



**E-CONTROL**

**INTERPRETATIVE NOTE**

of Energie-Control Austria on Transparency Requirements and  
Third-Party Access Services Concerning Storage Facilities

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- Available Capacities  
- User Friendliness  
- Utilization  
- Services

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## **Contents**

1.	Aim of the interpretative note .....	3
2.	Legal framework .....	3
	2.1. General remarks .....	3
	2.2. Penalties .....	4
3.	Transparency requirements pursuant to Article 19 Regulation (EC) No 715/2009 .....	5
	3.1. General provisions (Article 19(1)) .....	5
	3.2. Services (Article 19(2)) .....	6
	3.3. Type of publication (Article 19(3)) .....	7
	3.4. Information to be published (Article 19(4)) .....	8
4.	Third-party access services pursuant to Article 15 Regulation (EC) No 715/2009 .....	11
	4.1 Long and short-term services (Article 15(2)(b)) .....	11
	4.2 Type of services (Article 15(2)(c)) .....	11
5.	Suggestions and recommendations by the regulatory authority .....	12

## **1. Aim of the interpretative note**

The present interpretative note details the legal point of view of Energie-Control Austria (hereafter “E-Control”) on the implementation of transparency requirements and third-party access services concerning storage facilities and sets the applicable minimum requirements.

In this note, E-Control interprets and details the relevant provisions with the aim to provide storage customers with all information they need to take informed decisions, in a straightforward and non-discriminatory manner.

The interpretative note is not legally binding, but it explains the regulatory authority’s legal viewpoint of the stipulations set forth in Article 15 and 19 of Regulation (EC) No 715/2009.<sup>1</sup>

## **2. Legal framework**

### **2.1. General remarks**

The legal basis for transparency requirements and third-party access services is mainly laid down in Article 19 and Article 15(2)(b) and (c) of Regulation (EC) No 715/2009.

A “storage facility” as defined in section 7 para. 1 item 57 *Gaswirtschaftsgesetz* (Natural Gas Act) 2011<sup>2</sup> is a facility used for storing natural gas, owned and/or operated by a natural gas undertaking, excluding any parts used for activities pursuant to the *Mineralrohstoffgesetz* (Mineral Resources Act), and excluding facilities reserved exclusively for system operators in carrying out their functions.

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<sup>1</sup> Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks, OJ L 211, 14.08. 2009, p. 36, as amended by the Commission Decision of 10 November 2010 amending Chapter 3 of Annex I to Regulation (EC) No 715/2009, OJ L 293, 11 November 2010, p. 67.

<sup>2</sup> *Gaswirtschaftsgesetz* (Natural Gas Act) 2011, *BGBI* (Federal Law Gazette, FLG) I no 107/2011

Regulation (EC) No 715/2009 refers to “storage system operators”, a term defined in Directive 2009/73/EC<sup>3</sup> concerning the internal market in natural gas as “a natural or legal person who carries out the function of storage and is responsible for operating a storage facility”. This definition was adopted in section 7 para. 1 item 58 Natural Gas Act 2011 for the German term *Speicherunternehmen*, additionally specifying that “this includes undertakings that merely manage a storage facility”. It is pointed out that the term storage system operator (SSO) in this interpretative note, also used in the Natural Gas Act, refers to *Speicherunternehmen*.

As part of its supervisory duties according to section 24 para. 1 item 1 *Energie-Control-Gesetz* (E-Control Act),<sup>4</sup> E-Control is entrusted with monitoring compliance of the market participants with all tasks assigned to them by virtue of ordinances issued pursuant to the E-Control Act or by way of directly applicable EU law.

Pursuant to section 24 para. 2 E-Control Act, in exercising its tasks E-Control may instruct by way of an official decision that compliance with the law be restored within an appropriate period of time, while at all stages of the proceedings endeavouring to effect an amicable settlement with the parties concerned.

## **2.2. Penalties**

According to section 159 para. 2 item 31 Natural Gas Act 2011, infringements of the stipulations of Regulation (EC) No 715/2009 and of the guidelines adopted pursuant thereto are deemed to be administrative offences and fined up to € 75,000.

Such fines are imposed by the district administration authorities.

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<sup>3</sup> Cf. Art (2)(10) Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas, OJ L 211, p. 94.

<sup>4</sup> FLG I 2010/110 as amended by FLG I no 107/2011.

