

## Opinions on the „Proposal for a framework of a mutually recognised natural gas wholesale trading licence in the GRI SSE region”

We have collected and structured the comments received in the first turn. We marked where the comments related to. If there is a suggestion or proposal belongs to the relevant comment, you can find it parallel on the same number in the last column.

Organisation	Comment	Suggestion
<b>EFET</b>	<ol style="list-style-type: none"> <li data-bbox="539 663 1279 879">1. <b>(to I. Introduction)</b> <i>It is very important to distinguish licensing and registration. While the first entails ex-ante checks and verification and a relatively lengthy procedure, normally the second does not while entailing a commitment to compliance.</i></li> <li data-bbox="539 1031 1279 1246">2. <b>(to I. Introduction)</b> <i>With the above comment in mind the focus of the memo should rather be import licensing where some cases for a proper authorisation procedure may be made to address security of supply concerns and more in particular reliability of potential supplies.</i></li> <li data-bbox="539 1254 1279 1358">3. <b>(to definition: Wholesale trader)</b> <i>Such definition would be consistent with the Gas Directive definition of ‘wholesale customer’</i></li> </ol>	<ol style="list-style-type: none"> <li data-bbox="1305 663 2045 1023">1. As an overall comment one may therefore use this distinction to identify a lighter regime (notification only) for at least wholesale traders with no capacity. Such a solution would in fact make many of the issues discussed in the paper irrelevant it would for instance make participation to gas release programs much easier in those markets where competition is absent or very limited. Please note that not following the above would represent a step back for some of the markets in the region.</li> <li data-bbox="1305 1031 2045 1134">2. In this regard one may further differentiate a licensing procedure for contracts duration &lt; 1 year and one for contracts of longer duration</li> <li data-bbox="1305 1254 2045 1390">3. ‘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</li> </ol>

	<p>4. <b>(to II. Legal background)</b> - licensing by Member States is an unnecessary burden for wholesale traders <i>This is the key point. Licensed for pure trader are actually not necessary at all</i></p> <p>5. <b>(to III. Underlying Principles)</b> - The pillars of licensing processes in all Member States. <i>In all these respects in fact a license provides very little added value in that compliance the underlying assumption of participating to the natural gas business.</i></p> <p>6. <b>(to IV. Application of Law)</b> - NRAs shall be able to contact the trader, which can be facilitated in different ways. <i>Name of a contact person.</i></p> <p>7. <b>(to General conditions of participating on the wholesale market)</b> <i>All this can be part of a registration procedure and verified ex-post. In absence of the above access to the hub could be withdrawn</i></p>	<p>system where he is established;</p> <p>6. The name of a contact person can be easily provided as part of a registration procedure.</p>
<p>ANRE</p>	<p>1. <b>(to II. Legal Background)</b> The table of wholesale trade licenses. <i>Gas trading activity is covered by a supply license.</i></p> <p>2. <b>(to III. The underlying principles of the proposal, Main Principles)</b> <i>Does it mean that no other guarantees are required, only those required by participation to the market?</i></p>	<p>1. Correction of the table with data regarding Romania</p> <p>2. Clarification needed</p>

	<p>3. <b>(to VI. Application of law)</b> 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...<i>These paragraphs are not so clear – are dedicated only to the surveillance activities? Could the trader choose between licensing or other forms of registration?</i></p> <p>4. General comment to the issue of mutual recognition</p>	<p>3. Need to clarify how the NRA-s notify the traders entered into the national market.</p> <p>4. Proposal of a possible way further: The regional recognition could be based on a MoU concluded between Member States which are requesting a license for wholesale trading activity. In this respect a draft of a MoU could be proposed. In RO, the license is accompanied by license's conditions in which are explained the obligations and the rights of the license's holder. In order to clarify the rights and the obligations of a wholesale trader at regional level, a similar document could be developed based on the proposals from the document under discussion which are very useful for definition of a cluster of minimum criteria, which will accompany the MoU.</p>
<p>RWE</p>	<p>1. <b>(to I. Introduction)</b> Minimum criteria. <i>This comment applies to the entire document.</i></p> <p>2. <b>(to I. Introduction)</b> This minimum set of criteria shall function as the basis for mutually recognizing authorizations to conduct natural gas wholesale trade</p>	<p>1. RWE suggests removing the word "minimum". They do not think „minimum criteria" are what is needed, instead we need to move towards an exhaustive list (of course some items can remain at the discretion of national authorities, but to achieve harmonisation we need some sort of restriction of licensing rules).</p> <p>2. Mutual recognition may be good, but is perhaps not achievable in the near future. Instead, RWE would propose to focus on harmonisation as a near-term</p>

