



Upgrading the gas market - Regulatory and administrative requirements to entry and trade on gas wholesale markets in the EU

Final Report

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**Upgrading the gas market -
Regulatory and administrative
requirements to entry and
trade on gas wholesale
markets in the EU**

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ACRONYMS

ACER	Agency for the Cooperation of Energy Regulators
AML	Anti-Money-Laundering
CEER	Council of European Energy Regulators
DG	Directorate General
EEA	European Economic Area
EFET	European Federation of Energy Traders
ENTSO-G	European Network of Transmission System Operators for Gas
EU	European Union
Europex	Association of European Energy Exchanges
MiFID II	Market in Financial Instruments Directive II
MiFIR	Markets in Financial Instruments Regulation
MS	Member State
NBP	National Balancing Point (VTP in the United Kingdom)
NRA	National Regulatory Authority
OTC	Over-the-counter
REMIT	Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency Text with EEA relevance.
TSO	Transmission System Operator
TTF	Title Transfer Facility (VTP in the Netherlands)
VAT	Value added tax
VTP	Virtual Trading Point

Table 1 Acronyms

1 EXECUTIVE SUMMARY

Well-functioning and liquid gas markets are a prerequisite for ensuring affordable energy for consumers, competitiveness of industries, and security of supply. They also play a role in achieving the environmental ambitions of the European Green Deal, which foresees the decarbonisation of the gas sector via a forward-looking design for a competitive decarbonised gas market. Since most decarbonised gases are produced and consumed locally and it is likely that on-site production of decarbonised gas will play an important role in the future, lifting of entry barriers appears to be crucial in order to promote trade with locally produced decarbonised gas.

This Study aims to identify existing administrative and regulatory requirements to enter and trade on the EU wholesale gas markets. The characteristics, objectives, frequency and impacts of individual trade requirements will be described and significant barriers to wholesale gas trading identified. Additionally, legislative options to address and mitigate trade barriers on EU-level will be assessed and elaborated.

1.1 ***Task 1 – Analysis of requirements to enter and trade on wholesale gas markets and identification of those requirements constituting entry and trade barriers***

The Consultant first reviewed existing market studies and conducted an analysis of the identified entry and trade requirements. By determining a representative sample of 12 EU Member States¹, the key characteristics and consequences of various entry and trade requirements were analysed in more detail. Furthermore, an online questionnaire was launched in order to explore the "reality on the ground" and determine which trade requirements stakeholders consider to be barriers for wholesale trade. The Consultant received 35 completed online questionnaires from NRAs, TSOs and Ministries and ten submissions from wholesale traders. In parallel to the desk research and the evaluation of the outcome of the online questionnaire, the Consultant held interviews with relevant stakeholders to fill gaps in the data collection and to validate the initial assumptions derived from the analysis of existing studies.

The most frequently identified barriers are, *inter alia*, reporting obligations additional to REMIT, provision of criminal records and language issues. The requirements perceived as being the costliest are the requirements to provide collaterals, to have a local establishment or related to cross-border trade.

The requirements for entry and trade on the wholesale gas market differ among Member States, leading to a fragmentation of the wholesale gas market regimes. The description and analyses of the entry and trade requirements of the 12 representative Member States show that only in a few Member States, traders are not required to register or to obtain a licence. In several of the selected Member States, traders have to register and provide the NRA with information before commencing their trade activity. In others, traders have to obtain a licence and provide the authorities with information on the licence applicant and on the envisaged activities. Licences may be integrated, regulating both trading and supply activities, or mere wholesale licences. In addition, a licence for cross-border gas trading may be required.

The main objective of licensing is to provide NRAs with better control over markets and be able to fulfil their supervision tasks. Some requirements, such as the need to have some kind of local presence, support this objective by enabling the authority to exercise control over the legal entities owned by the traders and effectively enforce the law and make communication with the traders and the enforcement of gas regulations easier. Before obtaining a licence, applicants may be required to provide the NRA with proof of financial capabilities, a minimum amount of capital or specific financial guarantees. This requirement

¹ Austria, Bulgaria, Czech Republic, France, Germany, Greece, Italy, Lithuania, Netherlands, Poland, Romania and Spain.

is usually backed by the idea that only financially stable traders should be active on the market and to have a security in case of illiquidity of a trader.

In some Member States, there are no reporting obligations in addition to REMIT towards the NRA or other public authorities. In others, additional information regarding trading data, financial data and corporate data has to be provided. The penalties for breaching the rules vary across Member States in terms of type (fine, withdrawal of licence) and extent (e.g. ranging from EUR 5 to EUR 2,000,000). Further, administrative fees due by the traders are either cost-based or a contribution to the NRA's budget and differ in their amount. Other requirements/barriers are related to cross-border trade, the imposition of trading obligations (e.g. a certain amount has to be traded on a centralised platform) and insufficient or ineffective communication on the part of the competent authorities.

A comprehensive grouping of the detailed requirements shows that every requirement is either a licensing/registration requirement or an additional requirement/administrative burden. This grouping is used to elaborate on common principles underlying the regulatory requirements and serves as a basis for the identification of options to eliminate barriers. The guiding principles of requirements to enter and trade are:

- Identification of market participants;
- Capability checks;
- Communication/post-delivery;
- Preventing the evasion of law enforcement;
- Exercising control;
- Systemic risk minimisation;
- Financing of the NRA;
- Fraud prevention;
- Market surveillance;
- Security of supply;
- Increase of market liquidity.

1.2 Task 2 – Elaboration and assessment of legislative options to eliminate such barriers

The Lisbon Treaty gave EU energy policy an express legal basis in Article 194 TFEU. European Union energy policy shall aim to ensure, among other things, the functioning of the energy market and security of supply. These objectives shall be achieved by the guiding principles of solidarity, an internal market and environmental protection. Nevertheless, as with policy in other areas, action on EU level should be taken only when the aims envisaged cannot be sufficiently achieved by Member States alone and can therefore, by reason of scale or effects of the proposed action, be better achieved by EU policy. Because requirements for entry and trade on wholesale gas markets significantly differ among Member States and the functioning of the EU energy market is by its very nature a trans-boundary issue, it is worth assessing and elaborating on legal instruments that would ensure a more level playing field and better harmonised administrative and regulatory requirements within the EU. Future European Union action would additionally be justified by the fact that legal obstacles to the achievement of an internal energy market are prevalent in several Member States.

It must be noted that with REMIT, a legal framework for the monitoring of wholesale energy markets was introduced, which focuses on market integrity and transparency. Since many of the national requirements to enter and trade on the market were already established before REMIT was in effect, it might be possible to maintain sufficient market monitoring and remedy some of the barriers by improving the application and enforcement of REMIT (e.g. avoidance of double reporting, collecting information from existing sources) without changing the European legislative framework as a whole. Nevertheless, the current legal framework only provides for limited provisions on licensing/registration and no policies on administrative fees and potential administrative barriers.

An option under which Member States would have the possibility to maintain and adopt rules that take into account their market particularities is the development of European best practice guidelines for licensing, registration and other administrative and regulatory procedures. Such guidelines can be used as a reference for Member States, without being mandatory. This could lead to a more level playing field in the EU over time. Nevertheless, it is hard to predict how effective non-binding guidelines are.

Another policy option on EU level could be the abolishment of specific barriers and the definition of a set of minimum requirements for market entry, so NRAs can effectively carry out their supervision tasks. This would lead to better harmonised national legal frameworks, while the most severe barriers presently faced by market participants could be addressed. However, wholesale gas traders would still have to obtain information on the requirements applicable in the respective Member State and meet these requirements. Minimum requirements might lead to a higher bar for market entry than currently established in some Member States. Given the scale of the barriers identified in this Study, the implementation of the minimum requirements would take time due to the necessary revision of the national legal frameworks. The abolishment of specific requirements might cause Member States to implement new requirements that comply with EU law in order to provide for the desired level of regulation. It is hard to predict whether a substantial improvement of the wholesale gas market would be achieved or other barriers arise instead.

In order to address the need to apply for a new licence in different Member States, a system of mutual recognition could be introduced. This policy option would best be introduced as an addition to minimum requirements and not as an alternative. Once a licence is obtained in a Member State where a licence requirement exists, licence holders should be allowed to have this licence recognised in another Member State. This would not make it necessary for Member States to implement a licensing system but only require them to recognise licences from other Member States. This would be very beneficial for traders active on several markets with a licensing requirement. International traders would benefit from cost savings if they only have to get their licence recognised but do not have to repeat the whole licence procedure, costs for legal advice and translations would be reduced or saved altogether. Nevertheless, this option only addresses problems regarding international traders but does not provide any benefits for domestic traders. Mutual recognition does not result in the full harmonisation of the gas market legal framework but merely addresses the major barrier of having to meet multiple licensing requirements in different Member States.

Similar to financial market regulations, particularly MiFID II, an EU Wholesale Gas Trading Passport could be introduced, which covers the licensing of wholesale traders, the exercise of the freedom of establishment and of the freedom to provide services, the powers of supervisory authorities of home and host Member States and the regime for imposing sanctions. Companies who want to trade on the wholesale gas market would be subject to licensing by their home Member States. A gas trader licensed in its home Member State should then be entitled to trade throughout the European Union without the need to seek a separate licence in the Member State in which they wish to trade. Member States shall not impose any additional requirements on such traders. The licensing of market participants is without prejudice to obligations to comply with trading and network rules. A licensing system would therefore be mandatory in all Member States. The main and most effective benefit a passport system has for achieving an integrated gas market is the abolishment of the requirement to comply with the different licensing and registration schemes in the EU. A Wholesale Gas Trading Passport would provide for a set of market entry standards and ensure better market supervision in Member States where no licence or only registration is required. Regulatory authorities would have the possibility to withdraw the licence in case a trader does not comply with market rules, which ensure sufficient market supervision. In all Member States, a system of ex-ante market entry checks would be in place in order to avoid fraudulent behavior. It can be argued that ex-ante checks are not necessary because NRAs have sufficient means to take action against infringements of the market regulations through fines, court injunctions etc. However, this option would lead to higher market entry criteria in Member States where no licence or

only registration is required. In particular small traders participating on the wholesale market within their limited capabilities would be affected by this option because they might not have the resources and know-how to comply with a licence system. Also, the principle of home Member State supervision makes functioning and quick communication between NRAs necessary, which could lead to an increased organisational challenge for NRAs. Barriers in relation to reporting, fees and storage obligations would not be addressed by this option.

Another possible option would be to prohibit licensing altogether. The abolishment of licensing would mean that Member States are not allowed to request a wholesale trading licence in order to become active on the market. There are two possible scenarios for the abolishment of the licence requirement: On the one hand only the licence requirement could be prohibited, leaving the Member State with the option to have a registration or notification obligation on top of the REMIT registration. On the other hand, the abolishment of the licence requirement could be combined with the prohibition of any additional registration or notification requirement apart from REMIT. The abolishment of the licence requirement would constitute a level playing field for all market participants as there would be no limitations to market entry at all. Abolishing the current licensing framework would also mean that all barriers relating to licensing would be removed. When abolishing the licence requirement and any registration or notification requirement on top of REMIT, traders would not need to undertake any action before entering the wholesale market. This would avoid any unnecessary bureaucratic barriers. Nevertheless, this option would leave the NRAs without the possibility for ex-ante checks on the financial fitness, the good conduct or the qualifications of the trader. It can be argued that ex-ante checks are not necessary because TSOs, energy exchanges and trading platforms are already conducting the relevant checks of market participants. Moreover, NRAs would no longer have the possibility to withdraw a licence, which limits ex-post measures to case-by-case legal proceedings. This could possibly incentivise fraudulent behaviour if malicious actors base their decision-making on a cost-benefit analysis of getting caught and punished.

A less invasive proposal would be to set-up a centralised information system including a blacklist. The centralised information system could provide TSOs, NRAs, ACER and ENTSOG with information on creditworthiness, information on the status of the validity of licences as well as appropriate behaviour of trading parties. The blacklist would contain information on traders convicted of fraudulent behaviour in one or more Member States. It could also provide information on the requirements to enter and trade on the wholesale market in the various Member States. The information could be made available in English and kept up-to-date by the NRAs. This would help avoid the cost of fraud and/or default being socialised, because NRAs and TSOs would automatically be informed of every new entry and thus could react to potentially fraudulent activities. Due to the information available, licence applicants and market participants might not have to provide the same information again in each Member State they want to become active in. The major downside of this option is that it does not harmonise access to the wholesale market and traders would still be required to follow the market access regulations for each Member States. The impact on the identified barriers would therefore be limited.

2 INTRODUCTION

2.1 *Situation on the wholesale gas markets*

Well-functioning and liquid gas markets are a prerequisite for ensuring affordable energy for consumers, competitiveness of industries, and security of supply. They also play a role in achieving the environmental ambitions of the European Green Deal, which foresees the decarbonisation of the gas sector via a forward-looking design for a competitive decarbonised gas market. Additionally, functioning gas markets allow natural gas to be cost-competitive with more polluting fuels, like coal and oil. The emergence of renewable gases, which primarily include biogas, biomethane and hydrogen as well as synthetic gas, might lead to an increase of new market entries. Today, most decarbonised gases are produced and consumed locally and it is likely that on-site production of decarbonised gas will play an important role in the future. Consequently, a lot of new small actors will aim to enter the market, which makes it all the more important to lift market barriers. An integrated gas market is therefore a contribution to a more renewable energy mix and the efforts to reduce greenhouse gas emissions in order to achieve the goals set out in the European Green Deal.

First steps towards the liberalisation of the European gas market were taken more than two decades ago with the First Energy Package which was adopted for gas in 1998. The Third Energy Package in 2009 called for the creation of an internal market for gas and electricity. Such an internal market implies that there is liquidity on the market. However, this important indicator for a functioning Single Energy Market still is not fulfilled in all Member States. Until 2019 only two fully mature benchmark hubs existed (TTF and NBP).²

As reported by a number of relevant market studies, including ACER's latest Gas Market Monitoring Report, the actual performance of gas markets differs. Markets are generally functioning well in Member States representing 70–80% of EU gas consumption, but the gap between better functioning hubs and those without transparent trading venues continues to increase. In 2018, only the wholesale markets in Belux, France, the Netherlands and the UK met the ACER Gas Target Model thresholds of a diverse and not concentrated market, while Italy, Ireland and Spain were close.³

The different level of development is also represented by the substantial differences in volumes traded at different EU hubs, with the amount of gas traded at TTF or NBP being larger by a factor of at least ten with respect to any of the advanced hubs' traded volumes and larger by a factor of 100 when compared to any of the emerging or illiquid hubs' traded volumes.⁴ Furthermore, gas hubs in Northwestern Europe registered some of the highest price convergence levels in the EU to date, while Mediterranean hubs in general show lower price convergence.

There are a number of factors that affect the development of the gas market. Typically, the challenges to market functioning are structural and institutional, and more severe in certain regions of Europe, often linked to reliance on a single source of supply.⁵ Another factor is disproportionate and over-burdensome administrative and regulatory requirements. The current regulatory regimes in EU Member States regarding access and trade on the wholesale gas market are manifold. All requirements to enter and trade are intended to ensure a functioning gas system, while striking a balance between security of supply, a competitive market, consumer protection and, more important than ever, sustainability. This difficult task is accomplished to varying degrees by the Member States'

² ACER/CEER (2019), ACER Market Monitoring Report 2018, para 126, available at: https://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/Publication/ACER%20Market%20Monitoring%20Report%202018%20-%20Gas%20Wholesale%20Markets%20Volume.pdf.

³ ACER/CEER (2019), ACER Market Monitoring Report 2018, para 8.

⁴ ACER/CEER (2019), ACER Market Monitoring Report, para 132.

⁵ ACER/CEER (2019), The Bridge Beyond 2025, p. 8.

regulatory frameworks, with some imposing much more burdensome requirements for traders than others.

The difficulties of the market, the differing regulatory regimes and the need for more integration on the European gas market require the identification of the administrative and regulatory requirements impeding the future development of the wholesale gas market and measures to overcome these obstacles and build the basis for the project "Upgrading the gas market – regulatory and administrative requirements to enter and trade on the wholesale gas market" (the "**Study**").

2.2 Description of the main study tasks

The overall objective of the Study is to explore legislative means on EU-level to facilitate access and trading on gas wholesale markets in the EU. The Study specifically aims to identify existing administrative and regulatory requirements to enter and trade on wholesale⁶ gas markets (trade requirements); (ii) describe the characteristics, objectives, frequency and impacts of the individual trade requirements; (iii) elaborate on trade requirements which constitute major barriers to entry and trade on wholesale gas markets; and (iv) develop possible legislative options to address and mitigate trade barriers on EU level.

