM and CMP



2.4 TECHNICAL INFORMATION AND SERVICES OFFERED

One of the main responsibilities of transmission system operators is to make public all necessary information related to services they offer as well as the technical information needed for network users to gain effective network access. The basic requirement of Article 6(1) Regulation (EC) 1775/2005 is accomplished by detailed list of technical information necessary for access to the system in chapter 3.1 guidelines annexed to Regulation (EC) 1775/2005. This list, together with several questions resulting from the non Commission staff working document on transparency requirements¹⁵, was part of the transparency questionnaire - the answers of the regulatory authorities are presented in Table 2 below.

¹⁵ Information on history of gas quality and pressure specifications as well as the historical information on gas flow interruptions.

Table 2 Technical information and services offered

	Bosnia and Herzegovina	Croatia	FYR of Macedonia	Moldova	Serbia	Turkey	Italy
Is description of services offered and their charges published?	no	yes	no	yes	no	yes	yes
Is info. on firm transportation contracts published?	no	yes	no	no	no	yes	yes
Is info. on interruptible transportation contracts published?	no	yes	no	no	no	n.a.	yes
Is information on long-term transportation contracts published?	no	yes	no	no	no	n.a.	yes
Is information on short-term transportation contracts published?	no	yes	no	no	no	n.a.	yes
Is standard transportation contract published?	no	yes	no	no	no	yes	yes
Is network code published?	no	yes	yes	yes	no	yes	yes
Is online capacity booking system available?	no	yes	yes	no	no	no	yes
Are standardized nomination and re-nomination procedures available online?	no	yes	yes	no	no	yes	yes
Is adequate data available online to simplify the transfer of capacity rights between network users?	no	yes	no	no	no	yes	yes
Are the standard conditions outlining the rights and responsibilities of network users published?	no	yes	yes	yes	no	yes	yes
Are the standard procedures for using the transmission system published, including the definition of key	no	yes	yes	yes	no	yes	yes

terms?							
In case granting of third party access is subject to appropriate guarantees, are these published?	no	yes	no	yes	no	n.a.	yes
Are provisions on capacity allocation published?	no	yes	no	no	no	yes	yes
Are provisions on congestion management published?	no	yes	no	no	no	yes	yes
Are provisions on anti-hoarding published?	no	yes	no	no	no	yes	yes
Are provisions on re-utilization published?	no	yes	no	no	no	yes	yes
Are the rules for capacity trade on the secondary market vis-à-vis the TSO published?	no	yes	no	no	no	yes	yes
If applicable, are flexibility and tolerance levels included in transportation and other services without separate charges published?	no	n.a.	yes	-	no	yes	n.a.
In case separate charges exist for flexibility and tolerance levels, are these published?	no	n.a.	no	-	no	yes	n.a.
Are entry and exit specification conditions, concerning information on gas quality and pressure requirements, published for all relevant points?	no	yes	no	yes	no	yes	yes
Is info. on the history of gas quality and pressure specifications at all relevant points published?¹⁶	no	yes	no	no	no	yes	yes

¹⁶ Commission staff working document on transparency requirements.

Is info. on each occasion when gas flow has been interrupted due to gas quality or pressure problems published? ¹⁷	no	yes	no	yes	no	yes	yes
Are the rules for connection to the system operated by the transmission system operator published?	no	no	yes	yes	yes	yes	yes

The level of transparency with respect to services offered and technical information necessary for effective access to the system varies strongly among the analyzed gas markets¹⁸. Concretely:

- In Bosnia and Herzegovina the technical information and information on services offered is not made public at all; in Serbia only information on network connection conditions is publicly available¹⁹.
- In the former Yugoslav Republic of Macedonia and Moldova approximately half of the requested technical information is available. Having in mind low level of capacity usage (15%) in former Yugoslav Republic of Macedonia, it has to be highlighted that some technical information is not applicable (for example, there is no need for congestion management procedures or implementation of interruptible capacity)
- In Italy all requested technical information is available to the public; in Croatia and Turkey all information is published, with the exception of connection rules (Croatia) and the lack of a online capacity booking system in Turkey.