	<p>in the GRI SSE region avoiding exaggerate modifications to the respective legislation in force. <i>This comment applies to the entire document.</i></p> <p><b>3. (to II. Legal background)</b> The factors that call for an internationally recognised natural gas wholesale trading license/registration <i>One key factor is missing from the list</i></p> <p><b>4. (to III. The underlying principles of the proposal)</b> <i>Additional principles</i></p> <p><b>5. (to III. The underlying principles of the proposal)</b> The pillars of licensing processes in all Member States shall be...</p> <p><b>6. (to III. The underlying principles of the proposal)</b> The entity willing to participate in wholesale natural gas trade</p>	<p>goal which is a precondition for mutual recognition anyway.</p> <p><b>3.</b> Add to the list:</p> <ul style="list-style-type: none"> <li>• to reduce the barriers to entry imposed through licensing and reporting rules would increase competition in the markets (leading to more choice and innovation for consumers) and benefit security of supply</li> </ul> <p><b>4.</b> To be added to the list:</p> <ul style="list-style-type: none"> <li>• Data reporting obligations should be made consistent across Europe to reduce the burden on licenced companies.</li> <li>• Duplication of reporting mechanisms must be avoided and NRAs should receive relevant data from ACER rather than requiring licenced companies to report the same data twice.</li> <li>• Licences requirements for wholesale traders may differ depending on whether the trader is active on the virtual point only or also using the transmission system.</li> </ul> <p><b>5.</b> In order to achieve the objective of minimising administrative burdens, this list needs to be made precise and less general/open ended.</p> <p><b>6.</b> It would be useful to harmonise what licenced parties need to provide when applying for a licence. In RWE opinion the relevant information is:</p> <ul style="list-style-type: none"> <li>• Company name, address and registered number;</li> <li>• Company structure, shareholding and names of company directors;</li> <li>• Single point of contact within the company for</li> </ul>
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	<p><b>7. (to III. The underlying principles of the proposal)</b> 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</p> <p><b>8. (to IV. Application of law)</b> Full/Simplified trading licence</p> <p><b>9. (to IV. Application of law)</b> These entities shall also ensure their continuous awareness of amendments to legislation in order to maintain compliance.</p> <p><b>10. (to V. Documents and conditions necessary for an integrated wholesale trade licensing procedure)</b> <i>Data provision</i></p>	<ul style="list-style-type: none"> <li>dealing with queries and official notices;</li> <li>• Brief explanation of company’s reasons for seeking a licence and a projected business plan;</li> <li>• Minimum of one year’s annual financial statement (if available) including audited summary from Group accounts (if part of a Group);</li> <li>• Signed declaration to comply with all national legislation and applicable terms and conditions of the registered bodies necessary to carry out trades;</li> <li>• Cost reflective licence application fee.</li> </ul> <p><b>7.</b> Ideally, this would be an exhaustive list without an opener under which an unlimited number of additional rules could be imposed</p> <p><b>8.</b> It will be necessary to define what is meant by ”full” and ”simplified” trading licence and what entitlements and obligations apply under each</p> <p><b>9.</b> In addition it would be useful if NRAs could support entities by informing them of changes to regulatory requirements automatically.</p> <p><b>10.</b> Duplication should be avoided. For example, NRAs should not request data from licensed companies that has already been provided to them, or ACER, under other legal obligations.</p>
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		GENERAL COMMENT FROM RWE: In our view this project would be equally relevant and useful for the electricity sector, so we propose to extend its scope.
AEEGSI	<p>A general comment to take into consideration the framework of common rules already set by the REMIT (EU Regulation No 1227/2011 on wholesale energy market integrity and transparency).  <i>The REMIT states the following: "A European register of market participants, based on national registers, should be established to enhance the overall transparency and integrity of wholesale energy markets." In that respect ACER has recently finalized a public consultation on the Centralised European Register of Energy Market Participants (CEREMP), the register in which all market participants must lodge an entry as part of REMIT.</i></p>	<p>AEEGSI suggests a relevant analysis of the ACER Public Consultation Paper on Functioning and Usefulness of the European Register of Market Participants.</p> <p>It needs further assessment.</p>
	<ol style="list-style-type: none"> <li>1. <b>(to definition: Wholesale trader)</b> They agree with E-Control's comment.</li> <li>2. <b>(to II. Legal background)</b> The table of wholesale trade licenses.  <i>Currently CERA issues a licence for the supply of natural gas to wholesale customers</i></li> <li>3. <b>(to III. The underlying principles of the proposal)</b> The requirements going beyond the</li> </ol>	<ol style="list-style-type: none"> <li>1. We should have to separate definitions on wholesale trading for physical and virtual gas wholesale trade</li> <li>2. Correction of the table with data regarding Cyprus</li> <li>3. Suggestion on the existence of a branch office.</li> </ol>

