

# EREGG Final 2005 Report on Monitoring the implementation of the GGPSSO Summary of responses

Ref: E05-STO-06-03a

## 1 Introduction

At the Madrid Forum held on 15-16 September 2005, ERGEG presented a first draft of the report on monitoring the implementation of the GGPSSO.

This document provides a summary of responses that were received to the draft version of the GGPSSO that was published by ERGEG for consultation. The closing date was 7 October and 9 responses were received – a list of respondents is in annex 1.

EREGG views are proposed (grey boxes) on the main points raised by respondents (§2) and on detailed comments on each section of the report on monitoring the implementation of the GGPSSO (§3-8).

## 2 Main comments

### 2.1 Minus three rule

2.1.a GSE: the report should also take into consideration existing confidentiality requirements which are also recognized by the GGPSSO. In particular they think that SSOs applying the lesser-3-rule can be compliant with the GGPSSO.

Only those SSOs publishing the data as required by the GGPSSO can be assessed as truly compliant. The report explains already why the non-publication is an option, and notes that the GGPSSO requirement 6.3 "...notifying the relevant NRA when information is not published..." is very unevenly implemented although it is a simple notification involving "per se" no regulatory involvement (p.32). For the sake of clarity, ERGEG will slightly change the presentation. Compliance for the SSOs not publishing the data because of the "three minus rule" will not be assessed (they will not be considered as "partly compliant"). Instead, the report will list those SSOs and indicate very clearly that the data are not published because of the "three minus rule".

2.1.b VNG: in their opinion it is not appropriate that SSOs invoking minus three rule are automatically mentioned as not implementing the GGPSSO as given in the table (page 27 of the report). As the market matures the situation will improve.

See ERGEG view on point 2.1.a

## 2.2 National specificities

- 2.2.a GSE: where possible the report should reflect the national specificities including different regulatory regimes and competences instead of using a rather statistical approach.

ERGEG acknowledges that the issue of national specificities should be better addressed in the report. The regulatory framework of access to storage will be developed in the background section.

- 2.2.b NAFTA: their storage code have not yet been approved by the regulator. The draft storage code is also aimed at the fulfillment of the GGPSSO but because it was not approved at the time the questionnaire was filled out, they could not have answered many of the questions. They complain that this fact has not been regarded in the report as ERGEG evaluated and assessed even those answers to questions to which NAFTA could not have duly answered.

The report will refer to the situation in the Slovak Republic in the background section.

## 2.3 Climate for investments

- 2.3.a GSE: they support and enhance market access to storage facilities. A prerequisite for the availability of storage capacity and thus a main concern for GSE is the promotion of a secure and healthy investment climate. A predictable, stable and favorable regulatory framework as created with the GGPSSO is a prerequisite.

ERGEG agrees on the importance of a clear and stable framework for new investments but it will analyze the GGPSSO for any eventual further modification where necessary.

## 3 Background

- 3.1 BEB: they ask ERGEG to update the report changing figures on technical capacity.

ERGEG will correct these figures.

- 3.2 GSE: they agree that implementation of the GGPSSO has not yet been fully achieved in all areas where required by the deadline of 1 April 2005. Further work is needed by storage operators and storage users in some areas, in order to improve the functioning of the market under the GGPSSO.

EREGEG will take into account in the report the GSE's commitment in ensuring full compliance to the GGPSSO.

#### 4 Roles & responsibility of SSOs

- 4.1 Gaz de France: as indicated in the report Gaz de France complies with that requirement. They noticed however that they do not appear in the category of SSOs "where the relevant national regulatory authority receives a copy of all storage contracts".

EREGEG can confirm that the relevant national regulatory authority receives a copy of all storage contracts between the SSO Gaz de France and its customers.

As explained in the report, requirement 1.3 applies "*in the case of a SSO being part of a vertically integrated undertaking*". Within the category of "vertically integrated undertakings" in the sense of article 2(20) of the Gas Directive, it applies primarily to those SSOs not legally unbundled from a gas producer and/or supplier. Where a SSO is separate, at least in its legal form, from a gas producer and/or supplier, or where the SSO operate as a "combined operator", and where it is part of a "vertically integrated undertaking", the requirement also applies, and the document in question would be the storage contract between the SSO and the affiliate.