2.5 INFORMATION ON TECHNICAL, CONTRACTED AND AVAILABLE CAPACITIES

Further to the technical information on the transmission system and services they offer, the transmission system operators are obliged to publish information on technical, contracted and available capacities for all relevant points of the system in a prescribed manner (Article 6(3) Regulation (EC) 1775/2005 and chapters 3.2 and 3.3. of the guidelines annexed to Regulation (EC) 1775/2005). The table below summarizes the answers provided by the regulatory authorities related to transparency of capacity data.

Requirements that results from the Commission staff working document on transparency are separately marked in the table.

¹⁷ Commission staff working document on transparency requirements.

¹⁸ In table 2 as in the rest of the document the data of Albania and UNMIK is not applicable, i.e. not presented in the tables and graphs.

¹⁹ The new Energy Law in Serbia defined TSO obligation to publish all the data necessary for access to the system and the data on services offered by TSO. Precise list of the data which should be published will be defined in Network code. Such obligation did not exist earlier.

Table 3 Information on technical, contracted and available capacities

	Bosnia and Herzegovina	Croatia	FYR of Macedonia	Moldova	Serbia	Turkey	Italy
Is the maximum technical capacity for flows in both directions at all relevant [cross-border interconnection] points published?	no	yes	yes	no	no	yes	yes
Is the total contracted and interruptible capacity published?	no	yes	no	no	no	yes	yes
Is the available capacity published?	no	yes	no	no	no	yes	yes
Is all of the above information published on a regular and rolling basis?	no	yes	yes	no	no	yes	yes
Is all of the above information published down to daily periods?	no	yes	no	no	no	no	no
Is all of the above information published in absolute figures? ²⁰	no	yes	yes	no	no	yes	yes
Is information on available capacities for a period of at least 18 months ahead published and at least updated every month?	no	yes	no	no	no	yes	no
Are daily updates of available short-term services (day/week ahead) published?	no	yes	no	no	no	no	no
Is a long-term forecast of available capacities for up to 10 years published?	no	yes	no	no	no	no	no
Is information on future aggregated contracted capacity published in the	no	n.a.	no	no	no	no	no

²⁰ Commission staff working document on transparency requirements.

units of time as it is sold? ²¹							
Regarding long-term information, is available capacity over all years where capacity is contracted, up to the first year where all capacity is available for booking by network users, published? ²²	no	n.a.	no	no	no	yes	yes
Are historical max and min monthly capacity utilization rates and annual average flows at all relevant points for the past three years published on a rolling basis?	no	yes	no	no	no	yes	no
Is information on the likelihood of interruption provided by publishing the historical data of system interruptions and/or by defining ex-ante the contractual parameters related to the interruptible capacity (e.g. duration, notice and maximum number of allowed interruptions)? ²³	no	n.a.	no	yes	no	no	yes
Are user-friendly instruments for calculating tariffs for the services available and for verifying online the capacity available provided or is information in accordance to that published?	no	yes	no	no	no	no	no

As for the technical information and the service offered, the **transparency of information on capacities differs among the analyzed gas markets** in the following way:

²¹ Commission staff working document on transparency requirements.

²² Commission staff working document on transparency requirements.

²³ Commission staff working document on transparency requirements.

- Information on technical, contracted and available capacities is not published at all in Bosnia and Herzegovina and Serbia²⁴;
- In the former Yugoslav Republic of Macedonia, only maximal technical capacity is published (on regular basis and in absolute figures) and in Moldova only likelihood of interruption provided by publishing the historical data of system interruptions and/or by defining ex-ante the contractual parameters related to the interruptible capacity (e.g. duration, notice and maximum number of allowed interruptions);
- In Turkey and Italy the most of the obligatory required data is published;
- Only in Croatia all information on technical, contracted and available capacities is publicly available.

