

ACER



Agency for the Cooperation
of Energy Regulators

Transit Contracts Inquiry **Compliance of existing transit contracts with the Third Package**

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The Agency for the Cooperation of Energy Regulators was created “to assist the authorities [regulating energy markets] in exercising at Community level the regulatory tasks performed in the Member States and, where necessary, to coordinate their action”

Regulation EC 713/2009 establishing an Agency for the Cooperation of Energy Regulators



19th Madrid Forum : ACER was invited to provide an additional **assessment on the existence of gas transit contracts in EU countries**, and **their consistency with the internal energy market legislation**, and **to identify where it sees scope and need for additional analysis**.



ACER contacted NRAs, requesting information on existing transit contracts subject to a different treatment from national transmission contracts:

- Letter sent to all NRAs in June 2011.
- Preliminary findings presented at the 20th Madrid Forum in September 2011.
- November 2011 : Final round of communications, in order to obtain answers from those NRAs who had not replied.

Assessment of Gas Transit Contracts

- In some cases there is still no clear information as to the different access regimes for transportation or transit, as well as the differentiated treatment of the primary allocation of capacity.
- In several cases, it remains unclear whether or not the capacity rights and access rules offered by the foreign and domestic pipeline operator are treated equally by the relevant authority.
- Evidence that historical capacity holders still obtain preferential access to the transit capacity. In a number of cases, transit lines are in ownership of joint ventures between domestic TSO and a foreign market player, hence access to import transmission lines is still limited through the preferential treatment of these pre-liberalisation contracts.

Consistency with Internal Market Legislation

- Within the Third Energy Package there are no provisions regarding the continued validity of those historical contracts. The uncertainty of the legal status of the historic transit contracts has been resolved through the ECJ jurisprudence and the Third Package.
- Congestion management and capacity allocation provisions fully apply.
- Transit contracts not invalid per se. The prerequisite for their validity, is the compliance with the internal market and EU Competition rules. Preferential treatment and limited access to transit capacity jeopardises the transition to open and competitive markets. If cross-border trade is to increase, access to transit capacity is vital, making these legacy contracts a key issue for market integration.

Scope and Need for Additional Analysis

- No ambivalence as to the differential treatment of the transit contracts or the competence of the NRAs to review them. The NRAs have the **authority** and **obligation** to ensure fair access to all non-exempted transmission lines, including cross-border/transit capacity. There is scope for optimisation of the use of the cross-border capacity.
- The immediate enforcement of the **Third Package** access and transparency rules will ensure that transit contracts are not subject to preferential treatment and along with the secondary legislation (national network codes) is expected in all cases to eliminate the existing differences among inland and transit by 2013.
- ACER will **monitor** the ongoing alignment of such contracts with the new regime and cooperate actively with the Commission in ensuring that **non-discriminatory access** to all existing gas transit lines is ensured.

Thank you for your attention!



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