The Study is divided in two tasks. Under task 1, which aims to identify and analyse the existing entry and trade requirements related to wholesale gas markets in the EU, the Consultant took stock and provides a comprehensive picture of the existing requirements to enter and trade on wholesale gas markets. Special focus has been placed on the analysis of the purpose, proportionality and practical consequences of the individual trade requirements. The Consultant assessed which of the requirements potentially impose a disproportionate administrative burden on natural gas traders and thus impede the establishment of a fully integrated European Gas Market.

Once the identification of regulatory and administrative requirements and the grouping and classification was completed and the Consultant has established common principles of the identified barriers, the Consultant conducted task 2. Under task 2, options to mitigate and remedy identified trade barriers were explored and elaborated on. Among these options are (i) the development of minimum and maximum requirements, (ii) the establishment of a mutual recognition system, (iii) a wholesale gas trading passport (iv) the abolishment of the licence requirement, and (v) a European information system. The Consultant took the impact assessment practice of the European Commission into consideration and therefore gave an overview of the option to change nothing so that the other options can be compared to a baseline scenario. For the elaboration of the options, the Consultant also analysed the Services Directive. The benefits and drawbacks of each option were examined, and the effectiveness, efficiency and proportionality considered. Subsequently, the barriers that would be eliminated if the option is implemented and those which would remain were detailed. Since today most decarbonised gases are produced and consumed locally, special attention was paid to the expected market entry of small, local actors which might not have the resources and know-how to meet complicated and stringent entry requirements.

3 METHODOLOGY

3.1 Review of existing relevant studies

To identify existing requirements relating to trading on the wholesale gas market, the Consultant first reviewed the existing market studies listed at the end of this Study,

⁶ For the purpose of this Study, wholesale trade means the purchase of natural gas from producers, traders or at an exchange and its sale to other traders (no end customers) or at an exchange and regardless of any network use. This Study does not examine the conditions for network use and subsequent licence requirements for network use.

including the interim report on the study assessing the existence of potential barriers pertaining to the energy retail markets in the EU (the "**Retail Study**") as well as the result of the ACER public consultation document titled "The Bridge Beyond 2025". The Consultant carried out a comprehensive inventory of the major trade requirements across the EU and drafted an overview table incorporating the identified requirements. The overview table is attached to this Study as [Annex 1](#).

3.2 Detailed analysis of trade requirements / identification of trade barriers

In a next step, the Consultant conducted a detailed analysis of the identified entry and trade requirements. For this purpose, the Consultant, in agreement with the Commission, determined a representative sample of EU Member States in order to illustrate the key characteristics and consequences of various entry and trade requirements. The sample of EU Member States was established by applying specific selection criteria, including the location of the main European natural gas hubs, securing a geographical balance and the diversity of regulatory regimes (from light to stringent and burdensome) and includes: Austria, Bulgaria, Czech Republic, Germany, Greece, France, Italy, Lithuania, Netherlands, Poland, Romania and Spain.

The detailed analysis of the selected national trading regimes was conducted on the basis of comprehensive desk and field research. The Consultant reviewed and analysed the individual market entry and trade regimes of the relevant Member States by looking into their national legislation and market rules. The Consultant also considered the available country analysis laid down in the studies listed in table 3. In addition, the field research included an online questionnaire and personal interviews with selected stakeholders.

3.3 Online questionnaire – Design and structure

The Consultant launched an online questionnaire which was addressed to key stakeholders. The main purpose of the online questionnaire was to explore the "reality on the ground" and determine which trade requirements stakeholders would identify and which they consider to be major barriers for wholesale trade in practice.

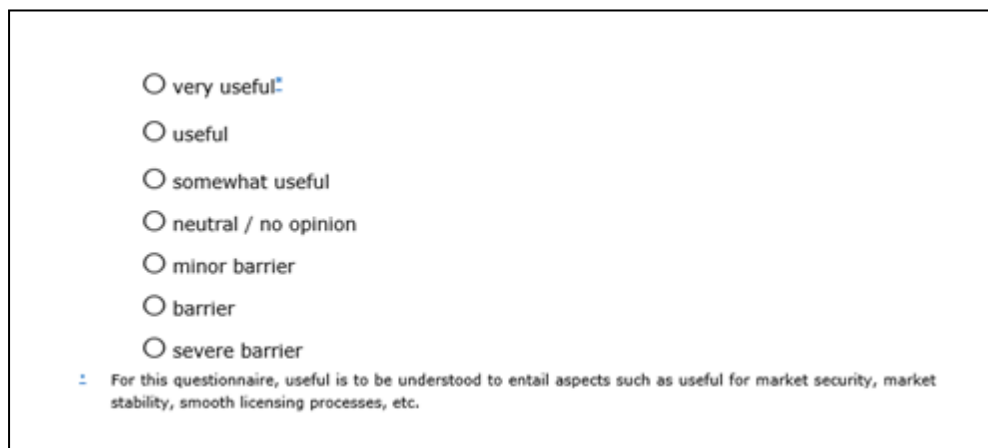
The design of the online questionnaire was based on a literature review of previous studies concerning barriers to entry and trade on energy markets, alongside the review of previous questionnaires on barriers to entry and trade on the (retail and wholesale) gas market. The Consultant also relied on its experience in the field and its expertise with regard to market entry requirements for wholesale gas trade in the EU. The geographical coverage of all members of the Consultant's team ensured that issues specific to certain markets were also acknowledged in the online questionnaire. Using these resources, the groups of requirements and barriers to be investigated and the relevant stakeholder groups were identified.

Building on the literature review, the categories of requirements or barriers were defined. These categories formed the overall structure of the online questionnaire and comprised the following: licensing/registration, local establishment, financial requirements, administrative fees, reporting obligations, and transparency. As a seventh category, other requirements, not falling into one of the aforementioned categories and open questions were included.

More specific questions were formulated under each category to dig deeper into the identified requirements and barriers (e.g. licensing process, document requirements, length of procedures, balancing group requirement, etc.). To allow both rigorous analysis and an unrestricted exploration of issues not identified in other studies, the online questionnaire included closed and open questions.

Closed questions mostly used a Likert scale, i.e. a grading from 1 (very useful) to 7 (severe barrier) or 0 (not important) to 5 (extremely important) with an option 'not applicable' in case an item was not of relevance to a respondent. Respondents were also provided with

free text fields to describe any barriers they felt had been overlooked, and for any other comments.



☐ very useful*

☐ useful

☐ somewhat useful

☐ neutral / no opinion

☐ minor barrier

☐ barrier

☐ severe barrier

* For this questionnaire, useful is to be understood to entail aspects such as useful for market security, market stability, smooth licensing processes, etc.

Figure 1 Likert scale (traders' questionnaire)

The Consultant drafted two online questionnaires, one addressed to NRAs, ministries and TSOs, recognising their respective roles in the sector, and one addressed to traders. The online questionnaire addressed to NRAs was used for fact finding on the one hand and confirmation of information provided by the reviewed studies on the other. The online questionnaire thus included a number of legal questions, asking about the current legal reality in the Member State. The survey also contained questions on the purpose of legislative measures and the usefulness of certain administrative and regulatory requirements. Finally, the online questionnaire posed three questions on possible remedies and asked the NRAs for their assessment of the following options:

- Introduction of an EU passporting system;
- Introduction of a system of mutual recognition;
- Abolishment of licensing altogether.

The online questionnaire addressed at traders included all of the above categories, but the questions focused more on the personal evaluation of the administrative and regulatory requirements in a certain Member State. Traders could evaluate the requirements and indicated how useful or burdensome they perceive them to be. Moreover, open questions provided a forum for traders to express their wishes or point the Consultant towards extremely burdensome requirements. Traders were not asked to comment on the above presented option to mitigate the barriers in the online questionnaire. A sample online questionnaire is attached to the Study as [Annex 4](#).

The Questionnaire was designed in a way that each response was country-specific, and the online questionnaire only addressed one Member State. This was necessary for two reasons. First, to facilitate the analyses of national markets. Thus, it was necessary to have stakeholders respond for each market separately. Second, setting up an online questionnaire which would have allowed respondents to repeat each question for all Member States they wanted to give input on would not have shortened the time a stakeholder would need to complete the questionnaire. There was the concern that including the possibility of answering each question several times for different Member States would make the whole online questionnaire confusing and impractical, because usually no employee would know the requirements and barriers in all Member States.

Once the questions were finalised, the online questionnaire was constructed using a specialist online tool, tested internally for functionality. To improve accessibility and make the experience smoother for the respondent, the online questionnaire was designed in a way that the respondents would only see the questions relevant to them. Hence, traders answering the online questionnaire for a Member State which has no licence requirement would not see any subsequent questions specific to licensing.

Using an online tool enabled effective sharing of the online questionnaire with stakeholders, by providing links via e-mail. The Consultant sent the online link to the umbrella organisations EFET, ACER, CEER, ENTSOG, Europex and Eurogas along with the request to distribute the link to their members and contacts. By using the umbrella organisations, the Consultant mitigated the risk of leaving out traders or other relevant stakeholders.

The landing page of the online questionnaire included instructions and assurances on data protection. The survey was made available only in English, but respondents were invited to contact the Team Leader if they wished to answer the online questionnaire in their native language. No such requests were received.

3.4 Online questionnaire – Results overview

The online questionnaire has been a very powerful tool, because it allowed the Consultant to gather views from stakeholders across Europe on the challenges they face in the wholesale gas market. The online questionnaire was open for participation for five weeks. After five weeks the Consultant started to evaluate the responses. In total, 35 completed online questionnaires from NRAs, ministries of energy and TSOs were received, as well as ten online questionnaires from traders.

Almost all regulators or competent authorities of the Member States responded to the Consultant's request. Nine TSOs completed an online questionnaire and ENTSOG sent a letter informing the Consultant of the most pressing issues in their view and their considerations on the legislative options included in the online questionnaire. No responses were received from the NRAs from Bulgaria and Cyprus.

On the ten completed online questionnaires received from traders, respondents focused on those Member States where they experience the most pressing issues and face the biggest barriers when entering and trading on the wholesale gas market. The Consultant received online questionnaires from traders on the following Member States: Czech Republic, France, Hungary, Italy, Poland and Romania. For Poland, the Consultant received three completed online questionnaires from different traders. In addition, the Consultant received a document from EFET describing barriers detected by EFET and communicated to it by their members for a number of Member States. The consultant received a total of 56 partially completed online questionnaires from traders. The completeness of these questionnaires ranges from no question answered up to almost all questions answered. The consultant reviewed all partial responses and included one of them in the Study, since it provided additional value to the Study.

The Consultant evaluated all responses and consolidated all relevant replies in two tables. The tables are attached to the Study as [Annex 1](#) and [Annex 2](#). [Annex 1](#) contains the evaluation of the outcome of the online questionnaire completed by NRAs and TSOs and the interviews conducted with NRAs and TSOs. The table follows the following structure: All detected requirements are marked with a checkmark; empty boxes indicate that the respective requirement was not identified in the Member State; all missing information was marked "N/A". [Annex 2](#) contains the evaluation of the online questionnaire from the traders. The table includes answers from the completed ten online questionnaires by traders and relevant answers from one non-completed online questionnaire. The table follows a similar structure as the table in [Annex 1](#): Detected requirements are marked with a checkmark; empty boxes indicate that the respective requirement was not identified by the trader; all missing information was marked "N/A" and all comments by traders were included in to table as indicated in the online questionnaire. In addition different colour shades were used to indicate the quality of the identified requirement (dark colour shade for severe barriers, medium colour shade for barriers, light colour shade for minor barriers and green colour for useful requirements).

3.5 Stakeholder interviews – Design and structure

In parallel to the desk research and the evaluation of the outcome of the online questionnaire, the Consultant held interviews with relevant stakeholders. The main

purpose of the interviews was to fill gaps in the data collection and to validate the initial assumptions provided for by the analysis of existing studies. The online questionnaires provided the opportunity for the stakeholders to communicate their contact details and thereby agree to be contacted for a follow-up interview. In addition to interviews with interested stakeholders, the Consultant held a telephone interview with EFET and Europex.

The conducted interviews were semi-structured. The primary advantage of semi-structured interviews – compared to structured interviews – is that they are open, allowing new ideas to be brought up during the interview as a result of what the interviewee says. The Consultant believes that using semi-structured interviews with the above-mentioned organisations and stakeholders was the best way to gather all relevant information on trade barriers on wholesale gas markets.

The interviews followed the structure of the online questionnaire. During the interview the following topics were discussed where appropriate: licensing / registration, local establishment, financial requirements, administrative fees, reporting obligations, transparency. The stakeholders were also given the opportunity to comment on the following options: (i) introduction of an EU passporting system; (ii) introduction of a system of mutual recognition; and (iii) abolition of licensing altogether. Finally, the stakeholders were invited to share any other thoughts on the situation on the wholesale gas markets or to propose another possible option to mitigate the identified barriers.

The interviews were held personally or via appropriate telecommunication tools (e.g. Skype, phone, etc.), depending on the logistical aspects involved as well as on the sensitivity of the data to be discussed. The decision whether or not an interview is to be held in person or via telecommunication tools was taken by the Consultant together with the stakeholders.

The interviews took place under the Chatham House Rules, providing the interviewee with an appropriate level of confidentiality but still allowing the Consultant to assign responses and use the provided information for the Study. Moreover, the Chatham House Rules allow the Consultant to include an overview of the categories of participants in the Study.

3.6 Stakeholder interviews – results overview

The stakeholder interviews showed to be a very helpful tool to verify the information provided in the online questionnaires, but also to gather additional information from stakeholders. The Consultant conducted 15 individual interviews with stakeholders.

Interviews were held with eight NRAs, one ministry, three TSOs and three traders and trader organisations. During the interview with EFET, eight traders and EFET representatives were present on the call and input was received from all of them. Another interview was held with Europex. During the interview also a representative of the Central European Gas Hub (CEGH) was present. Input from traders was given for the following countries: Austria, Belgium, Czech Republic, Germany, France, Hungary, Italy, Poland, Romania and Spain. Information on requirements for traders from the United Kingdom after Brexit was provided. EFET further informed us that some Member States will require traders from the United Kingdom to open a local establishment or branch. The information provided during the interviews has been included in all relevant areas of the Study.

3.7 Grouping and categorisation of trade barriers

Based on the outcome of the online questionnaire and the interviews, the Consultant analysed which requirements might constitute a barrier to entry and trade on wholesale gas markets. The analysis takes into account the objectives that the individual trade requirements may pursue. The Consultant examined if the trade requirements are proportionate and efficient in relation to their declared objective. To the extent possible and appropriate, the findings of the analysis were categorised and grouped according to various criteria such as frequency, intensity of the trade barriers, characteristics, consequences and whether the burdens are imposed as conditions for obtaining a licence,

as conditions for maintaining it, or whether they constitute incidental costs incurred in the process of complying with other regulatory requirements. The Consultant also outlines common principles underlying the individual trade requirements. The intent of the classification is twofold: (i) determine the "seriousness" of the barrier in deterring market participants (cost and time can be important proxies); (ii) allow structured analysis of the effectiveness of the mitigation options.

Particular attention is given to collateral effects of existing barriers in their assessment. Legitimate national interests, such as energy security, fraud prevention or market surveillance imperatives, are taken into account in the analysis of mitigation measures in task 2.

3.8 Workshop

On 25 February 2020, a stakeholder workshop was organised under the auspices of the European Commission / DG Energy in order to present the preliminary results of the Study and allow for inputs and substantial comments from interested actors. The stakeholder workshop provided the Consultant with the opportunity to present the interim results of the analysis under task 1 and give an outlook on the possible options that are taken into consideration under task 2. A number of representatives of professional associations as well as competent authorities of various Member States provided substantial input, which allowed the Consultant to collect additional data and receive feedback on the interim results. It also provided a platform for a discussion on the preliminary findings and an overview of possible legislative and non-legislative measures needed in order to mitigate trade barriers and facilitate entry and trade on wholesale gas markets.

The workshop was open to all interested stakeholders and attended by roughly 50 participants, including Member State representatives. The lessons learned from the discussion with the participants were included in the Study.

3.9 Methodology for task 2

Based on the results of task 1, the interviews and the outcome of the Stakeholder Workshop, the Consultant elaborated on legislative measures to mitigate or eliminate current trade barriers. The legislative options were established taking into account previous experience from the financial sector (e.g. MiFID, MiFID II) and the Service Directive as well as the Bridge Beyond 2025 Conclusion Paper by ACER. Based on the three legislative options ((i) abolishment of certain trade requirements; (ii) establishment of minimum and maximum trade requirements applicable across Member States; (iii) establishment of an EU passporting system) the Consultant has developed six different scenarios.