2.6 PUBLICATION FOR ALL RELEVANT POINTS OF TRANSMISSION SYSTEM

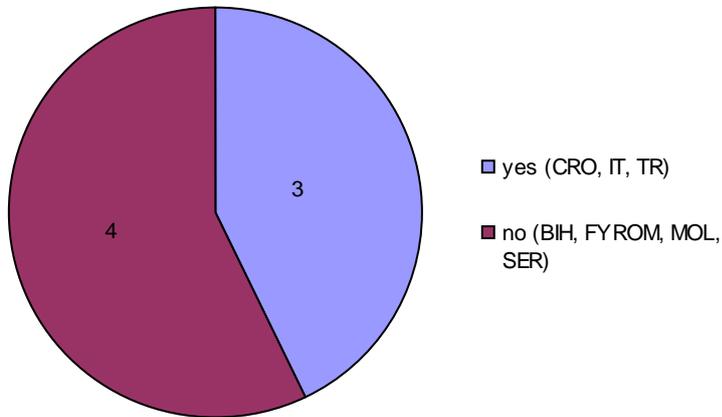
Regulation (EC) 1775/2005 requires transmission system operators to publish all information listed in chapters 3.4 and 3.5 of the guidelines annexed to Regulation (EC) 1775/2005 at all relevant points of the transmission system. The relevant points of the transmission system are described in chapter 3.2 of the guidelines annexed to Regulation (EC) 1775/2005²⁵.

Based on these requirements, the regulatory authorities were asked whether a detailed description of the gas system of the TSO indicating all relevant points interconnecting its system with that of other TSOs and/or gas infrastructure such as LNG infrastructure and infrastructure necessary for providing ancillary services is published. The answers of the regulators are presented at the figure below.

²⁴ The new Energy Law in Serbia defined TSO obligation to publish the data related to technical, contracted and free capacity for all entry and exit points of the transport system. Such obligation did not exist earlier.

²⁵ Article 6.4 of the Regulation (EC) 1775/2005 requires that all relevant points are approved by the regulatory authorities. Relevant points are approved by the regulator in Croatia, while there is no such a requirement in primary legislations of Albania, FYR of Macedonia, Serbia and UNMIK (secondary legislation in Serbia and UNMIK will include this provision, while in Albania and FYR of Macedonia the regulator has certain authority with respect to publication of TSO related data in general). For other analyzed markets there is no information on this.

Figure 3 Publication of technical data for all relevant points of the transmission system

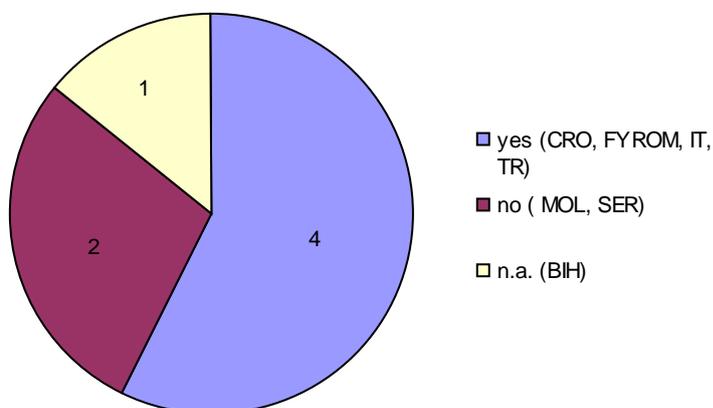


The analysis shows that **technical and capacity related data is published for all relevant points of the transmission networks in the more developed gas markets** of Croatia, Italy and Turkey. As also concluded before, the technical and capacity information is not published at all in Bosnia and Herzegovina and Serbia and only to the certain extent in the former Yugoslav Republic of Macedonia and Moldova.

2.7 CONFIDENTIALITY OF DATA

Transmission system operators are entitled to seek the authorization of the competent authorities to limit publication of information related to certain points of the network if there are justified reasons for confidentiality. The rules on granting such kind of authorization are prescribed by Article 6(5) Regulation (EC) 1775/2005. The regulators were asked whether the TSOs on their markets had ever requested an authorization to limit publications for certain points and the answers are presented at the figure below.

