



**Transparency of gas transmission system operators  
in the Energy Community Contracting Parties**

**Status Review**

December 2018

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# INTRODUCTION

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## 1. About ECRB

The Energy Community Regulatory Board (ECRB) operates based on the Energy Community Treaty. As an institution of the Energy Community<sup>1</sup> the ECRB advises the Energy Community Ministerial Council and Permanent High Level Group on details of statutory, technical and regulatory rules and makes recommendations in the case of cross-border disputes between regulators. ECRB is the independent regional voice of energy regulators in the Energy Community. ECRB's mission builds on three pillars: providing coordinated regulatory positions to energy policy debates, harmonizing regulatory rules across borders and sharing regulatory knowledge and experience

## 2. Background

Transparency was an element of every legislative package adopted on EU level since the beginning of market liberalisation, as it is considered as one the most important preconditions for market functioning. With the experience gained during the establishment and development of cross-border wholesale natural gas markets in the EU, awareness for the need of a harmonised and comprehensive set of rules for transparency arose. Transparency provisions of Regulation (EU) 715/2009<sup>2</sup> provide a comprehensive set of definitions of the data to be published.

This is the third transparency review prepared by the ECRB Gas Working Group<sup>3</sup> for the purpose of identifying the level of compliance of the transmission system operators with the transparency requirements of both Directive (EU) 73/2009<sup>4</sup> and Regulation (EU) 715/2009.

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<sup>1</sup> [www.energy-community.org](http://www.energy-community.org). The Energy Community comprises the EU and Albania, Bosnia and Herzegovina, fYR Macedonia, Georgia, Kosovo\*, Moldova, Montenegro, Serbia and Ukraine. Armenia, Turkey and Norway are Observer Countries. [\*Throughout this document the symbol \* refers to the following statement: This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Advisory Opinion on the Kosovo declaration of independence.].

<sup>2</sup> [https://www.energy-community.org/dam/jcr:31f64003-5c68-4f2a-9c1861927a6a61ec/Regulation\\_715\\_2009\\_GAS.pdf](https://www.energy-community.org/dam/jcr:31f64003-5c68-4f2a-9c1861927a6a61ec/Regulation_715_2009_GAS.pdf). Adapted and adopted for the Contracting Parties by Decision 2011/02/MC-EnC of the Ministerial Council.

<sup>3</sup> The previous one, published on 4th January 2018, may be found here: <https://www.energy-community.org/dam/jcr:1a7070fb-8f8c-4101-82a7-0899a5371dad/Gas%20Transparency%20Report.pdf>

<sup>4</sup> [https://www.energy-community.org/dam/jcr:004b3ca7-fa52-4633-875e-8ac1b2cea021/Directive\\_2009\\_73\\_GAS.pdf](https://www.energy-community.org/dam/jcr:004b3ca7-fa52-4633-875e-8ac1b2cea021/Directive_2009_73_GAS.pdf)  
Adapted and adopted for the Contracting Parties by Decision 2011/02/MC-EnC of the Ministerial Council.

### 3. Scope and methodology

The present report covers the Contracting Parties where a gas market is operational, namely Albania, Bosnia and Herzegovina (Republika Srpska entity), fYR of Macedonia, Georgia, Moldova, Serbia and Ukraine. This monitoring activity shall assist the National Regulatory Authorities (NRAs) in enforcing implementation of the Regulation (EU) 715/2009.

Data presented in this report refers to status quo in July 2018<sup>5</sup>. Data and analysis are based on information provided by the NRAs of the analysed markets relating to the transparency requirements of Directive 2009/73/EC and Regulation (EC) 715/2009. Each publication item, as listed in the tables and Annex I of this report, is treated with equal weight for the results presented.

The results presented in the following chapters are sorted along the following lines:

- Implementation of transparency requirements of Directive (EU) 73/2009,
- Implementation of transparency requirements of Regulation (EU) 715/2009,
- Overall scoring in terms of publication of data pursuant to Regulation (EU) 715/2009.