<p><b>CERA</b></p>	<p>minimum procedural conditions... Provisions related to security of supply issues should be taken into account depending on the specificity of the host country. <i>Maybe a minimum guarantee should be a prerequisite for obtaining a licence</i></p> <p><b>4. (to IV. Application of law)</b> The host NRA shall cooperate with the home NRA (or relevant authority)... <i>MoU between the NRAs</i></p> <p><b>5. (to Information provision)</b> <i>Move this section</i></p>	<p><b>4.</b> A type of MoU should be developed among the host and home NRA (or relevant body) or an Annex in the proposed document. Common/ Standard terms and conditions should be set on the MoU or by the Annex.</p> <p><b>5.</b> 'Information provision' should be a part of the MoU/Annex.</p>
<p><b>MGT</b></p>	<p><b>1. (to II. Legal background)</b> bundled capacity booking necessitates authorization to trade on both sides of the IP</p> <p><b>2. (to II. Legal background)</b> licensing by Member States is an unnecessary burden for wholesale traders</p> <p><b>3. (to III. The underlying principles of the proposal)</b> The entity ... is financially stable</p> <p><b>4. (to IV. Application of law)</b> The following licences or notifications give the possibility to the competent authorities to supervise the market participants:</p> <ul style="list-style-type: none"> <li>• <i>No licence in case of transit activity</i></li> </ul>	<p><b>1.</b> It's regulated by CAM NC.</p> <p><b>2.</b> Licencing shall provide security for operators and traders, proving the counterparty is licenced and fulfil the regulation.</p> <p><b>3.</b> This is part of the market participants role anyway, therefore it is not necessary to take by the NRA.</p> <p><b>4.</b> Add:</p> <ul style="list-style-type: none"> <li>• <i>No licence in case of transit activity</i> License doesn't necessary in case of System User transits gas through Hungary.</li> </ul>