### 3. Transparency requirements pursuant to Article 19 Regulation (EC) No 715/2009

#### 3.1. General provisions (Article 19(1))

*“[LNG and] storage system operators shall make public detailed information regarding the services it offers and the relevant conditions applied, together with the technical information necessary for [LNG and] storage facility users to gain effective access to the [LNG and] storage facilities.”*

#### E-Control interpretation

- The **services offered** by storage system operators shall include
  - a detailed product description (including the contract term pursuant to Article 15 (2)(b) Regulation (EC) No 715/2009 in days, months and years);
  - information about prices and price adjustment clauses.
  
- The **relevant conditions** include, as a minimum,
  - the general terms and conditions (GTC); and
  - standard contracts.
  
- The **technical information relevant** for storage users includes, as a minimum,
  - an overview of planned maintenance activities;
  - unplanned interruptions leading to restrictions of storage capacities, to be made public on the website of the SSO in a timely manner, and existing storage customers to be notified thereof;

- for each storage facility, a graphic depiction of the injection and withdrawal characteristics;
- technical maximum capacities (injection and withdrawal rates) and working gas volume;
- system operator.

### **3.2. Services (Article 19(2))**

*“For the services provided, [LNG and ] storage system operators shall make public information on contracted and available storage [and LNG] facility capacities on a numerical basis on a regular and rolling basis and in a user-friendly standardised manner.”*

#### E-Control interpretation

- Storage system operators shall **make public in a user-friendly standardised manner**
  - Access to data shall be free of charge and user-friendly. When registering for a login, it shall be ensured that access for the login is enabled immediately following registration, by way of an automated process. No special software or application shall be necessary for gaining access to the data.
- For the services provided, storage system operators shall make public **information on contracted and available storage capacities**
  - Pursuant to Article 15(2) Regulation (EC) No 715/2009, unbundled services with different contract terms must be offered.

- If during a certain period the services offered become limited (e.g. no bundled products can be offered due to booking of the total working gas volume), this fact shall be made public on the storage system operator's website in a user-friendly and standardised form; in addition, existing customers must be notified accordingly.
- For contracts already concluded, it is sufficient to make public aggregated data on the capacities or the working gas volume of the particular products.
- It is not necessary to state the available capacities for each product.

### **3.3. Type of publication (Article 19(3))**

*"[LNG and] storage system operators shall always disclose the information required by this Regulation in a meaningful, quantifiably clear and easily accessible way and on a non-discriminatory basis."*

#### E-Control interpretation

Access to data must be free of charge and user-friendly. When registering for a login, it shall be ensured that access for the login is enabled immediately following registration, by way of an automated process. No special software or application must be necessary for gaining access to the data.

### **3.4. Information to be published (Article 19(4))**

*“[LNG and] storage system operators shall make public the amount of gas in each storage [or LNG] facility, or group of storage facilities if that corresponds to the way in which the access is offered to system users, inflows and outflows, and the available storage [and LNG] facility capacities, including for those facilities exempted from third-party access. That information shall also be communicated to the transmission system operator, which shall make it public on an aggregated level per system or subsystem defined by the relevant points. The information shall be updated at least daily.*

*In cases in which a storage system user is the only user of a storage facility, the storage system user may submit to the national regulatory authority a reasoned request for confidential treatment of the data referred to in the first subparagraph. Where the national regulatory authority comes to the conclusion that such a request is justified, taking into account, in particular, the need to balance the interest of legitimate protection of business secrets, the disclosure of which would negatively affect the overall commercial strategy of the storage user, with the objective of creating a competitive internal gas market, it may allow the storage system operator not to make public the data referred to in the first subparagraph, for a duration of up to one year.*

*The second subparagraph shall apply without prejudice to the obligations of communication to and publication by the transmission system operator referred to in the first subparagraph, unless the aggregated data are identical to the individual storage system data for which the national regulatory authority has approved non-publication.”*

#### E-Control interpretation

- **Make public the amount of gas** in each storage facility, or group of storage facilities, and update the information at least daily