In addition, the Annex provides a detailed analysis of the level of compliance with the individual publication requirements of Regulation (EU) 715/2009 per Contracting Party.

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<sup>5</sup> The exception is fYR of Macedonia, where the new Energy Law is applicable only as of June 2018 and the relevant analysis of transposition and implementation could not be provided. Therefore the information in the report describes the transparency compliance for the first half of 2018.

# FINDINGS

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## 1. General overview

Limited progress has been achieved in transposition and implementation of the transparency requirements of Third Energy Package in the Contracting Parties during the last year.

Present report focuses on analysing the factual level of compliance with the Directive (EU) 73/2009 and of Regulation (EU) 715/2009 transparency requirements, however it is worthwhile to overview the status of **legal compliance** in the first place- this information is relevant as lack of a legal basis requiring data publication must be accepted as one of the reason of poor factual compliance.

- *Albania*: currently has no gas market. Nevertheless, in September 2015 Albania transposed the Third Energy Package and established a general legal framework for further developing the gas market in compliance with the acquires. Its gas sector is characterised by marginal domestic production of gas, the majority of which is consumed for own use in oil production and refining industry. The country is not connected to international gas networks.
- *Bosnia and Herzegovina*: there is no state level legislation compliant with the Third Energy Package. In the Federation of Bosnia and Herzegovina the gas-related legislation does not transpose the major principle of the gas *acquis communautaire* ('acquired'). In Republika Srpska, the natural gas sector is regulated by the Law on Gas adopted in 2007 and amended in 2012. This law, however, does not fully transpose the Third Energy Package provisions. Since October 2015, Bosnia and Herzegovina is subject to punitive measures for its failure to comply with the gas *acquis* (Second Energy Package).
- *Kosovo\**: following its adoption of the Law on Natural Gas Sector, Kosovo\* is largely compliant with the Third Energy Package in the gas sector, but has no functional gas sector. In the future, Kosovo\* plans to establish a gas supply route through an interconnector with the planned gas transmission system of Albania (the so-called ALKOGAP project).
- *fYR Macedonia*: The Energy Law as of 2011 transposes only those requirements of Directive 2009/73/EC, which remained the same as in Directive 2003/55/EC. All novelties introduced by the Third Energy Package were supposed to be transposed by the Energy Law in force as of June 2018, but the relevant information could not be provided by early July 2018. Improvements as regards compliance with the transparency requirements of the *acquis* compared to last year's results are therefore not reflected in this report.

- *Moldova*: With the adoption of the Law on Natural Gas in May 2016, Moldova transposed the Third Energy Package. Moldova did not adopt any secondary acts during this reporting period, which could have influence to the compliance of the transparency requirements.
- *Montenegro*: Following the country's adoption of the 2015 Energy Law and the 2016 Law on Cross-Border Exchange of Electricity and Natural Gas, which jointly transpose the gas acquis, Montenegro is now in the process of drafting secondary legal acts in the gas sector.
- *Serbia*: Serbia's gas sector is governed by the Energy Law, which transposes the Third Energy Package, and numerous secondary legislation adopted by the national regulatory authority AERS. However, several important secondary acts were not updated in line with the Law.
- *Ukraine*: The Natural Gas Market Law transposes the majority of Third Energy Package provisions. In spite of the adoption of numerous secondary acts, Ukraine has failed to amend other relevant primary legal acts (e.g. Law on the Cabinet of Ministers, Law on Pipeline Transport, Law on Oil and Gas, etc.) without which the Natural Gas Market Law cannot be fully implemented.
- *Georgia* became Contracting Party of the Energy Community in July 2017. So far, the Third Energy Package has not been transposed in national legislation.<sup>6</sup> Even though, Georgia in 2018 adopted network codes that will assist in increasing data publication to certain extent.