Figure 4 Authorization for limiting publication for a certain point



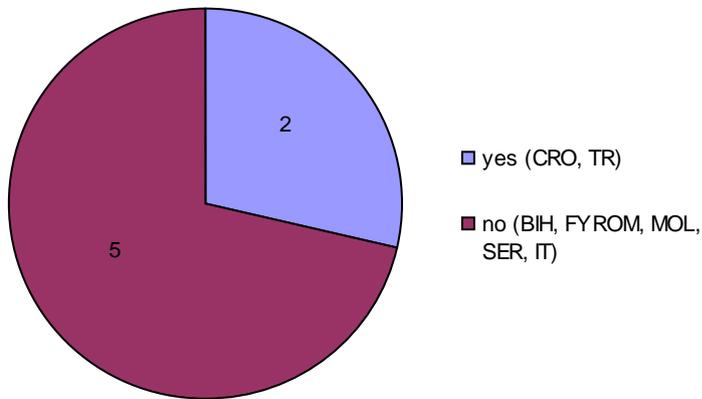
Again, **limiting publication of information for certain points of transmission system is possible only in markets where the information on transmission network is made public in general**, which is the case in Croatia, Italy, Turkey and the former Yugoslav Republic of Macedonia. **In all these markets, the TSO has requested so far the authorization to limit publication of information for certain points.** In Croatia, according to Ordinance on the natural gas market organization NRA can exempt TSO from the obligation of publishing the specific data. This exemption will not be given in the case where three or more transmission system users reserved transmission system capacities at the same entry point into the transmission system or at the same exit point from the transmission system. In former Yugoslav Republic of Macedonia the regulator gives the authorization to TSO to limit publication of information for certain points of the system if there is justified reason for this, but without specific rules to be followed in this respect.

2.8 INFORMATION ON BALANCING STATUS

With a view to enable transmission system users to timely correct their actions with respect to system usage, transmission system operators are obliged to provide online based information on the balancing status of the network users. According to Article 7(6) Regulation (EC) 1775/2005) also charges for providing this information have to be published.

The figure below shows that **online based information on the balancing status of network users is available only in Croatia and Turkey. The charges for providing information on the balancing status are published in Turkey, in other markets they are not applicable.** More precisely, there is no charge for information on balancing status in Croatia, while in other markets there is no information on the balancing status of network users at all.

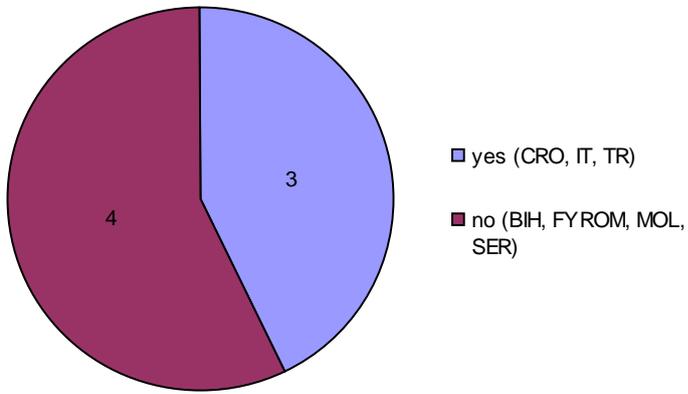
Figure 5 Online information on balancing status



2.9 INFORMATION ON PLANNED MAINTENANCE PERIODS

Finally, transmission system operators need to publish at least once a year all maintenance periods that might affect rights of network users determined in their transportation contracts, together with the corresponding operational information listed in chapter 1(9) of the guidelines annexed to Regulation (EC) 1775/2005). Based on the answers provided by the regulatory authorities, this is the case only in Croatia, Turkey and Italy.

Figure 6 Information on planned maintenance periods



3 PENALTIES

Article 13 of Regulation (EC) 1775/2005 requires national legislation to lay down rules on penalties applicable to infringements of the provisions of the Regulation and to provide necessary measures to ensure that they are implemented. The penalties issued by relevant authorities need to be effective, proportionate and dissuasive and to develop adequate impact on non-compliant TSOs in order to ensure proper compliance.

The purpose of the analysis was not only to investigate and describe the implementation of penalties on gas markets, but also to get a clear picture of the role of regulatory authorities in this respect.

