

**Proposal for a framework of a mutually recognised natural gas
wholesale trading licence in the GRI SSE region**

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I. Introduction

Wholesale traders must be ensured the possibility to conduct their activities without any obstacles on the European integrated natural gas market. In particular, newcomers should not face exaggerate burdens to operate on the market.

One of the primary regulatory barriers voiced by network users is the heterogeneity of licensing- and registration processes faced by market participants across the EU. Ideally, in a fully integrated market, such processes should be harmonised.

The existing EU-level and national regulatory frameworks allow for a wide array of natural gas trade licensing procedures in Member States that, besides respecting EU directives, take into consideration national specifications.

The project has been initiated at a sub-regional level in the V4 countries. The NRAs of the V4 completed a survey; the responses were summarized afterwards and discussed at a number of fora. The benefits of a sub-regional solution were found to be limited by the lack of infrastructure that connects the V4 countries. The lessons of the project and the expressed demand of network users for modifications call for continuing the project with an extended geographical scope.

The objective of the current document is to jointly develop a proposal for the definition of a cluster of minimum criteria that can be supported by all regulatory regimes in the field of natural gas wholesale trade licensing in the GRI SSE region¹ in order to:

- i. minimize administrative burdens to cross-border wholesale trade while maintaining the transparency of licensing regimes; and
- ii. maintain sufficient regulatory supervision for all concerned NRAs.

This minimum set of criteria shall function as the basis for mutually recognizing authorizations to conduct natural gas wholesale trade in the GRI SSE region avoiding exaggerate modifications to the respective legislation in force. It is thus pivotal that the set of criteria is defined based on the mutual understanding of all GRI SSE NRAs and better facilitates the commercial interoperability of markets. The document does not base itself upon already existing regulation, but intends to develop a general economic and legal thinking that can apply in each Member State irrespective of their national specifications.

Since the current paper for discussion only drafts the framework of a possible solution, the detailed rules and criteria necessary for de facto implementation can only be defined conditional to an agreement on the principles of the proposal and shall be agreed on in the next steps. Considering that the proposal is of high relevance to the members of the GRI SSE Stakeholder Group, the current document is circulated for consultation. The stakeholders' written feedback is kindly requested by 22 June 2016 COB. The responses received until the specified date will be collected, evaluated and shared with the participants of the Stakeholder Group meeting on 8 July 2016 in Budapest in due course, so that a fruitful in-depth discussion could be held on the topic.

For the sake of clarity the terms and concepts used throughout the document are defined below.

¹ The GRI SSE comprises Austria, Bulgaria, the Czech Republic, Croatia, Cyprus, Greece, Hungary, Italy, Poland, Romania, Slovakia and Slovenia.

home country: the Member State in which the natural gas wholesale trading license is issued by the respective authority

host country: the Member State different from the home country, where the natural gas trader trades on the wholesale market

wholesale trader: the undertaking registered in the territory of the EU of the EFTA conducting physical and/ or virtual natural gas wholesale trade, but that does not supply end consumers

license: an authorization required for natural gas wholesale trade required by national legislation and issued by the institution defined in national legislation (ministry, regulator). The conditions to obtaining (and keeping) the authorization are defined in legislation.

registration: a notification of the wholesale trader towards the entity defined in national legislation/ sector-specific rules that the entity will engage in natural gas wholesale trade. The entity's registration cannot be rejected.

It shall be noted that a mutually recognised license/registration among Member States shall only refer to wholesale natural gas trade, since the supply to end consumers (retail) presupposes the application of a number of often country-specific rules, which are complicated to harmonize. Furthermore, conditions of participating on the wholesale market set by market participants i.e. commercial commitments (eg. System Operator's General Terms and Conditions of Contracts), such as those referring to financial guarantees and IT capabilities are not sufficient to enable operation on the retail market from a regulatory point of view. The regulation of the retail market necessitates the consideration of aspects of consumer protection and a number of technicalities derived from it.

II. Legal background

The table below briefly summarizes where natural gas wholesale trading licenses are necessary to obtain and what the issuing institution is.

	Does wholesale natural gas trade require a licence?	competent authority for issuing a licence
Austria	No	-
Bulgaria		
Czech Republic	Yes	NRA
Croatia		
Cyprus		
Greece		
Hungary	Yes	NRA
Italy	No	-
Poland	Yes	NRA
Romania	No	-
Slovakia	No	-
Slovenia		
(Serbia	Yes	NRA)

The differences of natural gas trade between Member States of the European Union are well reflected by the inconsistencies of associated concepts and definitions used in national regulations, which are of

course intertwined with the difficulties caused by the heterogeneity of licensing regimes noted above. The general and regulatory use of diverse definitions reduces the transparency of European natural gas trade. Directive 2009/73/EC of the European Parliament and of the Council is one of the few pieces of European legislation that provides definitions with relevance to natural gas trading activities, albeit the list of concepts is not extensive.