Tables №1 and №2 below provide information on compliance of the gas market stakeholders of the Energy Community Contracting Parties with the transparency requirements of Directive 2009/73 EC and Regulation 715/2009.<sup>7</sup> Links to the relevant publications as well as details on compliance with detailed provisions of Annex I of the Regulation 715/2009.

Note that in the following two tables progress compared to the previous reporting year are marked green. There is no progress on implementation of Directive (EU) 73/2009 requirements in the Contracting Parties; regarding transposition of Regulation (EU) 715/2009 in terms of data publication obligation, Serbia and Moldova made certain improvement.

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<sup>6</sup> Transposition deadline for 73/2009 Directive and 715/2009 Regulation is 31.12.2020 with the limited enactment on cross-border trade (cf Article 2(1) and (7) of the Accession Protocol of Georgia to the Energy Community of 14.10.2016.

<sup>7</sup> Bosnia and Herzegovina and fYR Macedonia did not provide update on current progress of transparency obligation and thus their data stayed the same as of last year.

Table 1 Implementation of transparency requirements of Directive 2009/73/EC

Relevant Art. of Directive 2009/73/EC	Short description of information that has to be published	Body responsible for publishing	Albania	Bosnia and Herzegovina	fYR of Macedonia	Georgia	Moldova	Serbia	Ukraine
13(3) Tasks of transmission, storage and/or LNG system operators	Terms and conditions, including rules and tariffs, for the provision of balancing services by the TSOs	TSO ; NRA methodology for charges	No	√	√	nap	No	√	√
23(1) Decision- making powers regarding connection of storage facilities, LNG regasification facilities and industrial customers to the transmission system	Procedures and tariffs for connection of storage facilities, LNG regasification facilities and industrial customers to the transmission system	TSO	No	√	X	nap	√	√	√ <sup>8</sup>
32(1) Third- party access	Transmission, distribution and LNG tariffs or methodologies, where only methodologies are approved	TSOs, DSOs, LNG operators, NRAs	√	√	√	√	√	√	√

<sup>8</sup> Procedures for connection to the transmission system and storages are established by the Transmission network code (<http://utg.ua/img/menu/businessinfo/docs/GTS%20Code.pdf>) According to provisions of the Transmission Network Code, connection to the transmission system is not standard and its tariffs depend on the technical condition of certain connection. Tariffs for connection are defined by the requirements of the Methodology (<http://www.nerc.gov.ua/index.php?id=19652>).

Table 2 Implementation of transparency requirements of Regulation 715/2009

Relevant Art. Of Regulation 715/2009	Short description of information that has to be published	Body responsible for publishing	Albania	Bosnia and Herzegovina	fYR of Macedonia	Georgia	Moldova	Serbia	Ukraine
Art.3 Certification of TSOs	Decision on TSO certification, and, in case the decision different from the opinion of the ECS, the reasoning underlying such decision	NRA	√	X	X	X	X	√	X
Art.15 Third- party access services concerning storage and LNG facilities	Data on the use and availability of services, in a time-frame compatible with the LNG and storage facility users' reasonable commercial needs	LNG and SSO operator	X	nap	nap	X	nap	X	√
Article 16 (2) Principles of CAM and CMP concerning TSOs	Capacity allocation mechanisms	TSO	X	√	√	X	√	√	√
Article 16 (3) Principles of CAM and CMP concerning TSOs	Congestion management procedures	TSO	X	√	√	X	√	√	√
Article 17 (2) Principles of CAM and CMP concerning storage and LNG facilities	Capacity allocation mechanisms	LNG and SSO operator	X	nap	nap	X	nap	X	√
Article 18(1) Transparency requirements concerning TSOs	Detailed info. regarding services offered and the relevant conditions applied, technical information necessary for network users to gain effective network access	TSO	X	√	√	X	√	√	√
Article 18(2) Transparency requirements concerning TSOs	Reasonably and sufficiently detailed information on tariff derivation, methodology and structure	TSO or NRA	√	√	√	X	√	√	√