For each legislative option the Consultant assesses what barriers would be eliminated if the respective option would be implemented and what barriers would remain. In addition, the benefits and drawbacks of each option are identified and evaluated. The evaluation follows the Commission's Impact Assessment Guidelines and discusses the effectiveness, efficiency and proportionality of each option. Moreover, the Consultant also assesses the potential costs and benefits for traders concerning entry and trade on the wholesale gas market across the EU. A detailed presentation of potential cost reductions and additional costs for traders are listed for each option.⁷

⁷ The cost analyses is limited to a qualitative assessment of the cost elements which would be eliminated and which would arise in connection with each option. No quantitative assessment of any costs related to market entry or trade on the wholesale market has been performed.

4 COMPREHENSIVE INVENTORY OF REQUIREMENTS

Within the scope of the initial assessment, the Consultant reviewed relevant studies as listed in table 3 in order to identify administrative and regulatory requirements for entry and trade on wholesale gas markets.

4.1 Overview of the main findings

The reviewed literature covers a period of approximately ten years, with the oldest item dating back to 2009.⁸ As far as possible, meaning as far as the 12 selected Member States are concerned or information on other Member States was received, the Consultant checked whether the information in the studies was up-to-date and made an effort to only include data which is still accurate. In any case, the core findings of the existing studies looking at the wholesale gas trading regimes across EU Member States remain valid, and they are confirmed in the most recent ACER Market Monitoring Report from 2018, as well as the Bridge Beyond 2025 Conclusions Paper published in 2019.

Despite the diversity of approaches and the geographical focus, the general conclusion of the reviewed studies is that physical energy markets in the European Union are fragmented mainly because their operation is subject to very diverse and distinct national regulatory frameworks. The EU wholesale gas trading sector seems to be particularly affected, as different standards for accessing and operating on the market apply across Member States.

National licensing regimes are reported to be one of the root causes leading to such fragmentation.⁹ The higher the complexity of the licensing requirements and associated procedures, the more restricted access to the gas trading markets becomes.¹⁰ Apart from licensing itself, additional administrative barriers may arise, such as cumbersome reporting obligations, excessive administrative fees, translation and legal fees, and other costly requirements. Existing studies also underline that relevant information is not always readily available on the website of the competent national authorities or that it is available only in the national languages.¹¹ Such communication issues significantly affect foreign traders.

Some studies imply that opaque national regulatory regimes, at the sole discretion of NRAs, prevent wholesale gas traders from exercising the fundamental freedoms prescribed in the EU Treaties, i.e. free movement of goods and freedom to provide services.¹² The lack of regulatory harmonisation precludes the creation of an effective internal market for wholesale gas trading. In the medium and long term, key parameters of the gas market, e.g. security of supply, price affordability for consumers, and enhancement of business competitiveness, may also be affected.

The harmonised EU regulatory framework covering trade with financial instruments is often proposed to serve as a model for the adoption of optimal legal solutions that could foster

⁸ See EFET (2009), Memo on the legality of licensing and local presence requirements for energy trading in Central and Eastern Europe.

⁹ See EFET (2009); Energy Community, Non-Paper: Harmonization of licensing regimes in electricity and gas, available here: https://www.energy-community.org/dam/jcr:a3020615-2130-4fc9-a7fd-8fa8e6873ff9/ECRBEWG022018_Harmonisation.pdf; Brattle/Skadden (2010), Wholesale energy trading licences in the EU, available here: <https://www.ceer.eu/documents/104400/-/-/b16a581f-3d5a-1ea5-6300-c3f91e971887>.

¹⁰ Kantor (2017), Barriers to gas wholesale trading, p. 48, available here: <https://www.acer.europa.eu/en/Electricity/Market%20monitoring>; In this study, participants, particularly from or operating on markets such as Bulgaria, the Czech Republic, Hungary, Poland, Romania, Spain, etc., ranked extensive licensing requirements and procedures among the most significant barriers to accessing and operating on wholesale gas trading markets. Parts of the information are already outdated, e.g. Bulgaria has changed the legislation and no longer requires a licence or registration.

¹¹ See CEER (2011), Final Advice on the Introduction of a Europe-wide Energy Wholesale Trading Passport, pp. 20-21, available here: <https://www.ceer.eu/documents/104400/-/-/70825d4b-e6ea-419c-0080-bed8a1c54728>; Energy Community, Non-Paper, pp. 7-8; Kantor (2017).

¹² See EFET (2009).

coordination on wholesale energy markets across the European Union. In particular, the reviewed studies discuss the "passport" feature applicable under MiFID. *Passporting* enables companies to offer services in any EU Member State without having to obtain additional authorisations other than those required in the company's home jurisdiction.

Although this option is not available to physical energy markets, some of the studies argue that the *passporting* regime could/should be extended to wholesale energy trading.¹³ However, some shortcomings are also identified, in particular in relation to preventing market abuse or financial irregularities. In this respect, the Bridge Beyond 2025 Conclusions Paper advances a potential solution based on the concept of a "blacklist", enforceable at EU level.¹⁴ Such a list, accessible to all relevant national and European regulatory authorities, would include factual information on creditworthiness and information on traders market behaviour such as adherence to market regulation, imbalance amounts or other available data on the traders (fraudulent) activities. Fraudulent traders would subsequently be prevented from operating on the wholesale gas trading market at EU level.

4.2 Overview table

Based on the literature review and the evaluation of the field research, the Consultant drafted an overview table (Annex 1), summarizing the information regarding the administrative and regulatory requirements listed by the external studies as well as the evaluation of the outcome of the online questionnaire completed by NRAs and TSOs.

All requirements that were identified as applicable to a Member State are marked with a checkmark; empty boxes indicate that the respective requirement is not applicable in the respective Member State; all missing information was marked "N/A".

The Annex 1 table presents the consolidated outcome of the online questionnaire for NRAs and other stakeholders as well as the results of the expert interviews. Where up-to date information was provided in reviewed literature, this information was also included in the table. For those Member States where we received more than one answer, the answers were consolidated to one final response. In most cases, feedback from the NRA was duly received and therefore we have been able to build a comprehensive picture of the administrative and regulatory requirements in place at present. The Consultant did not receive a response from the NRAs of Cyprus and Bulgaria. However, we received a reply from the Bulgarian TSO.

Annex 2 also lists a qualitative evaluation of responses provided in the context of the online questionnaire from the energy traders. Responses from ten online questionnaires completed by traders are taken into account. We have also included relevant answers from one partially completed online questionnaires. The partially completed online questionnaire is marked separately in the table.

The table and figure below show the entry requirements for all EU Member States.

¹³ See CEER (2011), EFET (2009), Brattle/Skadden (2010), Wolf Theiss (2018), The Wolf Theiss Guide to: Licensing of Electricity and Gas Wholesale Activities in Central, Eastern & Southeastern Europe, available here: <https://www.wolftheiss.com/knowledge/wolf-theiss-guides/detail/the-wolf-theiss-guide-to-licensing-of-electricity-and-gas-wholesale-activities-in-central-eastern/>.

¹⁴ ACER/CEER (2019), The Bridge Beyond 2025, p. 11.

ENTRY REQUIREMENTS			
	Licence ¹⁵	Registration/notification	No requirement
Austria		✓	
Belgium			✓
Bulgaria			✓
Croatia	✓		
Cyprus	-	-	-
Czech Republic	✓		
Denmark			✓
Estonia		✓	
Finland			✓
France	✓		
Germany			✓
Greece		✓	
Hungary	✓		
Ireland	✓		
Italy		✓	
Latvia		✓	
Lithuania		✓	
Luxembourg	✓		
Malta			✓
Netherland	✓		
Poland	✓		
Portugal	✓		
Romania	✓		
Slovakia	✓		
Slovenia		✓	
Spain		✓	
Sweden			✓
United Kingdom	✓		

Table 2 Entry requirements in all EU Member States

¹⁵ Licence means integrated, wholesale, shipper and cross-border licences issued by an authority or in the case of the Netherlands issued by the TSO according to administrative/regulatory rules.

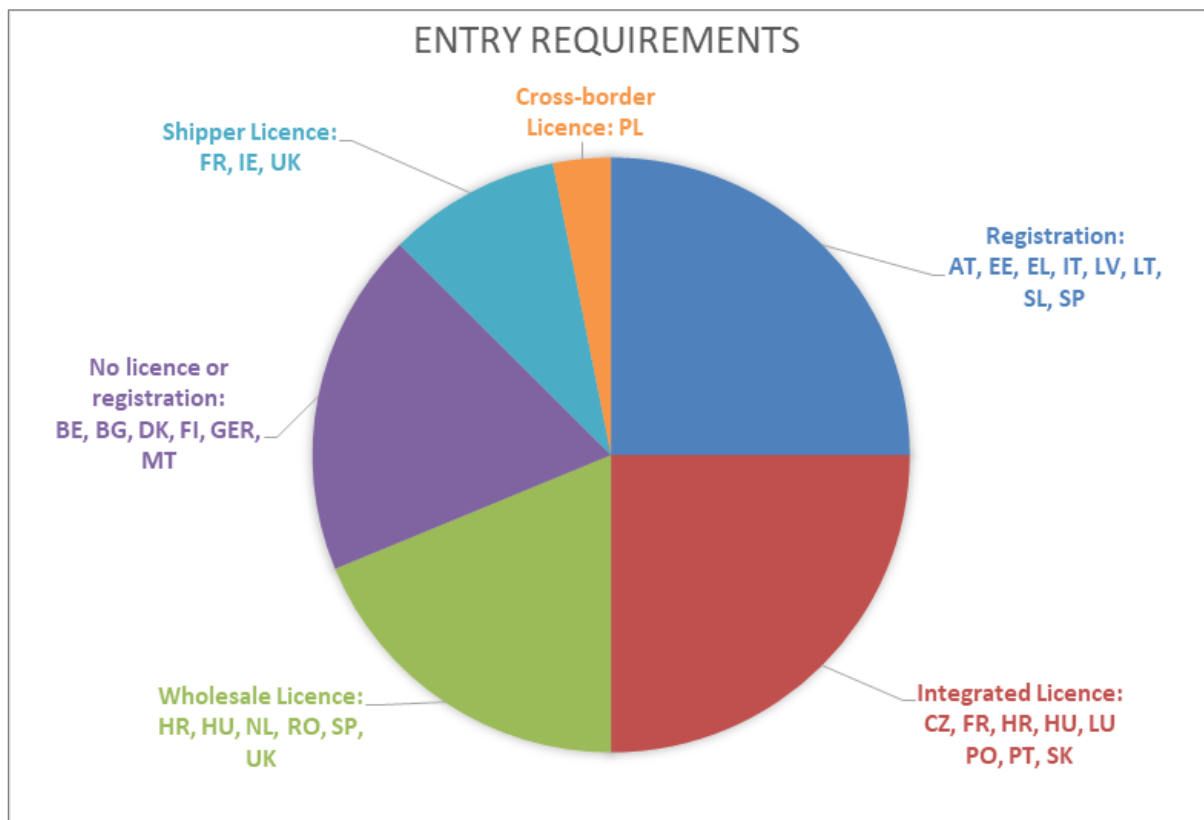


Figure 2 Distribution of different entry requirements by all EU Member States

5 DESCRIPTION AND ANALYSES OF THE REQUIREMENTS FOR 12 REPRESENTATIVE MEMBER STATES

This section provides:

- A detailed description of the identified requirements for entry and trade on wholesale gas markets for the 12 selected Member States;
- The objectives and justifications for the identified and described requirements; and
- An explanation as to why the identified requirement may constitute a barrier.

5.1 Introduction

The description of the requirements follows the same structure as the online questionnaire and is based on the one hand on the input from the relevant studies and on the other hand on the review of the regulations in each of the 12 Member States. The Consultant has asked experts in their fields to review the legislation of each Member State and to provide the Consultant with the respective information.

The chapter also discusses the objectives the requirements may pursue and preliminary findings regarding their (possible) justifications. We note that the restrictions to trade should be justified in pursuance of a legitimate public interest. The measure in question must be proportionate for the attainment of these objectives. Overriding reasons of public interest may be public policy, public security, the effectiveness of fiscal supervision, security of supply or fairness of commercial transactions.¹⁶

Moreover, the section explains why a requirement may constitute a barrier to entry or trade on the market.

¹⁶ EFET (2009), p. 6.

5.2 No registration or licence requirement

Among the 12 selected Member States, only two Member States – Bulgaria and Germany – neither require traders to register with the NRA nor to obtain a licence. In those Member States, traders who do not make use of the physical network simply have to register at the VTP in order to become active. Traders who make use of the network will need to gain access to the network. Network access is granted by the TSO directly, without any involvement of the NRA.

5.3 Registration / notification

In a number of the sampled 12 Member States, traders are required to register with the NRA before becoming active on the market. A registration or notification requirement in addition to REMIT can be found in the following Member States: Austria, Greece, Italy, Lithuania and Spain.

In order to register with the NRA, the traders are required to submit a registration document (electronically and/or in hard-copy). In most Member States the document is available in the national language and in English.¹⁷ In all of the analysed Member States traders are required to provide the following information with their registration:

- Name and contact details of the notifying/registering company;
- Details on when they intend to start trading on the market;
- Information on the type of activities planned;
- Information allowing the identification of the company (e.g. company register number, VAT number, etc.).

In Austria, Greece and Lithuania the NRA also requests information on (i) the name and contact details of the CEO/management board; and (ii) the name and contact details of a contact person in the respective Member State. In Lithuania, the NRA also requests a confirmation that the trader is not bankrupt, in reorganisation or liquidation. In Greece, the NRA also requests a business plan and detailed information on the corporate structure of the company. The trader has to submit (i) a copy of the articles of association, (ii) certified copies of the General Assembly's minutes regarding the appointment of the management, (iii) a certificate of good standing regarding non-resolution of the company and non-revocation of its corporation, (iv) proof that the company is not bankrupt or in liquidation, (v) proof that the company has no tax/social security arrears, and (vi) an affidavit by the representative of the company certifying that all information provided in the application is true.

In all Member States except Spain, the competent authority for the registration is the NRA. In Spain the trader has to register with the Ministry of Energy, who will then forward the information to the NRA. The registration process is usually completed immediately (Italy, Lithuania) or within a week (Austria). In Greece, however, the registration process takes at least 40 days; in practice the registration might take up to several months. The NRA will either confirm the receipt of the registration or request missing information. In Spain, the lack of a formal communication on the part of the Ministry of Energy for more than six months also constitutes a confirmation of the registration. The NRA usually publishes a list of all registered wholesale traders.¹⁸

In Austria and Lithuania the NRA requires traders to notify the NRA before exiting the market.

¹⁷ In Greece the registration document is only available in Greek and all correspondence with the NRA has to be in Greek.

¹⁸ In Greece traders are registered in a specific user-registry (National Natural Gas Transmission System User Registry).

5.3.1 Objectives / justification

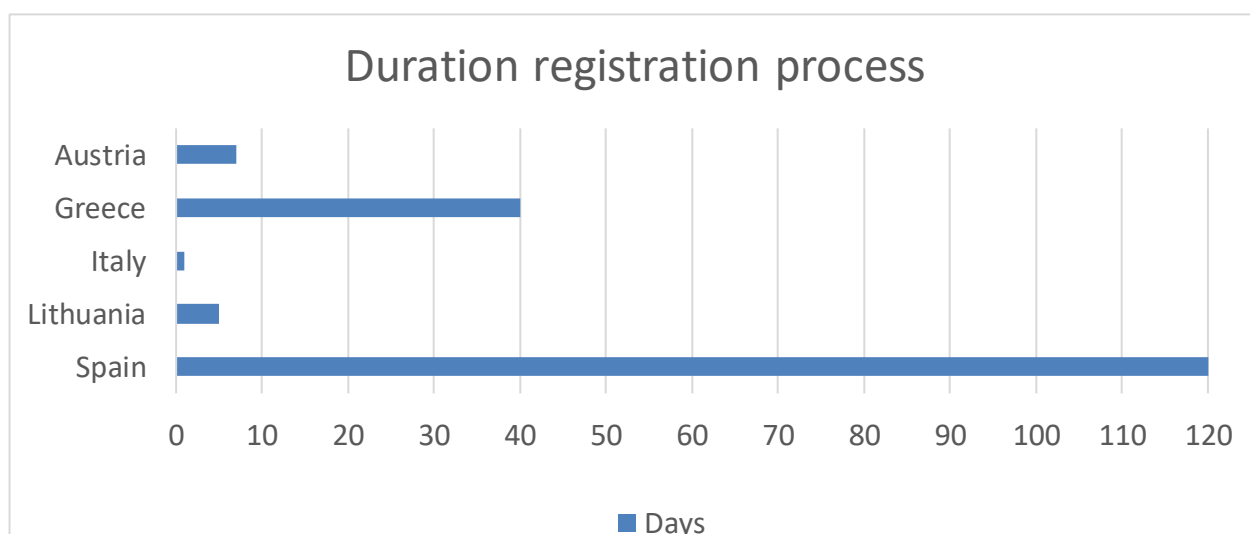


Figure 3 Duration of the registration in the selected 12 Member States

The objective of a registration requirement is to enable the NRA to verify whether or not a trader legally exists and the person signing the notification is authorised to legally represent the trader. A registration serves the purpose of protecting market functioning from malicious practices.¹⁹ Moreover, the registration requirement enables the NRA to assess the legality of a company's planned trading activities and its technical capabilities. A registration requirement for market exit, such as the one in Austria, provides the NRA with the information necessary to fulfil its requirements regarding market overview and market surveillance.