In the responses received by ERGEG, some SSOs did not provide an answer to the question because they consider that the requirement applies only to SSOs not legally unbundled from a gas producer and/or supplier. However, as National Regulatory Authorities checked the answers, some indicated that the document in question existed – or not. Therefore, in presenting the results, ERGEG chose to make the distinction.

For the sake of clarity, ERGEG will slightly redraft the paragraphs in question. There will be no impact on the assessment of compliance since Gaz de France complies with that requirement anyway.

- 4.2 RWE Transgas: it complains that, in section 4 of the report, the overview of the fulfillment of the respective requirement (SSOs have prepared a document setting out terms and conditions related to use by an affiliate company) is very confusing as it levels different aspects of the fulfillment (type of company vs. type of document).

In ERGEG view this statement is an opinion which does not need to be reflected in the report.

## 5 Confidentiality requirements

- 5.1 BEB: they complain that two sentences are misstated. They refer to the provision of information concerning the development of IT system and the location of SSO and supply business. BEB, as described in the report (page 10), is one of “8 SSOs which are separate from other gas activities of the overall company...”. For this reason they claim that the answer to question 5.1.b and 5.3 shall be “not applicable”.
- 5.2 E.ON Ruhrgas: since they have only a few people working as a SSO, a compliance program and they have outsourced their storage marketing, they consider that it is proportionate for the SSO to remain in the same building as the supplier.

As indicated already in the report (p. 17), “the GGPSSO mention that compliance against 5.1.d is subject to cost effective solutions. Assessing whether a decision by a SSO to locate/not locate in a separate building is cost-effective is not in the scope of this report”.

- 5.3 GSE: they intend to identify then provide guidance on best-practice in respect of compliance programs for GSE members.

ERGEG welcomes any initiatives taken by GSE, or by any other business organizations, in the light of the commitment agreed among all stakeholders for full implementation of the GGPSSO.

- 5.4 VNG: same as point 5.2

See ERGEG view on point 5.2.

## 6 Necessary TPA services

- 6.1 E.ON Ruhrgas: it inappropriate to say that unbundled services, interruptible contracts and title transfer for secondary market have not been implemented, since timetable for the obligations according to the GGPSSO will be fulfilled in due time (by 1st April 2006).

Postponed deadlines for implementation of certain provisions of the GGPSSO have been agreed in some cases. However ERGEG clarifies that date reference for information and figures of monitoring report is 1 September 2005. For this reason no change of the report is envisaged on this point. Moreover, this section of the report is purely descriptive and does not provide an assessment on compliance

- 6.2 Gaz de France: Gaz de France claims that all their capacities are offered on a TPA basis excluding facilities reserved exclusively for transmission system operators in carrying out their function. They consider that it is not correct to imply that in France, “it is up to the SSO to determine how much capacity is being offered to third parties” and that “the exclusion of (some) capacity from TPA has not been approved or monitored by the relevant NRA”. Therefore, they wish to be removed from the list of SSOs on page 18-19 of the report

CRE is competent to audit the TSOs unbundled accounts and therefore is able to monitor that the facilities reserved exclusively for transmission system operators in carrying out their functions (i.e. excluded from TPA) match the amount of storage capacity needed by the TSOs. This will be specified in the report.

However, the sentence “in France, it is still up to the SSO to determine how much capacity is being offered to third parties” is correct as at 1 September 2005.

- 6.3 Gaz de France: the report indicates that “Gaz de France makes a separate and additional charge for this service”. Yet, Gaz de France indicated in its reply to question 3.7 of the questionnaire that its reversal of flow direction service was free of charge within the framework of an annual credit of changes. The number is eighteen or twenty four, according to the group considered. Therefore, according to Gaz de France, it does not seem correct to consider as a basis that it “makes a separate and additional charge for this service”.

ERGEG will specify in the report that the system implemented by Gaz de France is such (reversal of flow direction service free of charge within the framework of an annual credit of changes – eighteen or twenty four- according to the group of storage facilities) but maintains that there is a separate and additional charge for this service.

- 6.4 TIGF: same as point 6.2.

See ERGEG view on point 6.2.

## 7 Storage capacity allocation and congestion management

- 7.1 Gaz de France: the report indicates that in France “capacity allocation is negotiated”. According to Gaz de France, the wording does not reflect the French situation.