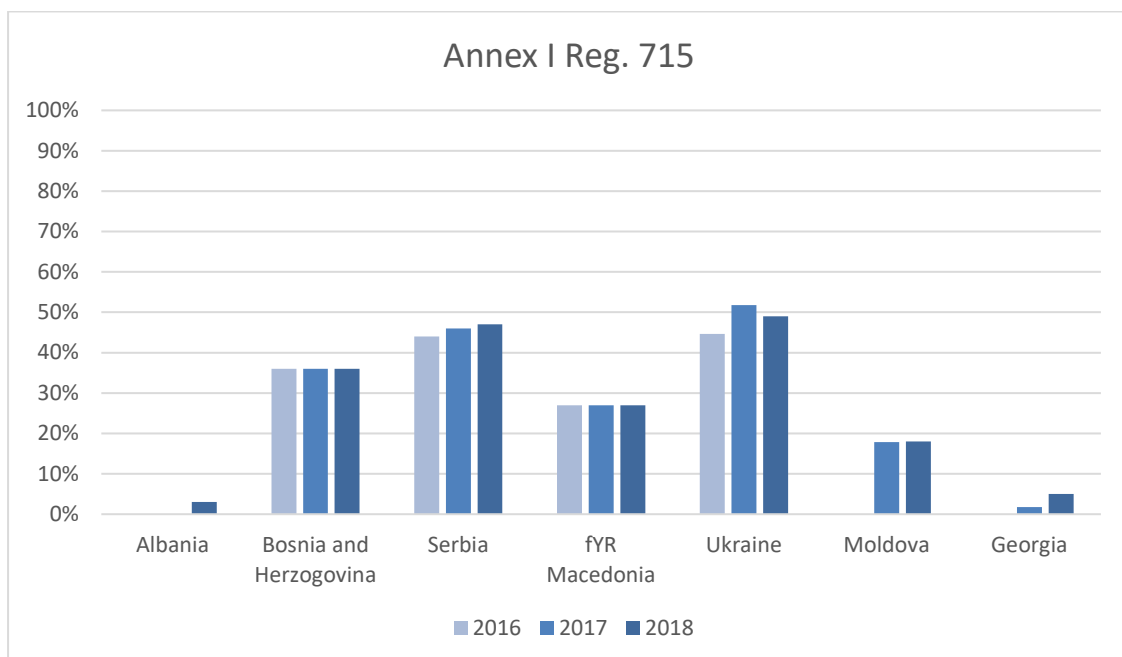


Relevant Art. Of Regulation 715/2009	Short description of information that has to be published	Body responsible for publishing	Albania	Bosnia and Herzegovina	fYR of Macedonia	Georgia	Moldova	Serbia	Ukraine
Article 18(3) Transparency requirements concerning TSOs	Info. on technical, contracted and available capacities on a numerical basis for all relevant points including e/e points on a regular and rolling basis, in a user- friendly and standardized manner	TSO	X	√	X	X	X	X	√
Article 18(6) Transparency requirements concerning TSOs	Ex- ante and ex- post supply and demand information, based on nominations, forecasts and realized flows in and out of the system	TSO	X	X	X	X	X	X	X
Article 18(7) Transparency requirements concerning TSOs	Measures taken as well as costs incurred and revenue generated to balance the system	TSO	X	X	X	X	X	X	X
Article 19 (1) Transparency requirements concerning storage and LNG facilities	Info. regarding services offered and the relevant conditions applied, technical information necessary for new LNG and storage facility users to gain effective network access	SSO and LNG operator	X	nap	nap	X	nap	X	√
Article 19 (2) Transparency requirements concerning storage and LNG facilities	Info. on contracted and available storage and LNG facility capacities on a numerical basis, on a regular and rolling basis and in a user- friendly standardized manner	SSO and LNG operator	X	nap	nap	X	nap	X	√
Article 19 (4) Transparency requirements concerning storage and LNG facilities	The amount of gas in each storage and LNG facility, inflows and outflows, and the available storage and LNG facility capacities, including for those facilities exempted from TPA.	SSO and LNG operator	X	nap	nap	X	nap	X	√
Article 19 (5) Transparency requirements concerning storage and LNG facilities	Sufficiently detailed information on tariff derivation, the methodologies and the structure of tariffs for infrastructure under regulated TPA	SSO and LNG operator or NRA	X	nap	nap	X	nap	√	√
Article 21(2) Balancing rules and imbalance charges	Calculation methodology for imbalance charges as well as final tariffs	TSO or other competent authority	X	X	√ (calculation methodology)	X	X	√	√