5.3.2 Findings

The NRAs justify the registration requirement as being consistent with the key task of supervising the market and ensuring the integrity and transparency of the wholesale gas market, in accordance with REMIT and Article 41 of Directive 2009/73/EC concerning common rules on the internal market for natural gas. Moreover, the NRAs have to monitor the level and effectiveness of the market opening and competition at the wholesale level. To this end, the NRAs need to be aware of who is participating in the market and conduct an initial review of the envisaged trade activity to check whether it is in compliance with relevant national administrative provisions.

The requirement to register with the NRA before commencing wholesale trading activities appears to be a proportionate and justified measure to provide the regulator with all information necessary to fulfil its obligations. Additionally, it only applies to traders not yet active on the market.

5.3.3 Barrier

A mere registration requirement, without the need to submit extensive documentation, is not perceived as a barrier to entry or trade on the wholesale gas market by the participants in this Study. Only in rare cases where the registration requirement is paired with extensive documentation requirements, language requirements (such as certified translations, apostilled documents, etc.) may the requirement be perceived as a burden to enter the market.

¹⁹ ACER/CEER (2019), *The Bridge Beyond 2025*, p. 10.

5.4 Licence requirement

In order to trade on the wholesale gas market, traders are required to obtain a licence in several of the 12 Member States. Various licences (integrated licence, wholesale licence, shipping licence, cross-border licence) exist. Such licence requirements can be found in the following Member States: Czech Republic, France, Netherlands, Poland and Romania.

An integrated licence²⁰ may be obtained in the following Member States: France, Poland and Romania²¹. In France and Poland, the following information has to be provided in order to apply for an integrated licence:

- Information on the licence applicant:
 - company name and registration number;
 - criminal record of the CEO/management board;
 - composition of shareholders including criminal records of the entities having significant influence;
 - declaration that there is no bankruptcy/insolvency procedure;
 - tax identification number;
 - documentation on financial capacities (such as income statements, financial statements for the last three years, bank guarantees, etc.);
 - bank account confirmation not older than three months (Poland);
 - period for which the licence is to be granted (Poland);
 - documentation that there are no social security arrears (Poland);
 - tax arrears (Poland).
- Information on the envisaged supply activities:
 - categories of customers;
 - qualified staff;
 - description of commercial activities in the energy sector;
 - five-year gas supply forecast;
 - long-term contracts;
 - ability to obtain sufficient supplies of gas volumes and capacity reservation;
 - use of gas storage (France);
 - overview of planned revenues, costs and sales for a minimum of three years (Poland).
- For Poland, the list of required documents is not exhaustive. The NRA, upon its sole discretion, may request more documents, depending on the individual situation of the applicant.

A wholesale licence²² is available in the following Member States: Czech Republic, Netherlands²³ and Romania. To obtain a wholesale licence, the following information has to be provided:

- Information on the licence applicant:
 - company name and company registration number;
 - ultimate beneficial owner (Netherlands);
 - contact details of contact person and representatives;
 - CVs of legal representatives (Romania);

²⁰ For the purpose of this Study, integrated licence means a licence that covers supply activities and wholesale activities. Most Member States offering an integrated licence do not provide the option of a mere wholesale licence. Traders therefore need to obtain a licence covering supply, even though no supply activities are envisaged.

²¹ In Romania traders may choose between an integrated licence and a wholesale licence. The study will only focus on the wholesale licence requirements.

²² For the purpose of this Study, wholesale licence means any permit, licence or authorisation issued by any state-controlled authority which allows the trader only to be active on the wholesale market.

²³ In the Netherlands traders may also obtain a shipping licence, which includes wholesale trade. The Study will only focus on the wholesale licence requirements.

- information on the rules for the operation (Romania);
- list of the premises (Romania);
- criminal record of the CEO/management board;
- information on insolvency;
- documentation on financial capability (bank account statements, financial statements, annual report);
- qualified staff;
- documentation that there are no arrears in taxation;
- social security;
- custom duties or fines (Czech Republic);
- statement on the quantity of gas estimated to be supplied in the first 12 months (Romania).

In most cases the licence is granted for an indefinite period. In some Member States, the licence is granted for a limited period²⁴, which may vary from five years (Czech Republic) to a maximum of 50 years (Poland). In Member States with a licence limited in time, the licence may usually be extended multiple times. In order to apply for an extension of the licence, the licensee must submit a formal request before the expiration of the licence. In Poland, the request for extension/renewal of the licence must include the same information as the original licence application. Moreover, in some Member States the licence application fee has to be paid again when applying for extension/renewal of the licence.

In the Czech Republic, Poland and Romania, the NRA is the competent authority to issue the licence. In France, the licence is granted by the Ministry for Energy. In the Netherlands, wholesale gas traders who intend to trade gas on the TTF need to obtain a licence from the TSO. The information required for the licence application usually has to be submitted in the national language, except for the Netherlands. In the Netherlands the application form is also available in English. All Member States require at least certified translations of foreign documents. In Poland only the original document or a certified copy is accepted for the licence application.

Once the competent authority has received the application, it usually reviews it for completeness and may request missing documents. In the second step, the authority reviews the content of the licence application and, if the applicant fulfils the (above listed) requirements, grants the licence and informs the applicant. In some Member States, the absence of communication from the authority for a certain period of time constitutes a rejection of the application (France). In the Netherlands, the TSO may invite the applicant for a meeting to discuss all relevant information. The TSO then either grants the licence or initiates an external screening. In the external screening procedure, the financial capabilities of the applicant are evaluated.

The duration of the licence process varies and official terms stated on the website of the respective NRA often do not match reality. Usually the term within which the NRA has to issue the licence is merely instructive and not compulsory for the authority. If such a term is not complied with, this does not lead to any negative consequences for the officials or the authority. Thus, in many cases the trader either has to appeal a tacit rejection (as mentioned in the previous paragraph) or to wait for the authority to react after the expiration of the deadline. The average official duration of the licensing process is two months. In some Member States authority is granted up to six months to decide on the licence application (France, Netherlands). In reality, however, the licence procedure may reportedly take even up to 18 months (Poland). The figure (Figure 4) below shows the duration of the licensing process as indicated by the participants of this Study and may differ from the time the authority may be granted legally to issue the license.²⁵

²⁴ Czech Republic, Poland, Romania.

²⁵ The information displayed in the figure on Poland was provided by the NRA and TSOs. Traders communicated a much longer duration of the licensing process (up to 18 months).

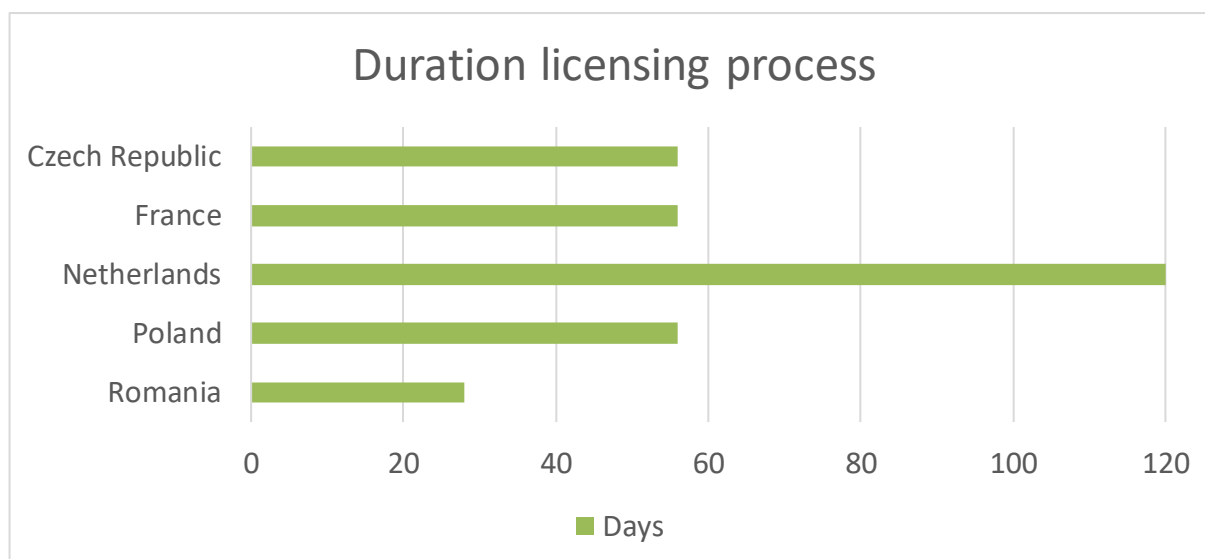


Figure 4 Duration of the licensing process in the selected 12 Member States

5.4.1 Objectives / justifications

Because gas is a product having consequences on the functioning of essential infrastructure of Member States as well as on the daily life of citizens, it is deemed to be necessary to regulate access to this market in a way that ensures security and supervision of the related activities. Licence requirements have multiple objectives, but are generally meant to help safeguard public policy interest, such as the need for market supervision, prevention of fraud and market abuse, tax and regulatory compliance. Licensing fees also provide for the financing of NRAs.²⁶

The objective of a licence requirement is to provide the NRA with all necessary and relevant information on the market actors while ensuring that gas trading is carried out by qualified professionals only. The financial requirements for obtaining a licence are introduced in the context of only financially stable traders being allowed to act on the market. Another rationale for licensing is to optimise the NRAs' monitoring and enforcement capacities by focusing on the licensees' technical capabilities and financial viability.²⁷ This is supposed to minimise the likelihood of market abuse and regulatory violations.²⁸ In particular balancing fraud is supposed to be prevented. A licence requirement also provides the authorities with the possibility to revoke the licence in case of misconduct or regulatory violations.

Licence applicants must provide a range of documents attesting to the existence of the company, the nature of the company's business activities, its financial fitness and creditworthiness, the non-involvement in criminal activities, etc. Such documentation requirements are supposed to enhance the NRAs' process of screening the quality of the applicants in order to detect potentially unreliable traders. The documentation is used to obtain information on the role the trader plans to have on the specific market.

5.4.2 Findings

The revocation of the licence is considered an important tool to control wholesalers' activities. However, the same effect could be achieved by introducing a set of requirements for traders where non-compliance is linked to an option for the NRA to impose

²⁶ Energy Community, Non-Paper, p. 3.

²⁷ Energy Community, Non-Paper, p. 6.

²⁸ CEER (2011), p. 16.

administrative measures and fines.²⁹ Such administrative measures could also usually include temporary suspension of the wholesale activity until the non-compliance is remedied or a ban on performing the wholesale activity for a certain period of time (e.g. two years).

The licence requirement is generally considered justified, as it allows an adequate level of security of supply (especially by preventing fraudulent behaviour) to be maintained. Moreover, a licence requirement may be justified by the need of the NRA to ban certain actors from the market. However, wholesale trade does not always affect the security of supply which is primarily linked to the good functioning of the grids. Wholesale trade does not have a direct influence on household customers, as it is not a direct upstream market, but only constitutes a more distant market alongside the value chain.³⁰ Fraud prevention, on the other hand, does at first glance appear to be a legitimate justification. It is questionable whether licensing is suitable for conducting economic, commercial or financial checks, as those require continuous assessment whereas with a licence requirement, the checks are only performed once.³¹

Licensing also serves the purpose of protecting the market functioning from malicious practices.³² Past experience throughout the EU has shown that balancing fraud (like taking a position in the balancing market and leaving the market before the required payment is due) poses a great risk. Some NRAs argue that mitigating this risk by conducting ex-ante checks justifies a licensing requirement. However, the example of Italy shows that mere registration and a very strict policy on bank guarantees enforced by the TSO might be sufficient to attain this policy goal. If a licensing requirement is justified by fraud prevention and the legitimate interest to know who is active on the market, it remains questionable whether it is proportionate. A mere notification that a company wishes to commence wholesale trading activities might be enough for the Member State to have knowledge about the market actors and their activities.³³

The requirement to obtain an integrated licence and the information requirements linked to such a licence, without offering the option for traders to obtain a mere wholesale licence, seems unproportionate excessive if the scope of wholesale gas trading activities is considered. In comparison to the simple registration requirements or those entailed by a wholesale gas trading licence, the cumbersome information requirements for integrated licences could be perceived as unjustified for mere wholesale traders.

5.4.3 *Barrier*

The existing studies assessed indicate that the requirement to obtain a wholesale gas trading licence across the EU may constitute a barrier to entry on a specific national gas market. It entails costs in terms of lengthy and burdensome legal and administrative procedures, meeting additional financial requirements, document translation and notarisation etc.³⁴ Excessive licensing requirements thus yield unnecessary bureaucracy, hinder market development and liquidity, and may prove time-consuming.³⁵ Highly detailed information requests (e.g. providing a business plan, providing only original

²⁹ Energy Community, Non-Paper, p. 10.

³⁰ EFET (2009), p. 7.

³¹ Energy Community, Non-Paper, pp. 9-10.

³² ACER/CEER (2019), *The Bridge Beyond 2025*, p. 10.

³³ EFET (2009), p. 8.

³⁴ EFET (2009), p. 6.

³⁵ EFET (2019), *Market Inefficiencies in the Member States of the European Union (Central and Eastern Europe)*, available here: https://efet.org/Files/CEE_EU%20market%20distortions_May%202019_final.pdf.

documents, etc.) may deter new traders from entering the market.³⁶ This applies particularly to companies who are not yet active in any European markets.

In some Member States there is no complete and exhaustive list or guidelines on what kind of documents must be provided as evidence that a specific licensing requirement is met. This creates uncertainty as to what the NRA may justifiably request. In cases where the NRA is allowed to request additional documentation at its own discretion, the legal uncertainty is perceived as a significant barrier by the participants in this Study.

Traders, but also TSOs and NRAs indicated in their responses that having to obtain an integrated licence, meaning one licence for supply and wholesale activities, is perceived as a barrier to entering the wholesale gas market.³⁷ Mainly because the requirements to obtain an integrated licence are usually significantly higher than those to obtain a separate wholesale licence. A supplier, when supplying household customers, has more responsibilities prescribed by both European and national legislation. The process of obtaining an integrated licence is lengthier, requires more documents and is ultimately more expensive than obtaining a separate wholesale licence. It usually requires traders to involve local legal and business advisors which incurs further costs.

The licensing process itself was in some cases classified as a barrier by traders and trader organisations. The licensing process reflects the administrative procedure market participants have to follow in order to obtain a licence and to become active on the wholesale market. Similar to the licence requirement, the licensing process is not always considered to be a barrier. Only lengthy licensing procedures, involving a large number of documents, including very strict language requirements (such as certified translations,³⁸ apostilled documents³⁹, etc.) and/or high collaterals⁴⁰ are perceived by traders as a (severe) barrier. Traders also criticised the submission process in some Member States, stating that it was a barrier. The submission process is considered burdensome, when documents have to be provided in the national language only, accompanied by certified translations or apostilled documents or when documents may only be submitted in a certain format, through a complicated online tool or in person.

Participating traders classified licensing processes lasting more than two months as a barrier. In some cases, the duration of the licensing process was qualified as a severe barrier, especially when they last more than 12 or even 24 months.⁴¹ When entering the market, the duration of the market entry process is crucial. Entering a host Member States' gas market as a wholesale trader is a business decision that includes several factors. One of them is the duration of the process. If the process is overly long, access to the market becomes unattractive. Companies then miss the opportunity to establish a business, especially in cases when the business is more short-term due to a specific situation.

In most Member States the licence is not limited in time, meaning that once the licence is obtained, the trader does not need to renew it. However, in some Member States⁴² the licence must be renewed after a certain period. In others the licence is not limited in time per se, but becomes invalid if the trader is not active for a certain period or does not provide the NRA with certain information or regular updates.⁴³ In such cases either a new

³⁶ Brattle/Skadden (2010), p. 35.

³⁷ See [Annex 2](#), Evaluation questionnaire traders. In Hungary and Romania, where an integrated licence is required and the general assessment of the regulatory and administrative environment was qualified as a barrier.

³⁸ E.g. required in Austria, France, Hungary, Poland, Romania.

³⁹ E.g. required in Hungary, Poland, Spain.

⁴⁰ E.g. required in Hungary, Poland, Romania.

⁴¹ Kantor (2017), p. 48; Licensing may take up to two years in Poland due to the extensive number of documents to be provided and the obligation to submit everything in the Polish language.