3.1 TRANSPOSITION OF ARTICLE 13 OF REGULATION (EC) 1775/2005

Generally, **in the majority of analyzed gas markets the provisions of Article 13 of Regulation (EC) 1775/2005 are transposed into the national legislation.** This is not the case only in Bosnia and Herzegovina, Moldova²⁶ and Serbia, although the regulatory authority in Serbia has the powers to penalize TSOs in case of misconduct regarding tariff application and to annul TSO decision rejecting TPA if not justified.

The provisions related to penalties are mostly transposed in energy laws of relevant markets, but also in Gas Market Act in Croatia and Law on Energy Regulator in UNMIK. In Slovenia, the provisions on penalties are transposed into secondary legislation (Ordinance on natural gas market operations). The legislation of Croatia, FYR of Macedonia and Slovenia comprise exhaustive and detailed lists of TSO's and TNO's²⁷ potential misdemeanors and applicable penalties.

3.2 INSTITUTIONS IMPOSING PENALTIES

Although the provisions of Article 13 of Regulation (EC) 1775/2005 do not require explicit responsibility of a regulatory authority regarding implementation of penalties, the prevailing role of the regulatory authority is dominant among analyzed gas markets. However, in some cases other institutions may also be in charge of imposing penalties (usually inspectorates of relevant ministries). Only in Croatia implementation of penalties related to infringements of the provisions of the Regulation is not the responsibility of the regulatory authority²⁸. For details please see the table below.

²⁶ Expected to be transposed into secondary legislation soon.

²⁷ In FYR of Macedonia both transmission network operator and transmission system operator are active on the gas market.

²⁸ With the ongoing transposition of 3rd Package it is expected that the regulatory authority will become responsible for implementation of penalties.

Table 4 Institutions imposing penalties

GAS MARKETS	INSTITUTIONS
ALBANIA	Regulatory authority and relevant inspectorates
BOSNIA AND HERZEGOVINA	n.a.
CROATIA	State inspectorate and other relevant inspectorates
FYR OF MACEDONIA	Regulatory authority, relevant inspectorates and Energy Agency ²⁹
ITALY	Regulatory authority
MOLDOVA	Regulatory authority
SLOVENIA	Regulatory authority
SERBIA	Regulatory authority and commercial and administrative courts
UNMIK	Regulatory authority

3.3 IMPLEMENTATION OF PENALTIES IN PRACTICE

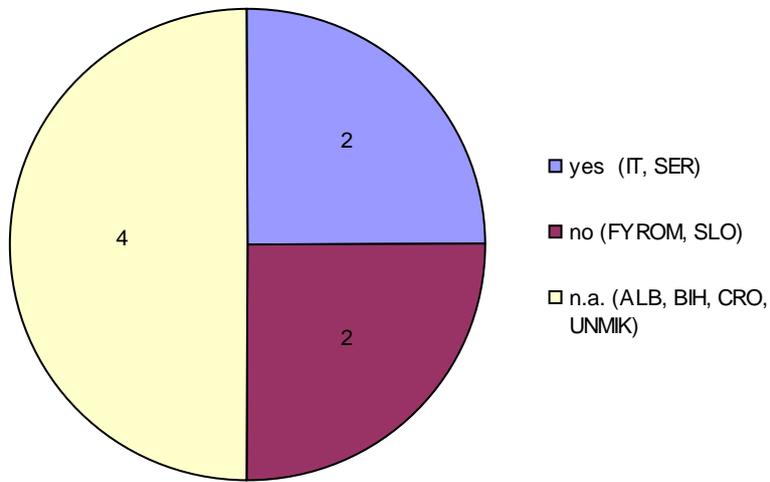
The regulatory authorities were asked whether the penalties provided, in their opinion, are effective (or dissuasive) and proportionate as well as to explain their positions. The answers received show that, in general, **the regulatory authorities have not had so far the opportunity to estimate the effectiveness and proportionality of penalties.** However, the regulators of FYR of Macedonia, Moldova and UNMIK believe that the penalties are proportionate and effective (the latter only in FYR of Macedonia). The Italian regulator considers the minimally imposed penalty as too high for the development of gas market.