The next sentence in the report reads that “in France, the SSOs (Gaz de France and TIGF) apply a capacity allocation mechanism that is based on some general provisions contained in national legislation. A more detailed decree is in preparation by the government”. ERGEG would like to stress again that the monitoring exercise relates to the situation as of 1 September 2005. Even if, in the future, the capacity allocation mechanism will be set by decree, as at 1 September 2005, the capacity allocation mechanism applied by Gaz de France was designed by the SSO and therefore was not “regulated”. For the sake of clarity though, ERGEG will review the wording.

Furthermore, as indicated in the report, “the GGPSSO does not prescribe which capacity allocation mechanism should be used – therefore, assessing which mechanism is the most appropriate is beyond the scope of this report”.

- 7.2 Gaz de France: the report places Gaz de France in the category of SSOs which do not comply with such a requirement and not in the category of SSOs “which use some other means to discourage hoarding and facilitate re-utilisation and trade of storage capacity” According to Gaz de France, this statement does not reflect its answers to the questionnaire.

ERGEG will change the report and indicate that Gaz de France use some other means to discourage hoarding and facilitate re-utilisation and trade of storage capacity, even though the effectiveness of such mechanisms is not assessed in the report anyway. ERGEG notes that Gaz de France will implement the requirement on day-ahead release of non-nominated injectability and deliverability by 1 April 2006 at the latest, but will not mention it in the report at this stage. As mentioned earlier, the monitoring exercise relates to the situation as at 1 September 2005.

- 7.3 GSE: according to the association of SSO, in some cases, terms and concepts are open to different interpretations and could mean different things in different circumstances. This is for example the case for capacity allocation and congestion management. A common understanding would be useful and may avoid any possible confusion.

ERGEG recalls that the GGPSSO requirements are, in some cases, high level principles, namely on capacity allocation and congestion management. For this reason, monitoring at national level may play a crucial role in ensuring effective compliance to the GGPSSO. Even if non specific modification of the paper is to be done on this point, ERGEG acknowledges that the issue of national specificities should be better addressed in the report.

- 7.4 RWE Transgas: under assessment of compliance against 4.4, it is unclear how it is possible that an ERGEG report states that it is not sufficiently clear (from the response to the questionnaire) how certain SSOs comply with the anti-hoarding/sales on interruptible basis requirements. NRAs are required to monitor the access conditions and respective NRAs should be able to interpret responses to the questionnaire by their respective SSOs.

ERGEG will address this comment adding a specific reference to the different powers of Regulators across the EU.

## 8 Transparency requirements

- 8.1 [confidential answer]: it has been indicated that one SSO publishes the data for available storage capacity on its website but that these capacities always equal to "0". According to this response, the published method for determining available capacities is based on historical clients, hence hindering any additional gas withdrawals over and above the "allocated capacity", which makes it extremely costly for clients to cover their peak demand. The response also recommends that available capacity figures are verified and audited by a neutral entity.

The report already states that the level of detail in the data that is published by most SSOs is minimal. In the next monitoring exercise, ERGEG will take a closer look into the methods of determining available storage capacity published and identify good practices.

ERGEG is in favour of having available capacity figures verified and audited by a neutral entity. A similar idea is behind the GGPSSO § 3.1 (*"exclusion of storage capacity from TPA shall be approved or monitored by the relevant national regulatory authority"*).

- 8.2 Gaz de France: Gaz de France is assessed as "not fully compliant" in the report, because of the way the historical utilization rate is derived (see report on p.30). Gaz de France considers that the data published on its website correspond to the drafting of 6.5.b as approved by the various parties on completion of the adoption of the GGPSSO.

ERGEG sticks to its analysis and will not change the report on that point. In publishing those data, Gaz de France may have implemented the GGPSSO in the letter (there is no definition of "historical utilization rates"). However, the GGPSSO have not been implemented in the spirit, which is also what is assessed in the report.

As a matter of fact, the French NRA receives some data on the level of gas in stock that are useful to calculate the actual utilization rates. This will be mentioned in the report. Still because these data are not published, Gaz de France cannot be considered as fully compliant with the GGPSSO.

- 8.3 GSE: GSE acknowledges that storage market appears not as transparent as it could be, especially in respect to operational information. In response, GSE commits itself (workshop on November, 16) to identify possible barriers to address information publication to system users and to assist them in improving information transparency. Consultation with storage users will also take place. GSE intends to provide guidance on best-practice compliance program/guidelines for GSE members regarding confidentiality requirements; this will be addressed during the same workshop.