	<p><b>5. (to V. Documents and conditions necessary for an integrated wholesale trade licensing procedure)</b> Obligations of the home NRA towards the host NRA in case of an internationally recognized licence</p>	<p><b>5. Add:</b></p> <ul style="list-style-type: none"> <li>• <i>information about the home country licencing procedure and data provision</i></li> </ul>
<p><b>E-Control</b></p>	<p><b>1. (to definition: Wholesale trader)</b> <i>Probably it would be better to split between virtual and physical traders. This fact could ease the definition of common set of rules.</i></p> <p><b>2. (to II. Legal background – table)</b> <i>using a more sophisticated distinction for the activity currently referred to as “wholesale natural gas trade” (i.e. physical vs virtual) and for the concept of a “license”(in case of AT, all market participants shall notify the NRA, which by no means is a license, but still provides for a communication requirement) could give more insight</i></p> <p><b>3. (to II. Legal background)</b> <i>license/registration: recommended: clear distinction between issuing a license and registration as the two are completely different</i></p> <p><b>4. (to II. Legal background)</b> <i>bundled capacity: bundled capacity may not in all cases (AT-DE) necessitate authorization to trade on both sides of the IP</i></p>	<p><b>1.</b> AT put forward the national practice for consideration: Wholesale traders are not subject to a licensing procedure in Austria, but physical traders (network users) are obliged to join the balance group system while virtual traders are not. Only those traders which apply to become a balance responsible party (BRP, the entity which represents their respective balance groups) need a license. Physical traders do not need to apply for a BRP license themselves but have the opportunity to join a balance group of an existing BRP.</p> <p><b>2.</b> Better to separate capacity holders form virtual trader to get better insight</p>

	<p><b>5. (to II. Legal background)</b> access to infrastructure: <i>may not in all cases be conditional to an authorization (AT: Just for those operators which are balance responsible parties)</i></p> <p><b>6. (to II. Legal background)</b> existing guarantees: <i>in AT's view this is not a precondition to apply specific licensing. Guarantees are generally verified by the statutory market participants (VTP, TSO); no further guarantees shall be requested: BRP must have according to GWG 2011 50.000 € as liability capital</i></p> <p><b>7. (to II. Legal background)</b> maintained jurisdiction: <i>There are other rules as e.g. REMIT which guarantee for this.</i></p> <p><b>8. (to III.: minimum procedural conditions)</b> indebtedness: <i>This check in AT is also performed by E-Control for the BRP. The problem is related to the fact that BRP can represent also other companies which decided to join an existing balance group</i></p> <p><b>9. (to III.: minimum procedural conditions)</b> monitoring: <i>isn't the text already covered by REMIT?</i></p> <p><b>10. (to III.: minimum procedural conditions)</b> financial stability: <i>in AT this check is performed by the statutory market participant (VTP, MAM, etc,) and by E-Control in the exceptional case of BRP</i></p> <p><b>11. (to III. Underlying principles)</b></p> <p><b>12. (to IV. Application of law)</b> <i>National rules shall be clear on whether the trader shall notify the NRA or if it is done through an intermediary (eg. TSO)</i></p>	<p><b>11.</b> Provisions related to security of supply or requiring the existence of a branch office in host country shall not be required in any case.</p>
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	<p><b>13. (to IV. Application of law)</b> minimum documents: <i>EU and national law apply to the market participants no matter if they declare to comply or not. The compliance is a precondition and will be monitored.</i></p> <p><b>14. (to V. Country specific conditions)</b> supervisory fee: <i>At least in Austria the costs of the NRA are borne by the network users via tariffs.</i></p>	<p><b>13.</b> <i>Maybe an information to traders upfront about the relevant EU and national legal framework and market rules would be more convenient.</i></p> <p><b>14.</b> <i>Inclusion of costs of supervision/monitoring in tariffs: This would mean a new system where we would have to split internal costs in network regulation and market monitoring for example? The overall costs would probably remain the same but the shares change between the market participants (and consumers). Interesting approach, but at the moment legally not possible.</i></p>
<p><b>MFGK</b></p>	<p><b>1. (to III. The underlying principles of the proposal)</b>  <i>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. According to the standpoint of the Hungarian Gas Trade Ltd. (hereinafter referred as to MFGK) it should be necessary to separate expressly the conditions in the whole proposal. The reason for that one group of the criteria is connected to the licensing process which serve as a „pre-condition” to obtain the license. The other part of the criteria is related to the activity of the wholesaler after having received the license. Furthermore, our understanding is that the main purpose of this draft is to establish the basic standards/rules to harmonize the licensing processes of the wholesaler. Therefore we propose that the draft should be more concentrated on that issue.</i></p>	<p><b>1.</b> <i>Clarification needed</i></p>