⁴² Czech Republic, Poland, Romania.

⁴³ E.g. France, Ireland.

licence has to be obtained or a renewal process has to be followed. Licences limited in time and especially the licence renewal process have been classified as a barrier to trade on the market. Undergoing the whole licensing process again is cost intensive, as not only the licence fee has to be paid again, but also costs for legal support and translations are incurred.

In all Member States where a licence has to be obtained before entering the market and in most of the Member States where registration with the NRA is required before trading on the market, a certain number of documents have to be submitted to the NRA. Even though the fact that documents are requested by the NRA is not perceived as a barrier per se by the participants in this Study, the quantity and quality of the requested documents can be perceived as a (severe) barrier. The following document requests have been identified as barriers by traders:

- Business plan

A business plan is required by several Member States⁴⁴ when applying for a licence. The mere fact, that a business plan is required does not in itself classify as a barrier; however, in cases where a specially audited business plan in the national language has to be provided, the requirement becomes a barrier.

Even though all market participants at some point drew up a business plan before entering the market, the requirement to have it drawn up in a specific language (which might not be the language of the trader) and to have it audited, prolongs the preparatory process and makes the licensing process more expensive. Moreover, the informative value of business plans is questionable, because they are of a non-binding nature and are frequently reviewed and adapted by the trader.⁴⁵

- Availability of qualified staff

To have qualified staff available is a very common requirement and is in itself not classified as a barrier by traders. However, the fact that there is no common understanding amongst Member States, as to how this requirement must be fulfilled and no common standard is applied, can be perceived as a barrier. Traders active in more than one Member State almost always classified this requirement as a barrier. In combination with an integrated licence requirement, availability of qualified staff becomes an even bigger barrier, because professional qualifications for a supplier are more stringent and require more technical background than necessary for wholesale traders. Wholesale traders usually have an economic background and are not energy engineers, for example.

- Criminal records of management

The submission of criminal records of the management of a company is a very common practice to prevent fraud and other criminal activities, even though the review of such documents falls short of providing the desired guarantees, as the management can easily be changed just to provide clean records.⁴⁶ In general this requirement does not constitute a barrier, as it is common practice also when establishing a legal entity, branch or for obtaining other licences. However, very strict and inflexible requirements for the criminal record to be accepted (e.g. the criminal record certificate has to be issued by the Member State where the company has its headquarters) may classify as a barrier, if they are very difficult to achieve.⁴⁷

⁴⁴ E.g. required in the Czech Republic, France, Poland.

⁴⁵ Energy Community, Non-Paper, p. 9.

⁴⁶ Energy Community, Non-Paper, p. 9.

⁴⁷ In Poland, the NRA requested that the criminal record is drawn-up by the competent authority from the Member State, where the trader has its headquarters. However, the management of a company does not always reside in the same country and

- Trading exam

Only a few Member States⁴⁸ require a trading exam when applying for a licence. However, wherever required, taking a trading exam was classified as a barrier by traders. This especially holds true, when the trading exam is only held in the national language and trading exams from other Member States are not recognised.

5.5 **Local establishment / local presence requirement**⁴⁹

In Bulgaria, Germany, Italy, Lithuania and the Netherlands, no requirements relating to a local establishment⁵⁰ or presence exist, while in Austria it is only necessary to have a local branch in case a physical trader wants to permanently trade on the Austrian market.

In several other Member States, some kind of local presence is required to obtain a licence (Czech Republic, France, Poland, Romania and Spain). This can either be the case for every foreign trader, including traders from EU Member States (Czech Republic) or only apply to traders that are not set up in the territory of the European Union (France, Romania), an EFTA country or a country with which another international agreement exists (Greece, Poland, Spain).

The requirement to have a local presence may entail the need to have a local address, the opening of a branch office (Romania) or the establishment of a corporation/subsidiary, meaning a legal entity with its own legal personality in the respective Member State. The local branch office might have to be registered in the Commercial Register (Austria, Czech Republic).

5.5.1 *Objectives / justifications*

The purpose of these requirements is to enable the authority to exercise direct control over foreign entities and effectively enforce national legislation. The establishment of a branch office or a local entity is also supposed to ensure higher transparency and simplified communication between the licence holder and the respective authorities.

5.5.2 *Findings*

It is questionable whether the requirement of a local presence for traders from EU Member States is compatible with the freedom of movement of goods and services. National measures that lead to the duplication of administrative controls are not objectively justified and Member States need to demonstrate that they are required to safeguard public interest criteria which are not safeguarded under the supervision of the Member State, where the trader has a local establishment.⁵¹ Thus, the requirement to have a local establishment in case the trader already has a seat in the EU is not justified. To ensure a minimum level of enforcement possibilities and to communicate effectively with traders, it may well be justified to require at least the establishment of a local branch office for companies from non-EU/EEA countries. In the Czech Republic licence holders from EU Member States can

thus the criminal record cannot be issued by the respective authority. Then the composition of the board has to be changed just to comply with the document request of the NRA.

⁴⁸ This used to be the case in Poland. Currently, trading exams are used as a tool to evaluate a licence application only in Portugal and France.

⁴⁹ The Consultant only assessed the justification of a local establishment required specifically by wholesale gas regulation. The requirement to have a local establishment due to other reasons (e.g. tax, trade code, etc.) has not been assessed by the Consultant.

⁵⁰ For the purpose of this Study, local establishment includes both, a local corporation (corporate entity registered in the respective Member State) and local branch (organisational unit without legal personality).

⁵¹ Cf EFET (2009), p. 9; Whereas EFET particularly refers to the following case law: C-155/82, Commission v Belgium [1983] ECR 531 regarding free movement of goods and C-33/74, Van Binsbergen, [1974] ECR 1299, para. 11; C-58/98, Corsten [2000] ECR I-7919 regarding free movement of services.

apply for the recognition of their licence and then do not have to fulfil the local presence requirement.

5.5.3 *Barrier*

According to the participants of this Study and the reviewed literature, setting up a local presence is considered a major obstacle to entering a new market, since costs are incurred for complying with additional reporting, accounting and transfer pricing rules.⁵² Moreover, some market operators argue that it is a discriminatory measure, as it deters foreign traders from entering the gas trading market more than local entities, given the costs of setting up the branch office/corporation (office, hiring staff and/or relocation, legal and translation costs).⁵³ The requirement to set up a subsidiary could also trigger tax liabilities and lead to the application of laws regarding profit tax and VAT. Further formalities like registering the ultimate beneficial owner under the AML rules, the implementation and application of internal AML rules under the applicable AML legislation, being subject to supervision by another regulatory authority, are time-consuming and increase the costs for entering the market. It is worth noting, that traders from the UK will be facing the need to establish a local branch or local corporation after Brexit.

5.6 ***Financial requirements***

Obtaining a licence or registering in some Member States (Czech Republic, France, Lithuania, Netherlands, Poland, Romania, Spain) requires applicants to provide the NRA with proof of financial capabilities, a minimum amount of capital or the provision of financial guarantees/collateral. Irrespective of that, in almost all Member States the TSO and/or the virtual trading point require network users and/or traders to provide a financial guarantee.

Financial capabilities might have to be proven in the form of a declaration regarding the company's solvency (Lithuania, Poland), an extract from the insolvency register (Czech Republic), financial statements (Czech Republic, France, Poland) or a minimum credit rating (Netherlands). The availability of sufficient funds for the operation might have to be demonstrated with proof of equity (Romania), cash deposits, bank or insurance guarantees (Poland, Romania).

A more flexible approach regarding financial requirements was taken by the Dutch TSO, which is the responsible party for the issuance of a licence for trade on the Title Transfer Facility (VTP). Traders have to meet financial security requirements appropriate for their exposure. After a financial analysis of the trade company, the credit limit is determined on the basis of the data provided. The credit limit must always cover exposure, which might make it necessary for traders to provide additional financial securities (bank guarantees, security deposits).

5.6.1 *Objectives / justifications*

Financial requirements for obtaining a licence are introduced against the backdrop that only financially stable traders should act on the market. This requirement is justified in order to maintain an adequate level of security of supply and to prevent fraudulent behaviour.

5.6.2 *Findings*

As already set out above, the financial requirements linked to a licence requirement can hardly be justified by mere fraud prevention objectives and are usually not suitable for economic or financial checks. Such checks need to be conducted continuously, whereas licensing only allows the NRA to check once. The proportionality of the requested collaterals

⁵² Brattle/Skadden (2010), pp. 34-35.

⁵³ EFET (2009), p. 6.

or other financial guarantees has to be assessed on a case-by-case basis. Financial requirements by the NRA are most likely not proportionate in those Member States where the TSO and the VTP again require collaterals from traders when granting access, as they are a mere duplication of guarantees.

5.6.3 *Barrier*

The requirement to hold financial guarantees imposed by the licensing authority (a public body) was described as being unnecessarily redundant by the participants of this Study, because they are usually required by the TSO when a trader plans on using the network or by the gas exchange, when trading is to take place there. Therefore, it might not be necessary to impose the same requirement within the licensing framework in order to ensure a functioning exchange or to prevent risks related to balancing fraud. In the context of a combined wholesale and supply licence, wholesale traders also stated that an assessment of commercial success⁵⁴ should not be a prerequisite for granting a licence, as the possible risks are not the same as for suppliers, and traders are incentivised enough by the market to operate economically. In general, high financial guarantees mainly deter new market entries, since they are no burden once the licence was granted.

In Member States where the collateral is very high or the financial guarantee must be obtained from certain banks, the traders participating in this Study perceive the requirement as a barrier. This holds true for all financial guarantees and is especially burdensome in cases where individual bank guarantees have to be provided for each of the NRA, the TSO and the VTP.

5.7 **Reporting obligations**

In some Member States, no reporting obligations in addition to REMIT exist towards the NRA or other public authorities (Bulgaria, Germany, Greece, France, Italy⁵⁵, Netherlands, Spain), whereas in others additional information has to be submitted (Austria, Czech Republic, Lithuania, Poland, Romania).⁵⁶

Reporting obligations additional to REMIT can include (i) trading data (Austria, Lithuania, Poland, Romania), e.g. transported volumes, prices, imported volumes, duration of contracts, terms and conditions of contracts, booked capacities; (ii) financial data, e.g. preliminary accounts, audited financial statements, business plan for the next five years; or (iii) corporate data, e.g. annual reports on employees or the shareholder structure. Generally, changes regarding the notification/registration or conditions for the issuance of a licence also have to be reported (e.g. Austria, Poland, Romania). Obligations sometimes only apply if trades reach a certain threshold (e.g. Austria) or if contracts have a duration in excess of a certain period.

Regardless of whether a statutory reporting obligations exist, the NRA might be entitled to request any information or document necessary for the fulfilment of the authority's tasks (Bulgaria, Czech Republic, Lithuania). The frequency of reporting obligations differs from country to country but usually is set on a monthly (Austria, Lithuania, Poland, Romania), quarterly (Poland) or annual (Lithuania, Poland, Spain) basis or on a continuous basis (Austria, Lithuania). Data can usually be submitted via e-mail or by means of an online platform. Traders may be required to appoint a person responsible for the reporting

⁵⁴ NRAs require documentation on the financial capabilities of licence applicants and business plans in order to assess the commercial success the company may have in the future. Without a positive outlook a licence will not be granted.

⁵⁵ Even though the law does not stipulate any additional reporting obligations apart from REMIT, we were informed by traders and the NRA that the NRA annually requests certain information from traders. According to information provided by the NRA this is only a request for information and not a legal reporting obligation.

⁵⁶ The Consultant's assessment in this Study is limited to reporting obligations towards public authorities. Reporting obligations towards TSOs or trade exchanges are not covered in the Study.

(Austria) and to keep a record of the data to be reported for a number of years (Austria, Lithuania, Spain).

5.7.1 Objectives / justifications

NRAs monitor, *inter alia*, the level and effectiveness of market opening and competition at wholesale and retail levels, including any distortion or restriction of competition and the level of transparency in the natural gas market. This is the main purpose for most of the reporting obligations. Information is also requested for statistical purposes. NRAs analyse the market and competition situation and regularly publish surveys, expert opinions and position papers on the gas market. Moreover, efficient market monitoring is vital to impose sanctions for breaches of market rules and therefore to discourage market abuse.

5.7.2 Findings

In general, reporting obligations are justified by market monitoring requirements. However, extremely burdensome reporting obligations, a high frequency in reporting requirements and the need to report the same data to several authorities minimises the justification of reporting obligations. The proportionality of reporting obligations is lost in cases where regulatory reporting requirements hinder market actors in their activities or are overly time-consuming. Reporting obligations duplicating data already reported by other market actors (e.g. the TSO) are considered especially unjustified.⁵⁷ Any reporting obligation duplicating data already reported under REMIT is most likely not justified, since NRAs have access to the data reported under REMIT and are supposed to use it to fulfil their market monitoring obligations.⁵⁸

5.7.3 Barrier

All Member States require some reporting to be done by the market participants. Reporting obligations are usually not perceived as extremely burdensome, as they are common and accepted by market participants. However, in cases where the reporting duplicates data already reported under REMIT, the reporting obligation was seen as an unnecessary burden to trade on the wholesale market by the participants of this Study and according to the reviewed literature.⁵⁹ This is particularly the case because REMIT aims to avoid double reporting and stipulates that required information should not be collected from traders but from other persons and existing sources where possible.

Moreover, the frequency of the reporting obligation and additional reporting requirements to different authorities, such as the NRA and the respective Ministry, are perceived as a barrier. Reporting obligations, which may only be fulfilled in the national language or which require complicated communication systems with the NRA, are also seen as burdensome and may constitute a barrier in extreme cases. Unlike other barriers, reporting obligations may constitute a barrier not just for companies planning to enter the market but also for already established market participants.

Detailed reporting obligations are time-consuming, may create uncertainty and impose additional costs (e.g. translation) on traders particularly if there is a constantly changing reporting format. The participants of this Study stated that the cost of data reporting is not detrimental, but it can be a burden for small companies.⁶⁰

⁵⁷ EFET (2019), Market Inefficiencies in the Member States of the European Union (Central and Eastern Europe), p. 10.

⁵⁸ EFET (2019), Market Inefficiencies in the Member States of the European Union (Central and Eastern Europe), p. 16.

⁵⁹ Kantor (2017), p. 15.

⁶⁰ Kantor (2017), p. 15

5.8 Penalties

The following events may trigger penalties across the 12 examined Member States:

- Violation of the registration requirement;
- Trading without a licence;
- Violation of the licence requirements (e.g. submission of false/misleading documents);
- Violation of the requirements to operate under a recognised licence;
- Violations of national gas regulations;
- Violation of reporting obligations (including REMIT).

In some Member States there is no possibility of holding a legal entity liable (France, Poland). In those states, the natural persons representing the legal entity or acting for the legal entity are held liable.

Violations of the registration requirement may lead to fines and to the prohibition from being active in the market. Fines for the violation of the registration requirement vary, from EUR 75,000 to up to 10 % of the energy undertaking's income received in the previous financial year from specific regulated activities in which the violation was committed. If a measurable benefit was obtained as a result of the infringement, the fine may be doubled.⁶¹

Trading without a licence, violating the licence requirements or the national gas regulation may lead to fines and, in some Member States, to imprisonment.⁶² The fines for trading without a licence or violating the licence requirements vary. In some Member States the fines are calculated according to a percentage of the trader's revenue; in other Member States the fine is a fixed amount or a portion of a fixed amount. In the Czech Republic, the NRA may impose fines of up to EUR 2m or 1 % of the net turnover of the gas trading activities per year. In France, the competent authority may impose fines up to EUR 150,000. In addition, the competent authority in France may impose the following penalties on natural persons: (temporary) closure of establishments, prohibition to exercise a certain profession. In addition, the French administrative authorities may impose a financial penalty of maximum 3% of the turnover. In the Netherlands, the competent authority may impose a fine of up to EUR 900,000 or 10 % of the revenue of the company (whichever is more). In Poland the NRA may impose fines between EUR 5 and EUR 1,100⁶³ or between one percent and 15 % of the income resulting from the licensed activity in the previous tax year. In Romania, the fines vary between EUR 4,200 and EUR 85,000.

In most Member States, the maximum amount possible for the fine is not completely exhausted; most of the time the fines are much lower.⁶⁴ In case of a repeated violation the NRAs may increase the fines by a certain percentage.⁶⁵ In many Member States the competent authority provides the possibility to correct the violations by setting a deadline in order to meet the requirements. In case the trader misses the deadline, the sanction is usually a fine or the withdrawal or suspension of the licence. If the requirements for holding a licence are no longer met, the competent authority in most Member States may withdraw the licence. Violation of the requirements to operate under a recognised licence may lead to a fine or the withdrawal of the permission to operate.

⁶¹ E.g. Spain.