The only regulatory authorities that have exercised their roles in penalizing TSO's non-compliance with provisions of the Regulation (EC) 1775/2005 are those of Italy and Serbia. The Italian regulator has used its powers in case of misdemeanors regarding technical and economic conditions of third party access and connections. The regulatory authority of Serbia resolved several misconducts arising from improper implementation of tariffs so far and annulled one TSO decision rejecting TPA.

The figure 7 presents the answers of regulators with respect to existing practice in implementing provisions related to penalties.

²⁹ Energy Agency is the authority in FYR of Macedonia in charge of renewable energy and energy balances

Figure 7 Has the RA ever used the provisions related to penalties?



Finally, **the levels of penalties substantially vary among analyzed gas markets**, going from 1.000 – 3.500 EUR in Albania, 5.000 – 7.000 EUR in FYR of Macedonia, 1.300 – 68.000 EUR in Croatia, 10.000 – 100.000 EUR in Slovenia to 25.000 – 150 million EUR in Italy, depending on the nature of misdemeanor. **In case of serious misdemeanors related to incompliance with provisions of the Regulation (EC) 1775/2005, the majority of regulatory authorities of analyzed markets have the power to revoke the license for performing the TSO activity** (Albania, Croatia, FYR of Macedonia, Serbia, UNMIK; no information for others).

4 CONCLUSIONS

Analysis of the implementation of transparency provisions of the Regulation (EC) 1775/2005, taking into account information needed for gaining effective access to the transmission network and its using, shows that:

- In the majority of analyzed gas markets the transparency requirements related to tariffs and tariff methodologies comply with provisions of Regulation (EC) 1775/2005. Certain variations exist regarding the level of details published for tariff methodologies (derivation, structure, financial elements).
- The calculation methodology for imbalance charges is published by the competent authorities in more than a half of the analyzed markets. The competent authorities differ from market to market.
- Capacity allocation mechanisms and congestion management procedures are published in the majority of investigated gas markets (only not in Bosnia and Herzegovina, Moldova and Serbia).
- The level of transparency with respect to technical information necessary for effective access to the network and services offered by the TSO strongly varies among the markets, from having all or almost all requested information in Italy, Croatia and Turkey, partial availability of network related information in former Yugoslav Republic of Macedonia and Moldova to almost complete non-availability of these information in Bosnia and Herzegovina and Serbia.
- Similar to the technical information and services offered by the TSOs, the transparency of information on technical, contracted and available capacity differs among the analyzed markets and follows the pattern of availability presented for them above.
- Technical and capacity related data is published for all relevant points of the transmission system in more developed gas markets of Croatia, Italy and Turkey. Limiting publication of information for certain points of the network is possible only in markets where the information on the network is made public in general and, with the exception of Moldova, the TSOs of all these markets (Croatia, former Yugoslav republic of Macedonia, Italy and Turkey) have requested so far authorization to limit publication of relevant information.
- Online based information on the balancing status of network users is available only in Croatia and Turkey. The charge for providing information on balancing status is applied only in Turkey and it is made public.
- Transmission network users are publicly informed once a year about the planned maintenance periods only in less than a half investigated gas markets.

In general, transparency requirements of the Regulation (EC) 1775/2005 are well transposed and implemented in more developed gas markets, while the expected secondary legislation in those less developed will certainly put more transparency related obligations on transmissions system operators and other relevant institutions in the near future.

Analysis of enforcement powers of regulators related to ensuring proper implementation of provisions of Regulation (EC) 1775/2005 (connected to the Article 13 of the Regulation to the extent the regulatory authorities are institutions selected for imposing penalties) shows that:

- In the majority of analyzed gas markets the provisions of Article 13 of Regulation (EC) 1775/2005 are transposed into national legislations. Although the provisions of Article 13 of the Regulation do not require explicit responsibility of a regulatory authority regarding implementation of penalties, the prevailing role of the regulatory authority is dominant among analyzed gas markets.
- Practically, the regulatory authorities have not had so far often the opportunity to estimate the effectiveness and proportionality of penalties. However, some of them (in Italy and Serbia) have used the provisions related to penalties.
- The levels of penalties substantially vary among analyzed gas markets and most of them are entitled to revoke the license for TSO activity in case of serious misdemeanors related to non-compliance with provisions of the Regulation.