Regarding the implementation of the transparency requirements of Regulation 715/2009, data publication checks were conducted on both the relevant articles of Regulation 715/2009 and Annex I of Regulation 715/2009. The overall scoring indicator of Annex I of 715/2009 Regulation was calculated as ratio of published data items compared to all publication requirements of Annex I.

Figure 1 reveals very limited progress by countries regarding the implementation of data publication requirements of Annex I of 715/2009 Regulation in 2018 compared to the past year. Albania participated for the first time in the survey, therefore compliance data are presented only for 2018. Serbia and Ukraine are ahead in terms of compliance with the Annex I of 715/2009 Regulation requirements on transparency but the situation almost has not improved in 2018. This fact needs further investigation with the relevant Contacting Parties. It is worth mentioning Moldova's attempts to increase data transparency coverage. Taking into account ongoing efforts, further improvements are expected in the next reporting period. Georgia fails to satisfy data transparency requirements to a great extent, which is caused by various factors such as non-compliance of Georgian gas legislation with the gas acquis. For the in-depth understanding of overall scoring indicator of Annex I of 715/2009 Regulation in 2018, please refer to Annex I.

Figure 1 Overall scoring in terms of publication of data pursuant to Annex I of Regulation 715/2009.



## 2. Summary of findings

In general, primary and secondary legislation setting the rules for gas market functioning in Serbia and Ukraine provide a solid background for fulfilling transparency requirements of both Directive 73/2009 and Regulation 715/2009. Nevertheless, the unbundling of transmission system operators in both countries has not been finalized and many activities envisaged by the network code are not yet performed. Having in mind that majority of secondary legislation in Ukraine started implementing in 2016, certain progress is already visible, albeit the full implementation of transparency requirements is still pending. Secondary legislation implementing Third Package in other analyzed Contracting Parties is still under preparation and currently implemented transparency provisions are based on the existing gas market related rules. In Moldova, most important primary and secondary legislation on transparency was adopted, but still important requirements are not met. The Regulation on access to the transmission networks and congestion management is not applied by the TSO due to the long term contracts signed with Gazprom. Georgia lags behind in transposition of not only transparency requirements but also all other provisions of Third Energy Package. However, having in mind that Georgia became Contracting Party only this year and having exemption from cross-border related requirements, it is expected that limited degree of compliance will be improved in the coming years.

## Annex: List of Publication Items Monitored

The following table provides a detailed assessment of the compliance status with the individual publication requirements of Annex I of Regulation (EU) 715/2009. Fulfilled requirements are marked green, whereas lack of compliance is marked red. Statuses are based on the survey answers of Contracting Parties. The table with links to the published information may be found here: [Transparency\\_2017.xlsx](#)