EREGG welcomes any initiatives taken by GSE, or by any other business organizations, in the light of the commitment agreed among all stakeholders for full implementation of the GGPSSO.

- 8.4 NAFTA: the text contains several mistakes, e.g. the factual error on page 27 under the table, showing also NAFTA in the "Do not comply" column. The comment shown here says that NAFTA has more than three clients, which is a mistake, which does not correspond to our answers in the ERGEG Questionnaire.

EREGG will change the report following NAFTA's indication.

- 8.5 RWE Transgas: under assessment of compliance against 6.5, the report states that "the GGPSSO explicitly require that SSOs publish numerical data". According to RWE Transgas, it should be pointed out that the GGPSSO also require confidentiality and that the SSOs using the "traffic light" make an effort to publish at least some kind of information instead of publishing nothing.

Publishing the information using the "traffic light" system is not acceptable. The disadvantages of such an approach were discussed extensively when the GGP (transmission) were being drafted and implemented. Therefore, ERGEG will not change the report.

- 8.6 RWE Transgas: under assessment of compliance against 6.5b, the report states that "publication of use of capacity information is particularly valued by market participants as it allows them to form opinions about whether refusal of access is because of genuine capacity constraints or capacity hoarding". For this particular reason, they state that it is not necessary to publish the data so soon after the real-time they refer to.

In ERGEG view this statement is an opinion which does not need to be reflected in the report.

- 8.7 RWE Transgas: under assessment of compliance against 6.5b/Users' views, the report states that "out of all responses, only two users have made a request to the SSO not to publish some information because it would harm their commercial interests. This may suggest that the commercial interest argument is not as strong as

presented by some users." They complain that it is not possible to check up on the statement as ERGEG had set ex-ante to treat responses to this question as confidential. What is not clear to them is why ERGEG had done so, especially with regards to the Y/N part of the question; this does not seem to be very transparent. Also, when assessing any response to such question, the position of the respective storage user (minor/major storage user) and the number of storage users in the respective storage facility need to be considered.

ERGEG methodology for the monitoring report was clearly declared in each questionnaire issued by ERGEG during the last months. Confidential answers were aimed at gathering information also from those users which might be harmed by taking part in the monitoring process.

- 8.8 RWE Transgas: under assessment of compliance 6.4 b/Users' views/Overall assessment of compliance, the report states that "the publication of the main commercial conditions is requested by the Directive" and that "this requirement does not seem yet to be implemented in some cases". It should be clear who fails or has failed to implement this requirement. In the cases mentioned it might actually be the Member States that fail/have failed to transpose the Directive into the national law.

The Directive has been in force since 1 July 2004 and it does not need to be reflected in the national law to be binding, except for those provisions on which Member States have different options according to the Directive itself. For this reason the Directive shall be applied in any case and, on this crucial point for transparency, no change in report is to be done.

- 8.9 VNG: they are not obliged to transfer information to the regulatory authority, neither is the Bundesnetzagentur empowered to ask for it. Nevertheless the report states that NRAs were not informed about the non-publication of data or in the case of exclusion of capacity from TPA. But as no legal basis for such notification procedures and no competencies of the NRA exist in Germany these provisions of the GGPSSO can not be demanded.

No change of the report is envisaged on this point. SSOs may always inform the relevant national regulatory authority on a voluntary basis, as long as it is not explicitly forbidden by legislation.

- 8.10 VNG: on their website they publish technical, contracted (booked) and available capacity. The report seems inaccurate on these figures.

The report should be changed to correct those figures.

## **9 Implementation of the other GGPSSO requirements**

- 9.1 OGG: the “Assessment of compliance against requirements with regard to secondary markets”, table “Compliance/non compliance GGPSSO (9.1), Secondary markets” should be integrated with a footnote for OGG saying that lack of compliance is justified as currently there is no long term congestion in Austria.

The GGPSSO do not say that this requirement does not apply in case of no congestion. There is already a footnote on page 36 of the report addressing the situation of OGG.

## **Monitoring the implementation of the GGPSSO Summary of responses – Annex 1**

### **List of respondents**

BEB

E.ON Ruhrgas

Gaz de France

GSE

NAFTA

RWE Transgas

TIGF

VNG

[confidential answer]