⁶² France, Poland.

⁶³ The Polish authority may impose fines between PLN 20 to 5,000. See Article 24 item 1 Polish Code of Administrative Offences.

⁶⁴ Information provided by market actors during the interviews.

⁶⁵ E.g. in France the financial penalty may increase to maximum 5% in case of a repeat violation of the same offence. In Romania, the regulator may impose a fine between 1% and 5% of the annual turnover in case of a repeating violation.

The violation of reporting obligations may lead to a fine. The amount of the fine varies among Member States.

Member State	Fines for the violation of reporting obligations
Austria	Up to EUR 75,000
Czech Republic	Up to EUR 2m or up to 1 % of the net turnover
Lithuania	Up to 10% of the annual income generated by the specific regulated activity in the last year
Romania	EUR 210 – 420 for natural persons; EUR 2,100 – 83,000 for legal persons
Poland	Max. 15 % of the income resulting from the licensed activity in the previous tax year

In case of repeated violations, the competent authority may increase the fines or impose an additional fine amounting to a certain percentage of the annual turnover. In some Member States⁶⁶, the NRA contacts all new market entrants at the beginning of the year in order to inform them of their reporting obligations. In those Member States very few traders were found to be in violation of their reporting obligations. In general, unintentional errors in reporting do not lead to a fine.

5.8.1 *Objectives / justifications*

The penalties mainly aim to support the enforcement of the national and European regulations by sanctioning non-compliance with the applicable provisions. The penalties also have the aim of imposing a certain discipline on the gas traders. By imposing penalties, the legislator may pursue the following objectives: (i) achieving transparency and non-discrimination of the implementation of the market rules; (ii) accountability for the actions of the market participants; (iii) warning to other market participants, (iv) warning and reassurance of a functioning supervision to consumers; and (v) deterring additional offenders.

5.8.2 *Findings*

Penalties are generally justified by the protection of the market, other market participants and the consumers. The above-mentioned penalties vary greatly in size (ranging from EUR 5 to EUR 2m). To assess the proportionality of penalties, the concrete violation, the specific market and the amount of the penalty have to be taken into account. Penalties such as the withdrawal of the licence are justified only when proportionate. It would not be proportionate to withdraw a licence just because the trader is one day late with reporting information or because of a single minor offence.⁶⁷

Generally, imprisonment is most likely not proportionate in any of the above-mentioned events. Usually imprisonment is a form of penalty only available in criminal procedures and upon a criminal and not an administrative or regulatory offence. A fine which is a

⁶⁶ E.g. Austria.

⁶⁷ Brattle/Skadden (2010), p. 2.

percentage of the turnover may only be proportionate in case of serious violations and not in case of minor violations of reporting obligations.⁶⁸

5.8.3 *Barrier*

Penalties were not detected as being a barrier to entry and trade on the wholesale gas market either in the reviewed literature or in the field research. However, traders reported that in some of the Member States the authorities are very quick to impose fines, even for small errors made in reporting or other minor mistakes, which they perceive as bullying.⁶⁹

5.9 **Administrative fees**

Administrative fees are understood as any fees due for licensing/registration and supervision of the market actors. Licence or registration fees may cover only the licensing or registration process, or they may also support the overall budget of the NRA. The same holds true for supervision fees; they might only cover the costs of market supervision or contribute to the overall budget of the NRA.

No administrative fees (neither for licensing/registration nor for supervision) are collected in the following Member States: Austria, Bulgaria, France, Germany, Greece⁷⁰, Italy, Lithuania, Netherlands and Spain. In those countries, NRAs' budgets are funded by the state budget or from fees collected from other market participants.

A licensing fee (stamp duty) has to be paid in the following Member States: Czech Republic, Poland and Romania. The amount of the licence fee ranges from EUR 140 to EUR 4,000. In Romania, the licence fee is calculated based on the gas quantities estimated to be supplied plus a one-off fee of EUR 500 for the review of the application. In addition, a fee has to be paid for any changes made to an already issued licence (e.g. change of company name, etc.).

In the following Member States a recurring supervision fee has to be paid: Czech Republic, Italy, Poland and Romania. The recurring fee has to be paid to the NRA for supervision and contributes to the budget of the regulator. In all those Member States, this recurring supervision fee is flexible. The fee is either calculated according to the amount of gas consumed by the trader's customers as a fixed amount per consumed MWh gas or by a percentage of the trader's turnover. In Poland the fee payable must be at least EUR 230 and must not exceed EUR 580,000.

5.9.1 *Objectives / justifications*

The regulator's independence is reliant on having access to necessary funding. Licence fees may either cover the administrative costs for issuing the licence or provide ongoing revenue for the budget of the regulatory authorities. The rationale for charging fees is different in each case:⁷¹

- Cost-based: covering the cost of issuing the licence, or the cost of the energy regulator;
- Revenue-based: fee according to a trader's turnover, being similar to a tax.

⁶⁸ Going forward it needs to be considered that if the requirement for a local establishment is abolished and a system of mutual recognition is introduced the turnover/revenue-based fines need to be re-assessed because the turnover then might be higher and thus the fines need to be limited to the turnover gained on the market where the violation was performed.

⁶⁹ E.g. Romania, Poland.

⁷⁰ Even though the NRA is entitled to them, registration fees are not collected. However, Greece does collect a fee on natural gas imports (EUR 0,24/Tcm).

⁷¹ Brattle/Skadden (2010), p. 34.

Cost-based licences tend to be lower and are considered more likely to encourage market entry. Revenue-based licences are considered unnecessary requirements that create disincentives for market traders and may influence wholesale prices artificially.⁷²

The objective of a supervision fee is to compensate the authority for its expenses when supervising the market, while also contributing to the overall budget of the NRA. In general, it is also justified by the expenses the NRA incurs when monitoring the market.

5.9.2 Findings

A fee calculated by the amount of gas consumed or by the turnover may not be justified for several reasons. First, the costs of monitoring the market do not increase with every MWh the trader consumes or with every euro the trader makes in turnover. It might be the case that a very active trader generates more supervision costs; however, not in the same amount for every additional MWh/EUR traded/earned. Second, charging market actors on the basis of the annual turnover might send the wrong signals to the market, as it incentivises the market actors to limit the turnover.⁷³ Third, supervision fees linked to the turnover of the trader may limit market liquidity, as traders may reduce trading activities in case the fee is too high compared to the benefits of trading on the market. A licence fee limited to the costs of the licensing procedure seems to be justified.

5.9.3 Barrier

The licence fee is usually not perceived as a barrier, as it is a rather small one-off fee. In some Member States, however, the traders active on the market and participating in this Study perceive the annual supervision fee as a barrier. Traders classify the supervision fee as a barrier in case legal certainty is not provided on how to calculate it (e.g. if the fee changes every year and is payable upon short notice) and when the amount of the fee is very high. They affect new market entrants to the same extent as already established traders, since both include fees in calculations regarding the profitability of a business.

5.10 Cross-border trade⁷⁴

Cross-border trade, meaning the import or export of gas to a Member State, is supposed to be performed by booking entry and exit capacities. In some of the 12 selected Member States the payment of an import or export fee is required.⁷⁵ In Greece, the import of gas is charged with an import fee of EUR 0,24/Tcm (thousand cubic meters). No Member State other than Poland has additional administrative or regulatory requirements regarding cross-border trade. In Poland a separate licence for cross-border trader is required.

To obtain a cross-border licence in Poland, the same information must be provided to the NRA as for a national licence. The application for a cross-border licence must also contain (i) a detailed description of the business activities, including a statement on how the obligation to diversify natural gas supplies from abroad will be fulfilled, (ii) a business plan containing the costs of business operation, costs of mandatory storage, margin and planned costs of gas purchases, (iii) the average daily volume of imports intended by the entrepreneur and (iv) the planned start date of imports of natural gas from abroad.

⁷² EFET (2019), Market Inefficiencies in the Member States of the European Union (Central and Eastern Europe), p. 3.

⁷³ EFET (2019), Market Inefficiencies in the Member States of the European Union (Central and Eastern Europe), p. 7.

⁷⁴ With regard to cross-border activities, the Consultant did not assess general taxation requirements and trading requirements, such as VAT registration, trade licence or the general requirement for all foreign companies to open a local branch in order to become active on the national market.

⁷⁵ Bulgaria, Greece, Poland.

The trader holding a licence for cross-border trade is subject to a mandatory storage obligation.⁷⁶ The licensee must maintain mandatory reserves of gas equivalent to at least 30 days of average daily imports and maintain mandatory reserves of gas in storage facilities whose technical parameters ensure that reserves can be delivered entirely to the gas system within a maximum period of 40 days. The amount of natural gas reserves is determined by the licence holder based on the amount of imported natural gas or by the NRA in case of entities planning to start importing natural gas from abroad based on the average daily import planned by the applicant. Traders having obtained a cross-border licence in Poland are obliged to diversify their natural gas supplies from abroad. The minimum level of diversification of natural gas supplies from abroad is determined by the maximum share of natural gas imported by the licence holder from one source in a given calendar year. It may not be higher than 70 % in the years 2017-2022 and 33 % in the years 2023-2026.

5.10.1 Objectives / justifications

The objective of a cross-border licence is to regulate the access of foreign companies to the national market and to specifically monitor gas imports.

5.10.2 Findings

The requirement for an additional cross-border licence seems to be disproportionate to the public policy interests it seeks to protect and might therefore be unjustified. Particularly in Poland this requirement seems to impede cross-border trade. The link between security of supply and additional cross-border requirements is not entirely comprehensible. Security of supply is mainly an issue regarding the supply to final customers. Even if a wholesale trader defaults, there is usually no direct impact on final customers.

5.10.3 Barrier

For most Member States the import and export of gas does not require any specific fees. However, in some Member States the traders participating in this Study stated that there is an import/export fee and that this fee is a barrier to trade.⁷⁷ Not only traders, but also NRAs from other Member States qualified the requirement for licences of sub-sectors as a barrier. A licence for cross-border activities duplicates administrative processes, especially for wholesale traders, as they are more often active on a national and a cross-border level than suppliers. Such a requirement paired with other requirements linked to the cross-border licence is perceived as a barrier to entry and trade on the wholesale market.

The storage obligation addressed to cross-border trade licensees, which requires the trader to maintain mandatory reserves in gas storage facilities is perceived as being a severe barrier, especially because the access to storage is considered to be discriminatory and makes it almost impossible for international traders to become active on the wholesale market. According to traders participating in this Study, which are active on the Polish market, the additional requirements for a cross-border licence and the mandatory storage obligations have led to many shippers leaving the market for several reasons. First, at the time the storage obligation was introduced, there was no storage available in Poland, because all storage capacity had already been booked through long-term contracts. Second, the possibility of fulfilling the mandatory storage obligation by providing storage abroad is almost non-existent due to the high requirements set by the Polish NRA. Documentation requirements are so strict that it is impossible to meet them. For example, some of the requested information is confidential and would not be provided by any storage provider. Third, even though national incumbents do offer to rent out their contracted storage capacity, the prices for subcontracting are so high that this is unfeasible.

⁷⁶ In addition to Poland, there are several other Member States which have a storage obligation. However, none of them was reported to be a barrier.

⁷⁷ Bulgaria, Hungary, Romania.

5.11 *Trading obligations*

Only very few Member States have introduced a trading obligation. A trading obligation usually requires the traders to trade exclusively or to a certain extent on the VTP or a centralised trading platform. A trading obligation is currently in place in Bulgaria, Poland and Romania. In Spain, the legislator introduced a concept of mandatory and voluntary market makers.

In Poland a licensee is required to trade no less than 55% of the natural gas injected into the transmission network on commodity exchanges, on a market organised by an entity running a regulated market in the territory of Poland or on an organised trading platform run by a company running a commodity exchange in the territory of Poland. Under certain conditions, the licence holder of a cross-border trade licence is exempt from this obligation.

In Romania, traders are required to sell 50% of their trading volumes over the centralised trading platform and to buy 40% of their trading volume over the platform. In Bulgaria, there is a gas release programme. The public provider shall offer no less than 2,220 GWh in 2020 for sale at the regulated gas exchange market, increasing gradually to 11,099 GWh in 2024. Additionally, extraction companies have to offer at least 15 % of the natural gas extracted by them on the regulated market. In order to release the gas quantities, the public provider conducts up to two auctions. The reserve prices at the auction have to include all costs for providing the gas to the VTP and the released quantities have to be purchased by end suppliers or customers connected to the Bulgarian transmission system, directly or via a trader.

The concept of a mandatory market maker in Spain also constitutes a trading obligation, as the means of trading (where, when and with whom) are (at least partially) regulated. The system behind voluntary market makers is, that they are free to commit to offer a certain quota of gas on the spot market in exchange for compensation.

5.11.1 *Objectives / justifications*

Trading obligations commonly have the objective to increase market liquidity. According to the NRAs, the trading obligation has the objective of making the market more liquid and to increase the transparency of the market. Market liquidity is an important tool to foster the wholesale market, as new players are looking only for liquid markets and then the market grows by itself. The compulsory release of quantities from extraction companies and the public supplier aims to secure certain liquidity of gas to be traded on the regulated gas exchange market. The mandatory market makers are market players with a certain market power.

5.11.2 *Findings*

Trading obligations such as the ones in Poland or Romania, where a certain percentage of the volume must be traded over a centralised national platform, are only justified if they are effective. However, it is questionable whether the trading obligations had the market impacts the legislator aimed for. According to traders in Poland and Romania, the liquidity on the market has not increased, but due to internal "know-your-customers" policies they trade less since the trading obligation is in force. Another issue might be that not all potential clients are able to meet the internal standards enforced by the centralised platform, while transactions are not allowed OTC. Exchange operators on the other hand generally welcome gas release programs as they help to establish a market. However, according to the information provided by hub operators, such gas release programs should be stopped once the market functions, because at this point no trading obligation is needed and could even have a negative effect.⁷⁸

⁷⁸ Information provided during the interviews.

The concept of market makers reportedly does increase liquidity on the market and has proven to be quite successful in Spain. Such a trading obligation is therefore most likely justified, as it is proportionate and effective.

5.11.3 *Barrier*

Unjustified trading obligations that are not limited in time and scope are perceived as a barrier to entry and trade on the market by the participants of this Study. The trading obligations mean that traders are less willing to trade on the market, because they cannot freely choose who to buy from and sell their volumes to. In some Member States, traders participating in the Study did not mention the requirement as a barrier to entry and trade on the wholesale gas market because due to other barriers, the trading obligation is considered one of the smaller obstacles.⁷⁹ Trading obligations affect new market entries to the same extent as existing traders.

5.12 **Good behaviour clauses**

Wholesale gas trading activities may be subject to good behaviour clauses, which may trigger the cancellation of the gas trading licence, if applicable, and/or financial penalties. These clauses need not be attached to the licence itself. For instance, although wholesale gas trading in Spain requires only a notification instead of a trading licence, there are detailed good behaviour clauses with which the traders must comply.

5.12.1 *Objectives / justifications*

Good behaviour clauses are meant to regulate instances of market behaviour that may lead to market abuse and manipulation (e.g. manipulating supply, price, or transactions; misleading the market with respect to future demand or price of energy, etc.).⁸⁰ Good behaviour clauses are meant to provide traders with an incentive not to abuse or manipulate the market.

5.12.2 *Findings*

Good behaviour clauses include conditions which forbid market abuse or manipulation. As such behaviour is usually already prohibited by other regulations (e.g. REMIT, general gas regulation, etc), such clauses are a duplication of other controls on anti-competitive behaviour.

5.12.3 *Barrier*

While of course traders should not object to avoiding market abuse, concerns are raised due to the excessive discretion granted to the NRAs and the clauses' potential redundancy as controls on anti-competitive behaviours are already in place.⁸¹ They only apply to traders already active on the market. However, the participants in this Study did not raise any concerns regarding such clauses being perceived as a barrier.

5.13 **Communication issues**

Communication issues refer to several requirements related to the obligation to carry out the licence application process and reporting in the national languages of the Member States.

⁷⁹ Information provided by traders during the interviews.

⁸⁰ CEER (2011), p. 22.

⁸¹ Brattle/Skadden (2010), p. 35.

Such issues are rated among the most burdensome barriers for market entrants. Traders flagged that in some Member States the information available was often of poor quality and outdated, that the NRAs' websites were not user-friendly, and that English disclosure was superficial and rarely published in time.⁸²

The lack of superficial disclosure in English makes it difficult for market entrants/participants to be up to date with market developments, changes in legislation and codes, market operations, demand forecast, and plans for the operation of generation and transmission.⁸³ Such issues may contribute to creating an unpredictable and costly environment for traders.