Relevant Article of Annex I of Regulation 715/2009	Short description of information that has to be published	Albania	Bosnia and Herzegovina	fYR Macedonia	Georgia	Moldova	Serbia	Ukraine
1.9.	Planned maintenance periods that might affect network users' rights from transport contracts and corresponding operational information with adequate advance notice; changes to planned maintenance periods; updated regularly	no	yes	yes	no	no	yes	yes
3.1.2.a	Detailed and comprehensive description of the different services offered and their charges	no	yes	yes	no	yes	yes	yes
3.1.2.b	Different types of transportation contracts available for these services	no	no	yes	no	no	yes	yes
	Network code and/or the standard conditions outlining the rights and responsibilities of all network users including:	yes	yes	yes	no	no	yes	yes
	1. Harmonized transportation contracts and other relevant documents;	no	yes	yes	no	no	yes	yes

	2. if relevant for access to the system, for all relevant points as defined in paragraph 3.2 of this Annex, a specification of relevant gas quality parameters, including at least the gross calorific value and the Wobbe index, and the liability or costs of conversion for network users in case gas is outside these specifications;	no	yes	yes	no	yes	yes	Yes (not for each point, but for territory regions)
	3. if relevant for access to the system, for all relevant points information on pressure requirements;	no	yes	yes	no	yes	yes	yes
	4. the procedure in the event of an interruption of interruptible capacity, including, where applicable, the timing, extent, and ranking of individual interruptions (for example pro-rata or first-come-last-interrupted);	no	yes	yes	no	no	yes	yes
3.1.2.d	Harmonised procedures applied when using the transmission system, including the definition of key terms	no	yes	yes	no	yes	yes	yes
	Publish provisions on:							
3.1.2.e	1. capacity allocation	no	yes	yes	no	Yes	yes	yes
	2. congestion management	no	yes	yes	no	Yes	yes	yes
	3. anti-hoarding	no	no	no	no	no	Yes	no
	4. reutilization procedures	no	no	no	no	no	Yes	no
3.1.2.f	Rules applicable for capacity trade on the secondary market vis-à-vis the transmission system operator	no	no	no	no	yes	yes	yes

3.1.2.g	Rules on balancing and methodology for the calculation of imbalance charges	no	yes	no	no	no	yes	yes
3.1.2.h	the flexibility and tolerance levels included in transportation and other services without separate charge, as well as	no	yes	yes	no	no	yes	yes
3.1.2.h	any flexibility offered in addition to this and the corresponding charges	no	no	yes	no	no	no	no
3.1.2.i	Detailed description of the gas system of the transmission system operator and its relevant points of interconnection as defined in paragraph 3.2 of this Annex		yes	yes	no	yes	no	yes
3.1.2.i	Names of the operators of the interconnected systems or facilities	no	no	yes	no	yes	no	yes
3.1.2.j	Rules applicable for connection to the system operated by the transmission system operator	yes	yes	yes	no	no	yes	yes
3.1.2.k	Information on emergency mechanisms, as far as it is the responsibility of the TSO, such as measures that can lead to the disconnection of customers groups and other general liability rules that apply to the transmission system operator	no	yes	yes	no	no	yes	yes
3.1.2.l	Procedures agreed upon by TSOs at interconnection points, of relevance for access of network users to the transmission systems concerned, relating to interoperability of the network	no	yes	?	no	no	yes	yes
3.1.2.l	Agreed procedures on nomination and matching procedures	no	yes	?	no	no	yes	yes

3.1.2.m	Detailed and comprehensive description of the methodology and process, including information on the parameters employed and the key assumptions, used to calculate the technical capacity	no	yes	no	no	no	no	no
3.3.1., 3.3.2., 3.3.3.	At all relevant points the following information for all services and ancillary services:							
	(a) the technical capacity for flows in both directions;	no	yes	no	no	yes	No	yes
	(b) the total contracted firm and interruptible capacity in both directions	no	no	no	no	no	No	yes (contracted capacity only from EU members to Ukraine)
	(c) the nominations and re-nominations in both directions;	no	no	no	no	no	no	no
	(d) the available firm and interruptible capacity in both directions;	no	yes	no	no	no	no	no
	(e) actual physical flows;	no	no	no	no	no	no	yes
	(f) planned and actual interruption of interruptible capacity;	no	no	no	no	no	no	yes
(g) planned and unplanned interruptions to firm services as well as the information on restoration of the firm services (in particular, maintenance of the system and the likely duration of any interruption due to maintenance).	no	no	no	no	no	yes	yes	