Article 2 of Directive 2009/73/EC stipulates the following:

(7) ‘supply’ means the sale, including resale, of natural gas, including LNG, to customers;

(29) ‘wholesale customer’ means a natural or legal person other than a transmission system operator or distribution system operator who purchases natural gas for the purpose of resale inside or outside the system where he is established.

Article 4 (1) of the Directive provides for the authorization procedure:

“In circumstances where an authorisation (for example, licence, permission, concession, consent or approval) is required for the construction or operation of natural gas facilities, the Member States or any competent authority they designate shall grant authorisations to build and/or operate such facilities, pipelines and associated equipment on their territory, in accordance with paragraphs 2 to 4. **Member States or any competent authority they designate may also grant authorisations on the same basis for the supply of natural gas and for wholesale customers.**”

The absence of an exhaustive collection of relevant definitions in European legislation has left space for national interpretations to prevail and the setting has so far been able to provide a sufficient framework for natural gas trade. However, with the intensification of European natural gas market integration supported by changing legislation, a number of difficulties have risen in cross-border trade, which seem to pose a barrier to smooth wholesale market activity across Member States.

The factors that call for an internationally recognised natural gas wholesale trading license/registration:

- bundled capacity booking necessitates authorization to trade on both sides of the IP;
- international activities are becoming dominant on liquid wholesale markets;
- access to infrastructure and market tools (eg.: organized market, capacity booking platforms, trading platforms, clearing houses, etc.) is conditional to authorization according to national regulations;
- the use of infrastructure and market tools does already require a system of guarantees necessary for secure operation, therefore no further guarantees shall be requested;
- maintained jurisdiction over market participants and their compliance with regulations must be ensured;
- licensing by Member States is an unnecessary burden for wholesale traders;
- wholesale market participation is often conditional to meeting redundant criteria in national procedures of licensing;
- the licensing requirements defined primarily to support the security of supply to consumers complicates wholesale market penetration.

III. The underlying principles of the proposal

- General approach: To jointly develop a proposal for the definition of a cluster of minimum criteria that can be supported by all regulatory regimes. This will be the basis of mutually recognizing authorizations to conduct natural gas wholesale trade in the GRI SSE region.
- Licensing mechanisms of retail trade (enabling the supply of end consumers) is out of scope at the moment.
- The main principles: Guarantees required to trade on the wholesale natural gas market shall be addressed on the level of market participants with tools facilitated by the market and supported by legislation, i. e. contractual commitments (eg. contract with TSO, commodity exchange, clearing house).
- A wholesale trader shall act in compliance with national regulations in force in the host country.
- Host NRAs shall have jurisdiction over the trader acting on the relevant wholesale market and these NRAs shall be able to implement measures against the trader once nonconformity with regulation is discovered.
- Burdens associated with obtaining a license and with gaining wider recognition of the authorization shall be minimized.
- The NRAs shall establish a common protocol / mechanism to monitor wholesale traders.
- The pillars of licensing processes in all Member States shall be:
 - EU Directives and network codes;
 - Financial stability criteria
 - Legal compliance (inclusion in registry, defined type of business entity, entity may not be insolvent, base capital, etc.);
 - Compliance with the provisions of Directive 2009/73/EC concerning conflict of interest;
 - Compliance with national taxation and accounting principles/regulations

The list above identifies those minimal principles that shall be respected in all regulatory regimes in order to maintain a transparent wholesale market with minimized administrative burdens. These principles shall be agreed by all regulators / competent authorities granting permits to wholesale natural gas traders to ensure that these authorizations are mutually recognisable in Member States. This proposal sees the above principles to be realized through a number of more precise requirements listed below.

Minimum procedural conditions of obtaining a licence to wholesale trade:

The entity willing to participate in wholesale natural gas trade:

1. is a registered company, is not insolvent and owes no debt to the state;
2. complies with the regulations of the country where the trading activity is conducted;
3. can be monitored regarding any conflict of interest (with respect to the country issuing the licence; assessing interests; monitoring is done “backwards”: infrastructure operators are examined first);
4. is financially stable;
5. meets national administrative requirements.

The requirements going beyond the minimum procedural conditions listed above shall be in line with required guarantees addressed on the level of market participants (see underlying principles) and shall

be in accordance with the principle of optimisation between the highest overall efficiency and lowest total costs with respect to pays and taxes associated with obtaining a licence.

IV. Application of law

The operation of a national gas market shall be based on EU- and on national legislation. EU law shall prevail under all circumstances, although there might be several differences (usually stricter provisions) in national regulations. While acting in accordance with natural gas market regulation of a given country, numerous other legal conditions shall be met by market participants (commercial criteria, data provision, etc.) and all necessary enabling conditions of market monitoring shall be provided.

In order to enable the NRA of a Member State to carry out its tasks of market surveillance, NRAs shall be able to contact the trader, which can be facilitated in different ways.