- **Make public inflows and outflows and the available storage facility capacities**, and update the information at least daily
  - As a minimum, the amounts of gas as well as the daily inflows and outflows should be published for the current month.<sup>5</sup>
  - Regarding the archiving of historical data (working gas volume, inflow and outflow capacities), historical values shall be made available to (potential) storage customers for reasons of transparency and equal treatment, since storage customers must be able to assess the probability of interruption as being reflected in the price of interruptible capacities (cf. Article 15(2)(a) Regulation (EC) No 715/2009). SSOs choosing not to publish historical data on their websites must at least make this information available to customers upon request, while an indication to this effect must be provided on the website. This historical information must be sent to potential storage customers upon a request for a service offer.
  - Available capacity must be published for that future period of time for which capacity is offered (i.e. the longest contract term).
  - The reference period for the available capacity may be longer than one day, but information must be updated on a daily basis. Consequently, in order for information to be transparently understandable, the storage system operator must indicate when the information was last updated (e.g. by including the item “updated on” at an appropriate place on the website). As long as there are no changes in the available capacity, only the date must be updated on a daily basis.

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<sup>5</sup> Cf. section 105 para. 1 item 4 Natural Gas Act 2011.

- **Communication of information to system operators**
  - Storage system operators may also meet the requirement specified in Article 19(4) Regulation (EC) No 715/2009 by providing the transmission system operator with information as to where and in what form specific data may be found on the storage system operator's website.
  - Pursuant to section 105 para. 1 item 2 Natural Gas Act 2011, storage system operators shall furnish to the distribution system operators various items of information that are mainly of a technical nature, especially data such as to ensure safe and efficient operation. Storage system operators must additionally make available on their websites the commercial information specified in section 105 para. 1 item 4 Natural Gas Act 2011.
  - The reference period for the available capacity may be longer than one day, but information must be updated on a daily basis.
  
- **Confidential treatment, reporting requirement vis-à-vis the system operator and publication**
  - In cases in which a storage system user is the **only user of a storage facility**, the storage system user may submit to the national regulatory authority a reasoned request for **confidential treatment**. The data (working gas volume, inflows and outflows, available capacity) can then be exempted from the publication requirement for a duration of up to one year.
  - Where the capacity of a storage facility is marketed by several storage system operators (as is the case e.g. for the Haidach facility) and one of these storage system operators serves one user only, a request for confidential treatment is not deemed to be reasoned, as the storage facility as a whole is used by more than one user.

- A storage system operator that has been granted non-publication by the regulatory authority must still communicate the data to the system operator. However, if the (aggregated) data to be published by the system operator are identical to the data for which an exemption from publication has been granted, the exemption also applies to publication by the system operator, i.e. the data are not published.

## 4. Third-party access services pursuant to Article 15 Regulation (EC) No 715/2009

### 4.1 Long and short-term services (Article 15(2)(b))

*“Each storage system operator shall [...] offer to storage facility users both long and short-term services [...]”*

#### E-Control interpretation

- Offer both **long and short-term services**
  - This provision refers to a market-oriented range of offers concerning the duration of contracts, i.e. it includes all contract terms.

### 4.2 Type of services (Article 15(2)(c))

*“Each storage system operator shall [...] offer to storage facility users both bundled and unbundled services of storage space, injectability and deliverability.”*

### E-Control interpretation

- Offer both **bundled and unbundled services**
  - No further details

## **5. Suggestions and recommendations by the regulatory authority**

In addition to complying with the transparency requirements specified in Article 19 Regulation (EC) No 715/2009, E-Control suggests publication of the information and data listed below:

- The GGPSSO CAM & CMP<sup>6</sup> should be reflected in the GTC, which are the immediate legal basis for storage contracts. It is therefore recommended that storage system operators publish the GGPSSO CAM & CMP on their websites as well.
- Technical indicators:
  - pressure
  - how deep underground the facility is located
  - year of start of operations
  - type of facility

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<sup>6</sup> Publicly available at [http://www.energy-regulators.eu/portal/page/portal/EER\\_HOME/EER\\_PUBLICATIONS/CEER\\_PAPERS/Gas/2005](http://www.energy-regulators.eu/portal/page/portal/EER_HOME/EER_PUBLICATIONS/CEER_PAPERS/Gas/2005) and, in the 2011 updated version, at [http://www.energy-regulators.eu/portal/page/portal/EER\\_HOME/EER\\_PUBLICATIONS/CEER\\_PAPERS/Gas/Tab](http://www.energy-regulators.eu/portal/page/portal/EER_HOME/EER_PUBLICATIONS/CEER_PAPERS/Gas/Tab)