3.3.4.	Measured values of the gross calorific value or the Wobbe index at all relevant points, on a daily basis	no	no	no	yes	no	yes	yes
	Preliminary figures at the latest 3 days following the respective gas day	no	no	no	yes	no	yes	no
	Final figures within 3 months after the end of the respective month	no	no	no	yes	no	yes	yes
3.3.5.	Available capacities, booked and technical capacities, on an annual basis, for all relevant points,	no	yes	no	no	no	no	yes
	over all years where capacity is contracted plus 1 year, and	no	no	no	no	no	no	No
	at least for the next 10 years.	no	no	no	no	no	no	no
	(a) interconnection point where the capacity is sold;	no	no	no	no	no	no	yes
	(b) type of capacity, i.e. entry, exit, firm, interruptible;	no	no	no	no	no	no	no
	(c) quantity and duration of the capacity usage rights;	no	no	no	no	no	no	no
	(d) type of sale, e.g. transfer or assignment;	no	no	no	no	no	no	no
	(e) the total number of trades/transfers;	no	no	no	no	no	no	no
(f) any other conditions known to the TSO as mentioned in 3.3.	no	no	no	no	no	no	no	
3.4.1	TSOs shall ensure the publication on a daily basis and updated every day the aggregated amounts of capacities offered, and contracted on the secondary market (i.e. sold from one network user to another network user), where the information is available to the TSO:	no	no	no	no	no	no	no



	(a) interconnection point where the capacity is sold;	no	no	no	no	no	no	no
	(b) type of capacity, i.e. entry, exit, firm, interruptible;	no	no	no	no	no	no	no
	(c) quantity and duration of the capacity usage rights;	no	no	no	no	no	no	no
	(d) type of sale, e.g. transfer or assignment;	no	no	no	no	no	no	no
	(e) the total number of trades/transfers;	no	no	no	no	no	no	no
3.4.2.	(a) a description of standardised products which can be sold on the secondary market;	no	no	no	no	no	yes	no
	(b) lead time for the implementation/acceptation/registration of secondary trades. In case of delays the reasons have to be published;	no	no	no	no	no	yes	no
	(c) the notification to the transmission system operator by the seller or the third party as referred to under 3.4(1) about name of seller and buyer and capacity specifications as outlined in 3.4(1).	no	no	no	no	no	yes	no
3.4.3.	Regarding the balancing service, does the TSO provide to each network user, for each balancing period, its specific preliminary imbalance volumes and cost data per individual network user, at the latest 1 month after the end of the balancing period?	no	no	no	no	no	yes	yes

	Is final data of customers supplied according to standardised load profiles within 14 months later provided?	no	no	no	no	no	yes	no
3.4.4.	Are flexibility services, other than tolerances, for third party access offered?	no	no	no	no	no	no	no
	Is ex-post information on the aggregate utilization of every flexibility service at the end of each gas day published?	no	no	no	no	no	no	no
3.4.5.	Per balancing zone:							
	The amount of gas in the transmission system at the start of each gas day and	no	nap	no	no	no	no	no
	The forecast of the amount of gas in the transmission system at the end of each gas day	no	nap	no	no	no	no	no
	Is amount of gas in the transmission system published on an hourly basis?	no	nap	no	no	no	no	no
	Alternatively, per balancing zone:							
	The aggregate imbalance position of all users at the start of each balancing period	no	nap	no	no	no	no	no
	The forecast of the aggregated imbalance position of all users at the end of each gas day	no	nap	no	no	no	no	no
3.4.6.	Are user-friendly instruments for calculating tariffs provided?	no	nap	no	no	no	no	no