In most EU countries where a wholesale gas trading licence and/or the establishment of a local seat are required, the application process must be conducted in the national language of the Member States. In Greece, the registration process has to be conducted in Greek and all correspondence with the NRA must be done in Greek. Such a requirement implies completing the application form and translating the solicited documentation into the respective Member States' language. Moreover, reporting obligations have to be fulfilled in the national language and the communication with the NRA is limited to the national language of the Member State. In addition, most Member States require traders to submit certified translations and some of them only accept apostilled documents. Although communication with NRAs in the various national languages reflects the European principle of multilingualism, English guidelines on procedures and requirements or the possibility to submit documents in English can provide a service for traders.⁸⁴

5.13.1 *Objective / justification*

The objective of the language requirements is twofold. On the one hand the NRA saves time and money, if all submitted documentation is in the same language. Moreover, such a requirement ensures that all staff of the NRA are able to understand the submitted documentation and able to communicate with the licence applicants. On the other hand, language requirements also serve to ensure a certain capability of the trader to understand the national regulations and other requirements, as most of the legislation in the Member States with which a trader must comply, is only available in the national language.

5.13.2 *Findings*

We recognise that multilingualism is one of the founding principles of the European Union and that Europe's rich linguistic diversity has to be protected. Some Member States have legislation requiring the authorities to conduct all administrative procedures (such as licensing) only in the national language.⁸⁵

Nevertheless, it must be noted that the NRAs service to communicate in English or provide certain information in English could contribute to a more integrated wholesale gas market. Liquidity is increased in Member States where many market actors are active on the market and language requirements are addressed by the possibility to communicate in English.⁸⁶ English is for example today spoken in all Member States and NRA staff are mostly capable of reading and understanding documents in English.⁸⁷ For this reason, it would arguably not require excessive efforts, but would have a positive effect on the market if NRAs were

⁸² See Kantor (2017).

⁸³ See EFET (2019), Market Inefficiencies in the Member States of the European Union (Central and Eastern Europe).

⁸⁴ In all of the 12 selected Member States at least some basic information on the NRA websites is provided in English.

⁸⁵ We were informed during the workshop on 25.02.2020, that this is the case in France and Poland. Other Member States might have such a requirement as well; however, we have not received any additional information in that regard.

⁸⁶ In the Netherlands, which is considered a liquid market, all documents can be submitted in English.

⁸⁷ As set out in section 3.3 the online questionnaire was conducted in English only. We received a completed questionnaire from 25 NRAs without receiving any requests for translation into a national language. Moreover, we held several interviews with NRAs and all of them were conducted in English without any communication problems.

to use or accept other widely spoken languages in their communications as an additional service.

5.13.3 *Barrier*

According to traders participating in this Study and the reviewed literature, language requirements can constitute a barrier. Highly detailed documentation coupled with translation and legalisation requirements may pose a significant barrier to market entrants, as it implies an excessively bureaucratic process. The more burdensome the requirement (e.g. certified translations) the more severe the barrier is perceived to be. The most important reason why the language requirements are perceived as a burden for market entrants, but also for traders active on several markets, is that the involvement of local support from translators, lawyers etc. is required, which makes the application process longer and more expensive.

In cases where the application must be carried out in the national language, applicants face significant costs related to the translation of documents, particularly in jurisdictions where detailed information is required in order to obtain a wholesale gas trading licence and/or establish a local seat. The legalisation of documents necessary for the licence application process and/or the establishment of a local seat imposes costs on wholesale gas traders. Such costs are proportionate to the amount of documentation required.

5.14 ***Quality and quantity of the information provided by the NRA***

In most Member States, the information provided by the NRAs on their websites is often either only in the national language or outdated and incomplete when provided in English.⁸⁸ In some Member States, no or just very few legal acts are available in English translation. According to the literature, the reason behind these limitations is that not all NRA employees are trained to speak English.⁸⁹ This leads to a lack of efficiency in communication.

Moreover, in some Member States the information provided on the NRA's website is not reliable and is outdated, regardless of the language the information is provided in.⁹⁰ The poor quality and quantity of the information provided by the NRA is mainly caused by budgetary constraints or the lack of employees competent to update the website and provide relevant information.

Consultations between market participants and the regulator are a useful tool to increase transparency and legal certainty. Consultations are supposed to give market actors the possibility to take part in the process of adopting new market rules or amending existing market legislation. Almost all Member States provide some form of consultations or possibility for market actors to become involved. However, in some Member States the way the consultations are conducted is poor (no adequate time periods for participation, no consultation documents in English, etc.).⁹¹ This restricts traders' ability to participate and give meaningful input.

⁸⁸ According to the Questionnaires the following Member States do not provide all information in English: Austria, Germany, Greece, Italy, Lithuania. The following Member States provide only limited information in English: Poland, Romania. It was indicated that in France no information on the website of the ministry is available in English.

⁸⁹ Kantor (2017), p. 15.

⁹⁰ According to information provided by the traders, the information on the website of the NRA is outdated or limited in the following Member States: Hungary, Italy, Poland, Romania.

⁹¹ According to the information provided by the traders, consultations are either lacking or insufficient in the following Member States: Hungary, Italy, Poland, Romania.

5.14.1 Barrier

Almost all NRAs in the EU provide a homepage with information on how to access the market and other market relevant information. In general, traders participating in this Study do not see a barrier in the information provided by the NRA but in some countries the quality of the information provided by the NRA is so low, that it constitutes a barrier. In many Member States the information on licensing, registration or reporting obligations is only provided in the national language and only limited information, if any at all, is provided in English. The limited use of English is perceived as a significant barrier to wholesale market development.⁹²

Insufficient transparency is, *inter alia*, caused by infrequent and short consultations between market participants and the regulator. The lack of transparency is considered a barrier by the participants in this Study, especially in those Member States where the consultations primarily are addressed to the TSO, state-owned companies and energy associations, leaving small and medium market actors without a chance to participate.⁹³ Moreover, the lack of transparency caused by delays in the publication of information and the lack of reliability of the information provided is perceived as an important barrier to trade.⁹⁴ In some Member States the information provided on the homepage of the NRA is outdated or lacking information critical for operation. Traders also criticised the fact that the information accompanying statistical data is poor and that this constitutes a barrier, because traders are not able to keep up to date with market developments.

6 CATEGORISATION AND GROUPING OF BARRIERS

6.1 Categorisation of barriers

Based on the reviewed studies and field research, the Consultant identified two main categories of potential barriers to wholesale gas trading. The first category includes requirements or pre-requisites pertaining directly to the process of obtaining a wholesale gas trading licence or registration. The high number of documents involved and the complexity of the requirements in general may render the approval process excessively bureaucratic and costly.

The second category comprises additional administrative burdens, outside the licensing/registration process itself. Such requirements may not be addressed comprehensively by the application of a simple uniformisation of the licensing regime at EU level. Consequently, the identified market access requirements for the wholesale trading of natural gas would generally fall under one of the two following categories:

Licensing and/or registration requirements:

- Local establishment ((i) a local address or contact person, (ii) establishment of a local branch, or (iii) establishment of a local entity);
- Documenting the company's business activity (e.g. business plan, sometimes audited by an independent expert, financial reports, etc.);
- Financial fitness and creditworthiness (e.g. audited financial statements, tax and custom certificates, bank account statements, information with regard to past insolvency, etc.);
- Lack of involvement in criminal activity (e.g. copies of passports and personal information of members of management, criminal clearance by authorities, criminal record of traders/representatives, a list of member of the board of directors, etc.);
- The level of education, trade expertise and experience of the traders/representatives of the trading company at its office in the host country;

⁹² Kantor (2017), p. 47.

⁹³ Kantor (2017), p. 39.

⁹⁴ Kantor (2017), p. 43.

- Evidence that the trader has adequate financial resources or obligation to submit financial guarantees or cash collateral;
- Submission of certified or apostilled documents as well as certified translations;
- Requirement to obtain additional licences (e.g. wholesale, import/export or supply licence), either separately or combined with the original trading licence;
- Payment of licence fees.

Additional requirements/administrative burdens:

- Reporting obligations in addition to REMIT (reports on financial performance, trading activity, corporate information). Reports are to be submitted monthly, semi-annually, and/or annually. Sometimes, traders are required to submit reports to other national regulators/authorities, apart from the energy regulator;
- Language of submission of the application (in most EU countries the licence application may be submitted only in the national language of the host country);
- The presence of so-called good behaviour clauses that could generate severe penalties or even withdrawal of the licence itself;
- Unreasonable penalties;
- Trading obligations;
- Security of supply obligations (e.g. storage obligations for imported gas, etc.);
- Availability and accessibility of relevant information (sometimes information is not available online or only in the national language). The lack of information or superficial disclosure in English, for example, makes it difficult for market entrants/participant to keep up to date with market developments, changes in legislations and network codes, market operation rules etc.;
- Additional financial guarantees; some Member States may require market participants to hold collateral cash in significant amounts, while additional financial guarantees are required for the participation of traders at VTPs, exchanges, OTC transactions and balancing platforms as well as for registering physical capacity and nominations with the TSO;
- Additional costs incurred with translation, local lawyers or for hiring specialised personnel;
- Length of the administrative process.

We note that this dichotomy is not reflected strictly for all Member States, as some of the items listed under the additional requirements category might be included, in certain jurisdictions, under the conditions required for the licensing process. The licensing regimes vary significantly in complexity from one jurisdiction to another. In more mature markets, licensing requirements are rather minimal in terms of the documentation to be submitted and the process is more straightforward. In other jurisdictions, the licensing requirements are detailed and burdensome and the process is reported to be lengthy.

Additionally, barriers can be categorised into ones only affecting new market entries and ones affecting both, new entries and already established traders. Companies planning to become active are particularly affected by the requirements related to licensing and registration (e.g. local establishment and guarantee requirements), whereas the rest of the above-mentioned requirements/burdens also apply to already established traders.

6.2 Grouping of barriers

The Consultant prepared a table grouping the different barriers according to (i) the frequency with which they are encountered, (ii) the burden they represent for potential market actors and (iii) the burden they represent for existing market actors. The burden the different barriers represent are divided into the following sub-categories: (i) costs, (ii) time constraints, (iii) inefficiencies. Each burden then is grouped again by impact and frequency. The most severe burdens are marked in a dark colour shade, severe burdens are marked in a medium shade and slight burdens are marked in a light shade. The same concept is applied to frequency. Very frequent barriers are marked in a dark colour shade, frequent barriers in a medium shade and infrequent barriers in a light shade. The table is attached to the Study as [Annex 3](#).

7 COMMON PRINCIPLES UNDERLYING THE REGULATORY REQUIREMENTS

In this chapter the Consultant elaborates on common principles underlying the regulatory requirements identified across the Member States. These principles will then serve as a basis for the identification of options that will be elaborated under task 2. The evaluation presented in this chapter was guided by the following questions: What are the main objectives of the identified requirements and are there valuable reasons for the identified administrative and regulatory requirements?

This chapter is based on the detailed description and analyses of the administrative and regulatory requirements described in Chapter 5. Based on the objectives of the requirements, the following common principles underlying the regulatory requirements have been identified:

7.1 *Identification of market participants*

One common principle behind all registration and licence requirements is the NRA's need to know who is active on the national market. The requirements regarding registration, licensing and the documents requested by the NRA all aim at the basic need of the regulator to be aware of who participated on the market and whether the market participants legally exist. This need is driven by the core functions and responsibilities of the NRA: market supervision and monitoring. Also, the literature review makes it clear that it is necessary for NRAs to know all trading companies active on the market.⁹⁵ Knowing all traders active on the market allows NRAs to perform certain checks on market entrants. These checks vary from Member State to Member State and differ depending on the requirement (registration or licence). However, NRAs commonly check whether the envisaged activities of the new market entrant are in line with the regulatory requirements, whether a market entrant is financially fit and proper to perform the envisaged activities and whether the person representing the trader is allowed to do so.

7.2 *Capability checks*

A common principle underlying certain licensing requirements is the need to check whether a trader has sufficient technical and organisational capacity to fulfil energy regulatory guidelines.⁹⁶ The requirement to present qualified staff, trading exams, trading track records or technical requirements all pursue this goal.

7.3 *Communication / post-delivery*

The common principle behind the requirement for a local establishment, local postal address or contact person is the need of the NRA to be able to contact the traders easily and to simplify communication between the licensee and the respective authorities. The need to deliver official documents by registered mail or serving the trader in case of fines, is another common principle behind such a requirement.

7.4 *Preventing the evasion of law enforcement*

Local establishment requirements and licence requirements both also serve the purpose of preventing traders from evading law enforcement. Without a seat in the Member State (or within the EU), traders could easily evade law enforcement. A local branch or establishment or even just a contract with a local postal service agent, increases the NRA's ability to enforce administrative decisions and judgements. A licence requirement gives the NRA the

⁹⁵ CEER (2011), p. 29.

⁹⁶ CEER (2011), p. 17.

opportunity to know all market participants, which is crucial for executing its supervisory function efficiently and effectively towards the supervised entities.⁹⁷

7.5 Exercising control

Registration, licence and to a certain degree also local establishment and reporting requirements are based on the common principle that the regulator needs to exercise control over market actors. On the one hand, the NRA needs to be able to perform basic capability and liability checks on traders entering the market or active on the market. On the other hand, the NRA must monitor the market and the compliance of market actors with the regulations. Regulatory access to the gas wholesale market supplemented by an oversight regime, should help identify and prevent irresponsible or criminal traders from entering or re-entering the market. A registration or licence requirement also enables the NRA to exclude traders from the market and enforce regulatory decisions and judgements.

7.6 Systemic risk minimisation

The common principle behind financial requirements, such as collaterals, a certain credit rating or bank statements is to minimise risks for the market. The fear that under-collateralised or illiquid market actors might become "too big to fail" or tend to misuse the market (balancing fraud) is the driver behind financial requirements. Only financially stable market actors should be allowed to act on the market. To this end, the NRAs require a certain level of financial ability from traders entering or trading on the wholesale market, even though this might be a duplication of financial requirements, as TSOs, energy exchanges and clearing houses also require collaterals.

7.7 Financing of NRA

Licensing and supervision fees have the underlying common principle which is to finance the activities of the NRA and to raise revenues. In most Member States the NRA is at least partly financed by fees paid either for the licence or for being active on the market.⁹⁸ In some Member States the annual fees paid by traders significantly contribute to the budget of the NRA, as they are calculated by a percentage of the annual turnover.⁹⁹

Also fines payable to the NRA to a certain extent contribute to the NRA's budget. Even though the primary objective of fines is to ensure the compliance of market actors with regulations, a common principle underlying larger fines is to contribute to the budget of the NRAs.

7.8 Fraud prevention

An underlying common principle of licence requirements and collaterals is fraud prevention. Balancing fraud has been a big problem in several Member States and the Member States have chosen different approaches to tackle the problem. Some Member States feel that a strict licensing procedure and requiring high collaterals is the right way to address balancing fraud and other fraudulent behaviour. Other Member States (e.g. Italy) have introduced a very strict system of collateral requirements via the TSOs to prevent fraudulent behaviour. Common to all these requirements is the need to mitigate and prevent fraud.

⁹⁷ CEER (2011), p. 16.

⁹⁸ Energy Community, Non-Paper; CEER (2011).

⁹⁹ Energy Community, Non-Paper, p. 11.

7.9 Market surveillance

Reporting obligations and to a certain degree also registration and licence requirements share the underlying common principle that NRAs have the duty to monitor the market. NRAs monitor the level and effectiveness of market opening and competition of wholesale markets. Regulators are also required to monitor the level of transparency on the market. Data reported by market actors is indispensable to fulfilling this task across Member States.

7.10 Security of supply

A common principle underlying financial and reporting requirements, but also storage requirements as well as certain trading requirements is to ensure the security of supply. Security of supply aspects seem to be especially important in Member States where only an integrated licence is available. System security could be threatened by unexpected balances if a trader fails to deliver a large volume of gas and the TSO has difficulties balancing the system.¹⁰⁰

7.11 Increase of market liquidity

Wherever they occur, trading obligations have the common objective of increasing liquidity on the market. A more liquid market automatically attracts more traders to become active on it. Even though the trading obligations differ from Member State to Member State, the core elements stay the same. More volume is supposed to be traded on a centralised trading platform attracting more traders to enter the market and trade on the platform.

8 REQUIREMENTS FOR LEGISLATIVE OPTIONS

8.1 Legal basis for EU intervention

EU energy policy was given an express legal basis in Article 194 TFEU by the Lisbon Treaty. This was the first time energy policy has been recognised as an independent European policy area at primary law level and an energy-specific competence basis has been created, which does not mean that the European Union has so far been inactive in energy policy.

The policy aim is set out in Article 194(1) TFEU:

"In the context of the establishment and functioning of the internal market and with regard for the need to preserve and improve the environment, Union policy on energy shall aim, in a spirit of solidarity between Member States, to:

(a) ensure the functioning of the energy market;

(b) ensure security of energy supply in the Union;

(c) promote energy efficiency and energy saving and the development of new and renewable forms of energy; and

(d) promote the interconnection of energy networks."