The following licences or notifications give the possibility to the competent authorities to supervise the market participants:

- Full trading licence
- Simplified trading licence
- Direct notification at the NRA
- Indirect notification of other licensees (TSO, trading platform, capacity booking platform, clearing house, SSO)

Both direct and indirect notifications can be applied depending on the preference of the trader. Based on these types of registration, the NRA can contact the trader for the purposes of data provision, and for the claim of market supervisory fee.

Traders entering the wholesale natural gas market shall automatically comply with the relevant regulations of the host Member State they conduct their activities in without explicit reminder or warning thereof. These entities shall also ensure their continuous awareness of amendments to legislation in order to maintain compliance.

The host NRAs shall be entitled to take action against the wholesale trader conducting its activities on the relevant market. The host NRA shall cooperate with the home NRA (or relevant authority) that issued the original authorization of the trading activity in case of a legal assessment with the purpose of providing legal assistance.

V. Documents and conditions necessary for an integrated wholesale trade licensing procedure

The key principle used in this proposal is that authorization in every Member State shall be conditional to meeting the minimum procedural conditions listed earlier, the assessment and documentation of which shall serve as the basis of the authorization process. Wholesale trading activities can be carried out in the Member State upon the fulfilment of the minimum conditions.

The minimum documents that must be requested by the authority issuing the licence:

1. (A valid and authentic) certificate of registration. A confirmation that the entity is not insolvent, and documentation of no debt owed to the state

2. A statement from the entity declaring that *all* national regulations and grid codes with relevance to its activities in terms of their character and geographical scope are binding and have to be applied while carrying out its activity on the market
3. A confirmation from the bank on payment of the administrative fee to the NRA (or relevant authority)
4. Contact details of the applicant.

General conditions of participating on the wholesale market:

Technical conditions

A fundamental condition of participating in natural gas wholesale trade is the ability to connect to necessary infrastructure. Since the lack of such an ability excludes membership in network use and at different platforms, no further requirement is needed (to avoid duplication). The potential market participant is incentivized sufficiently by the requirements established at the level of system operation.

Guarantees

The financial guarantees and contractual arrangements/conditions required by market participants (TSOs, SSOs, trading platform, capacity booking platforms) are sufficient to manage financial risk arising from the operation of wholesale traders, therefore no additional financial guarantees are needed.

In other cases, such as in the case of a bilateral commercial contract the provisions of civil law shall prevail.

Data provision

It is an indispensable condition of regulatory oversight and monitoring of the natural gas market to require market participants to provide relevant information to the NRAs of concern. Such data might overarch public and confidential information. In order to make sure that the market participant provides information that is valuable in terms of its relevance to the market, it shall be explicitly stated in its licence that upon the NRA's request, the market participant shall provide data to the NRA of the Member State regarding its activities on the respective market. Any further data request can be fulfilled with the legal assistance of the NRA having issued the original (trade) authorization.

Country specific conditions (where these are relevant):

Regulatory charges

The fundamental condition of the independence of national regulatory authorities is that their decisions and market supervisory role are fully separated from the executive branch. An additional condition is their financial independence, facilitated by financing their own operational expenditures by the fees imposed on market participants. Consequently, internationally active wholesale traders shall contribute to the financing of market monitoring and supervision in the countries they operate in. Different types of regulatory charges shall be applied according to national legislation, eg. administrative fee, supervisory fee.

Information provision

Obligations of the home NRA

The international licensing/authorization procedure shall be supported by easily accessible, comprehensive documentation prepared by the home NRA both in English and national language, summarizing key information for market participants. The information provided therein shall include:

- description of the market model, underlying information on access to the market and its infrastructure;
- applicable pieces of legislation, relevant market rules;
- grid code;
- detailed description of data provision;
- the amount of administrative fees, payment conditions;
- description of the jurisdiction of the NRA in terms of market supervision;
- the supervisory functions of the NRA;
- form of appeal.

Obligations of the host NRA towards the home NRA in case of an internationally recognized licence

- Information about the new market entrant – the country of origin shall record the extended activity;
- Information about the termination of the trading activity in the country of concern;
- Information about the obligation to pay a supervisory fee;
- Information about the case if a procedure against the authorized undertaking has been initiated in the country of operation;
- Information about the activity conducted in the country of concern in legal assistance has been requested.

Obligations of the home NRA towards the host NRA in case of an internationally recognized licence

- Any changes to the authorized entity (termination, extension, limitation, withdrawal of authorization, contact details and any changes thereof);
- Forwarding data regarding the trading activities conducted in the country of operation in case legal assistance has been requested.

Content and formal requirements

The integrated, internationally acknowledged wholesale natural gas trading licence shall be identically structured with identical content in the main text of NRA documents across the Member States involved. Further formal requirements can be included according to the NRAs' general practices.

The authorization shall be available both in English and the national language (if different from English).

The authorization shall include authentication.