*Besides these we suggest to take a look on the rules of the so called Service Directive (2006/123/EU) whose purpose is to remove barriers to the freedom of establishment for providers in Member States and barriers to the free movement of services as between Member States and to guarantee recipients and providers the legal certainty necessary for the exercise in practice of those two fundamental freedoms of the Treaty. The aims that were set by the Service Directive are similar to the issues covered by this proposal. Therefore this practical connection could be absolutely useful first of all to justify these proposal. We would like to highlight the Section 3 of Article 10 of the Service Directive which covers the harmonization of the authorizations:*

*"3. The conditions for granting authorisation for a new establishment shall not duplicate requirements and controls which are equivalent or essentially comparable as regards their purpose to which the provider is already subject in another Member State or in the same Member State. The liaison points referred to in Article 28(2) and the provider shall assist the competent authority by providing any necessary information regarding those requirements."*

**2. (to III. The underlying principles of the proposal)**  
*Compliance with national taxation and accounting principles/regulations. According to the Hungarian legislation the condition related to taxation is implied which means that it is not stipulated expressly as a criteria of the licensing in the*

**2.** Clarification needed

	<p><i>respective regulation but the wholesaler acting within the territory of Hungary shall comply with them. As the national taxation regulation could be very different the MFGK does not suggest defining those provisions among the cluster of minimum criteria for licensing.</i></p> <p><b>3. (to III. The underlying principles of the proposal)</b>  <i>Complies with the regulations of the country where the trading activity is conducted The MFGK suggests that it shall be taken into consideration whether this criteria could be a minimum standard or not. The reason is that the respective NRA is able to assess only the compliance with the regulations of the home country prior to the licensing and not the host one. The compliance with the rules of the host country is an issue which is more related to the monitoring made by the NRA of the host country.</i></p> <p><b>4. (to III. The underlying principles of the proposal)</b>  <i>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) In the point of view of the MFGK it should be necessary to clarify in more detailed way what the conflict of interest does mean? It is suggested inserting a reference to the Section 9 of the preamble of the 2009/73/EU Directive</i></p> <p><b>5. (to III. The underlying principles of the proposal)</b>  <i>Meets national administrative requirements. The MFGK suggests defining the main administrative</i></p>	<p><b>3.</b> Clarification needed</p> <p><b>4.</b> It is suggested inserting a reference to the Section 9 of the preamble of the 2009/73/EU Directive</p> <p><b>5.</b> Defining the main administrative requirements as a minimum standard instead of this reference as the main purpose of this proposal is to establish the</p>
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	<p><i>requirements as a minimum standard instead of this reference as the main purpose of this proposal is to establish the common but basic requirement for the licensing. If the European legislation leaves the issue to define the concrete criteria on national level the fulfillment of this proposal could be jeopardized.</i></p> <p><b>6. (to General conditions of participating on the wholesale market)</b> <i>The understanding of the MFGK is that these criteria are not conditions of issuing a licence.</i></p> <p><b>7. (to General conditions of participating on the wholesale market)</b> <i>Any further data request can be fulfilled with the legal assistance of the NRA having issued the original (trade) authorization. The MFGK suggests inserting the section as follows for clarification: "request by the NRA of the host country"</i></p> <p><b>8. (to Obligations of the host NRA towards the home NRA in case of an internationally recognized licence)</b> <i>Information about the new market entrant – the country of origin shall record the extended activity; According to the point of view of MFGK the undertaking shall notify (without licensing) to the host NRA the extended activity (for information/monitoring purposes) at least.</i></p>	<p>common but basic requirement for the licensing.</p> <p><b>6.</b> Clarification needed</p> <p><b>7.</b> “Any further data <i>request by the NRA of the host country</i> can be fulfilled with the legal assistance of the NRA having issued the original (trade) authorization.</p> <p><b>8.</b> Clarification needed</p>
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