The first sentence places the EU's energy policy under the three guiding principles of "solidarity", "internal market" and "environmental protection", whereas letters (a)–(d) define four specific objectives. Article 194(2) TFEU provides the legal basis for the European Union's energy policy. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall establish the measures necessary to achieve the objectives mentioned under Article 194(1) lit a-d. This means the

¹⁰⁰ CEER (2011), p. 19.

competence of the EU is linked to the pursuit of the objectives mentioned above. Only the pursuit of these specific objectives constitutes a corresponding competence of the EU. It is not necessary, however, for all the stated objectives to be pursued at all times; each objective can be pursued independently of the others in order to establish a legal basis.

This means, since the enactment of the TFEU in 2009, that new EU instruments in Energy can be adopted under Article 194. The focus of ensuring the functioning of the energy market in accordance with Article 194(1) lit a TFEU implies that there is a failure or malfunction of the energy market, which can be remedied by EU policy. The barriers identified in this Study generally constitute such a market failure or malfunction which could be addressed by EU policy.

Nevertheless, the EU's exercise of its energy competence is subject to limits. First, the general limits of the principles of subsidiarity and proportionality according to Article 5(3) and (4) TEU apply. Secondly, all measures taken based on Article 194 TFEU must be "necessary" in order to achieve one of the objectives set out in Article 194(1) lit a-d (e.g. the functioning of the energy market). The following policy options are therefore assessed in terms of their subsidiarity, proportionality and necessity.

These policy options do not cover the supply of gas to final household customers or industrial customers, for which different regulatory or administrative requirements might be necessary in order to achieve goals inherent to supply activities (e.g. security of supply).

8.2 Subsidiarity and proportionality

According to the principle of subsidiarity¹⁰¹, action on EU level should be taken only when the aims envisaged cannot be sufficiently achieved by Member States alone and can therefore, by reason of the scale or effects of the proposed action, be better achieved by EU policy.

The functioning of the EU energy market is by its very nature a trans-boundary issue. The barriers to enter and trade in the energy wholesale market have been clearly identified and analysed in this Study. A binding legal instrument adopted at EU level would ensure that all Member States apply a regulatory framework based on the same principles, thereby ending the current fragmentation of administrative and regulatory requirements. Requirements which are divergent in the Member States risk being insufficient to ensure effective market supervision and the development of a level playing field. Action at EU level can avoid divergences and weaknesses and thus contribute to the elimination of regulatory arbitrage opportunities.

The objective of the policy options below, namely the creation of a fully functioning internal market for gas, cannot be sufficiently achieved by the Member States and can therefore, by reason of its scale and effects, be better achieved on EU level.

Article 5 TEU states that "the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties". This principle of proportionality regulates the exercise of powers by the EU. It seeks to set actions taken by EU institutions within specified bounds.

Because compliance with the principle of proportionality is dependent on how exactly policy is designed, a more detailed assessment of this principle can be found after the evaluation of each policy option.

¹⁰¹ Art. 5(3) of the Treaty on European Union (TEU) and Protocol (No 2) on the application of the principles of subsidiarity and proportionality.

8.3 *Necessity and objective of the legislative options*

As already described, the objective of European Union energy policy is to ensure a functioning gas market. It is necessary to lift the identified barriers in order to achieve easily accessible and functioning markets.

Barriers to entry to the wholesale gas market occur in two types of situations:

- when an already established gas trader from one Member State wants to become active in another Member State;
- when someone who is not yet active in the wholesale gas market in any Member State wants to become active in the EU.

A horizontal approach is justified by the fact that the legal obstacles to the achievement of an internal energy market as provided for in Article 194 TFEU are often prevalent in several Member States. Accordingly, the aim of the proposed legal options is to establish a legal framework which facilitates the entrance to the EU wholesale gas market or the expansion of the trading activity to another Member State. A functioning internal energy market can only be achieved when the NRA's ability to efficiently carry out its supervision tasks is not compromised, which is why some of the proposed options include provisions on the supervisory tasks of the competent authorities. It is noteworthy that the objective of a number of national provisions is monitoring, although REMIT has introduced a comprehensive set of rules in this respect.

Cross-border trade in the gas market is becoming increasingly important and is taking place more frequently. Bundled capacity booking necessitates the authorisation to trade on both sides of the IP. This calls for simplified market access which can be achieved by policy on EU level. Additionally, many requirements for wholesale traders are actually designed for the supply of end customers, which makes it necessary to change the policy framework.

9 **LEGISLATIVE OPTIONS**

The proposals are the result of the analysis of previous studies on the wholesale gas market, an in-depth analysis of requirements to enter and trade on the market in 12 representative Member States, an online questionnaire completed by 25 NRAs, one Ministry, nine TSOs and ten traders as well as 15 interviews and consultations with key stakeholders.

It should be clarified that the following policy options focus on the abolishment of administrative and regulatory requirements based on national regulatory legislation. There might exist additional requirements and barriers related to network access, TSOs or energy exchanges which are not within the scope of this Study and will therefore not be addressed by the legislative options. Moreover, the options – as already set out in chapter 2.2 – address the access and trading on the wholesale market, regardless of any network use or where the transaction takes place (e.g. OTC, gas exchange, etc.).

9.1 *Baseline scenario – changing nothing*

Directive 2009/73/EC ("**Gas Directive**") stipulates that Member States or any competent authority they designate may grant authorisations for the supply of natural gas and for wholesale customers.¹⁰² Where Member States have a system of authorisation, they shall lay down objective and non-discriminatory criteria which shall be met by an undertaking applying for an authorisation to supply natural gas (including wholesale traders). The non-discriminatory criteria and procedures for the granting of authorisations shall be made

¹⁰² Art 4(1) Directive 2009/73/EC.

public.¹⁰³ Member States shall establish a procedure for applicants to appeal against the refusal of an authorisation.¹⁰⁴

The Gas Directive regulates, among other duties and powers of the NRA, that they shall have the powers to impose effective, proportionate and dissuasive penalties on natural gas undertakings not complying with their obligations. This shall include the appropriate rights of investigation.¹⁰⁵

While these provisions ensure a non-discriminatory application of administrative authorisation procedures as well as monitoring and supervision powers, they do not address the fragmentation of gas market frameworks. Moreover, they have not been sufficient to prevent the emergence of the identified barriers.

9.1.1 REMIT

In 2011, Regulation (EU) No 1227/2011 ("**REMIT**") introduced a legal framework for the monitoring of wholesale energy markets. It focuses on market integrity and transparency. The goal is to ensure that consumers and other market participants can have confidence in the integrity of electricity and gas markets, that prices set on wholesale energy markets reflect a fair and competitive interplay between supply and demand, and that no profits can be drawn from market abuse.¹⁰⁶

REMIT focuses on wholesale transactions and does not cover retail contracts for the supply of gas to final customers, as these contracts are not susceptible to market manipulation in the same way as wholesale contracts which are easily bought and sold. Wholesale energy markets under REMIT encompass both commodity markets and derivative markets.¹⁰⁷ They include, *inter alia*, regulated markets, multilateral trading facilities and over-the-counter (OTC) transactions and bilateral contracts, direct or through brokers.¹⁰⁸

It therefore provides for the monitoring of trade activities in wholesale energy products and the cooperation of NRAs and ACER. Market participants entering into transactions are required to report wholesale transaction information and to register with the NRA in the Member State in which they are established or resident or, if they are not established or resident in the European Union, in a Member State in which they are active. National registers contain sufficient information to identify market participants, such as its value added tax number, its place of establishment, the persons responsible for its operational and trading decisions, and the ultimate controller or beneficiary of the market participant's trading activities.¹⁰⁹ The uniform rules on the reporting of information should avoid double reporting and should take account of reporting frameworks developed under other relevant legislation (e.g. MiFID). Also, the required information or parts thereof should be collected from other persons and existing sources where possible.¹¹⁰

The Member States shall lay down the rules on penalties applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, dissuasive and proportionate, reflecting the nature, duration and seriousness of the infringement, the damage caused to consumers

¹⁰³ Art 4(2) Directive 2009/73/EC.

¹⁰⁴ Art 4(3) Directive 2009/73/EC.

¹⁰⁵ Art 41(4) lit (d) and (e) Directive 2009/73.

¹⁰⁶ Recital (1) Regulation 1227/2011/EU.

¹⁰⁷ Recital (9) Regulation 1227/2011/EU.

¹⁰⁸ Recital (5) Regulation 1227/2011/EU.

¹⁰⁹ Art 9(1) Regulation 1227/2011/EU.

¹¹⁰ Recital (19) Regulation 1227/2011/EU.

and the potential gains from trading on the basis of inside information and market manipulation.¹¹¹

9.1.2 *Benefits and drawbacks*

Benefits

REMIT provides for efficient market monitoring ensuring the collection of transaction records, structural data on capacity, data on the use of facilities for production, storage, consumption and data on the transmission of gas, but without prejudice to the right of NRAs to collect additional data for national purposes. Member States can therefore continue to collect data, while REMIT ensures a minimum standard of monitoring and market supervision. It might be possible to achieve sufficient market monitoring and remedy some of the barriers by improving the application and enforcement of REMIT (e.g. avoidance of double reporting, collecting information from existing sources) without changing the European legislative framework as a whole, since many licensing, registration and reporting frameworks were adopted before REMIT entered into force. Furthermore, the current European legal framework gives Member States the possibility to maintain and adopt rules which account for their market particularities such as different geographical, economic and political circumstances. In particular, the ex-ante and ex-post checks of traders to prevent fraud may remain different in the Member States, which was considered very important by some NRAs during the interviews.

Drawbacks

The current legal framework only provides for limited provisions on licensing/registration and no policies on administrative fees or other potential administrative barriers. Even though REMIT aims to keep reporting obligations to a minimum and to limit unnecessary costs or administrative burdens for market participants, this standard is not always met by Member States.¹¹² Especially reporting obligations in addition to REMIT which duplicate the reporting of the same information are regarded as an unnecessary barrier.

Maintaining the current framework would mean that the barriers identified in the first part of this Study would most likely remain to their full extent. Even if certain barriers would be removed over time, especially the double reporting, it is questionable when this is the case, since REMIT entered into force in December 2011. Market entrance for new players would remain cost-intensive in some Member States, due to high translation costs, legal costs and financial requirements by the authorities. Consequently, large and already established traders have a competitive advantage, which is not conducive to the goal of an integrated gas market.

9.1.3 *European best practice guidelines*

One option that would continue to provide Member States the ability to maintain and adopt rules that account for their market particularities is the development of European best practice guidelines for licensing, registration and other administrative and regulatory procedures. Such guidelines can be used as a reference for Member States, without being mandatory. As soft law, this could lead to a more level playing field over time. This could be an option in case political consensus with regard to a European legislative measure is not forthcoming. As regards the potential content of such European best practice guidelines, reference is made to the discussions on the other policy options for which the benefits and drawbacks are highlighted. In any case, standardised forms and formats in relation to licensing procedures and reporting would be beneficial and have a positive

¹¹¹ Art 18 Regulation 1227/2011/EU.

¹¹² According to the information provided during the interviews, the NRAs in some Member State do not fulfil the necessary technical safety standards required to access the REMIT data-bases and are thus not able to access the information provided under REMIT.

impact. Any measure contributing to simplification will in particular have a positive impact on potential market entries by gas traders who have no experience with registration, licensing and reporting procedures (e.g. local producers of decarbonised gas).

Nevertheless, the general fragmentation of gas market policy in the EU would likely remain to some extent and it is hard to predict how effective non-binding guidelines will be.

9.2 Minimum requirements (and prohibition of specific requirements)

9.2.1 Proposal

This proposal for a legal framework, similar to the Services Directive¹¹³, does not aim to lay down detailed rules or to achieve full harmonisation but merely to abolish specific barriers and provide for minimum requirements which help NRAs to carry out their supervision tasks and standardise aspects of the current national legal frameworks.

In order to achieve these goals, this option provides for (i) certain principles potential licensing/registration schemes must respect; (ii) the prohibition of specific restrictive requirements that may still be in force in certain Member States; and (iii) the obligation to assess the compatibility of national law with the conditions laid down in this legal framework.

It is left to the decision of the Member States whether a licence is required, or a mere registration is enough to enter the market. In any case, the following principles should be followed:

- In case a licensing or registration scheme is in place, it should cover the whole administrative procedure in order to be eligible to exercise the activity. Licence application and registrations should be submitted to a single point of contact through which all procedures and formalities can be completed ("single point of contact"). This helps to avoid the unnecessary duplication of procedures which might require market participants to submit the same information more than once.
- In case a licensing scheme is in place, wholesale traders should not be subject to the same requirements as suppliers.

In several Member States, wholesale and supply licences are combined. Wholesale traders do not pose the same risks to the market and security of supply as suppliers. Since the minimum requirements described in this chapter refer to wholesale traders, but the purpose of supply licences is typically the protection of household customers and network balancing, there should be the possibility to obtain a mere wholesale licence.

- Wholesale traders should not be required to obtain a cross-border licence for trade within the European Union.
- Licensing and registration requirements should generally be justified by an overriding reason relating to public interest whereby the objective pursued cannot be attained by means of a less restrictive measure.
- Licensing and registration procedures and formalities should be clear and made public in advance.
- Licensing or registration and reporting obligations should not duplicate obligations which are already covered by REMIT.

¹¹³ Directive 2006/123/EC.

- NRAs should provide the following up-to-date information on their website:
 - requirements applicable to gas traders, in particular concerning procedures and formalities to be completed;
 - a simple step-by-step guide in plain and intelligible language on how to obtain a licence or register;
 - contact details of the single point of contact;
 - means of redress which are generally available in the event of dispute between the NRA and the trader.
- The licence application procedure should not take longer than two months. A licence may be granted not only by a formal decision but also by an implicit decision arising from the silence of the competent authority for two months. The period should run only from the time when all necessary documentation has been submitted and can be extended in complex cases. Any negative decision should be substantiated and open to challenge before the courts or other instances of appeal.
- A licence granted to a trader shall not be limited in time, except where the licence is being automatically renewed or is subject only to the continued fulfilment of requirements, meaning licence holders should not undergo a completely new licence procedure unless there is an objective reason for it.
- Licensing or registration fees should be cost-based. Fees should be proportionate to the cost of the procedures and formalities the NRA performs. This should not prevent Member States from the simultaneous collection of other administrative fees, such as fees to finance the supervisory activities of the NRA. Nevertheless, "supervision" should only cover activities such as monitoring and fact finding, problem-solving, enforcement and imposition of sanctions and subsequent follow-up activities related to the wholesale gas market.
- It should be possible to submit licensing applications, to register and to fulfill reporting obligations by electronic means and to complete those procedures and formalities remotely. Member States should ensure that they may be completed across borders. This obligation does not cover procedures or formalities which by their very nature are impossible to complete remotely.
- The presentation of original documents, certified copies or a certified translation should not be imposed, except where objectively justified by an overriding reason relating to the public interest.
- The revocation of a licence or a prohibition to trade on the market should only serve as a means of last resort and only apply in cases of severe misconduct. Warnings and fines should be the prioritised means to address non-compliance with market rules.

The following particularly restrictive requirements should be prohibited altogether:

- Wholesale gas trade, either as a principal or secondary activity, should not be made subject to criteria such as place of establishment, residence, domicile or the opening of a branch office in the respective Member State. Nevertheless, the establishment in at least one Member State may remain a necessary requirement. Due to reporting obligations under REMIT, market participants are already well known. Requiring a presence in only one Member State is sufficient to minimise law enforcement challenges.
- Discriminatory requirements based directly or indirectly on nationality should be prohibited, including in particular:

- nationality requirements for the trader, its staff, persons holding the share capital or members of the provider's management or supervisory bodies;
 - a requirement that the traders' staff, persons holding the share capital or members of the provider's management or supervisory bodies are resident within the territory.
- Wholesale traders should not be required to take trade examinations or provide evidence that they will have economic success (e.g. provision of a business plan).

Economic success checks are a source of limited informative value because of their non-binding nature. They are therefore unlikely to successfully screen out candidates that could harm market functioning. Additionally, traders are already incentivised by the market to trade profitably and successfully. Trade examinations can generally be better conducted by energy exchanges, which might demand them as a prerequisite for using their services.

- Market participants should not be subject to an obligation to hold a minimum amount of capital or required to pose collateral.

Market participants in the wholesale market do not require protection to the same extent as final customers. The protection of wholesale traders can be better achieved by means of individual agreements between them, since counterparties have a direct interest in a trader having sufficient collaterals to cover a trade. Administrative financial requirements are usually in place due to a desire to protect consumers and the market in general against insolvent or fraudulent traders. Although this is a legitimate and well-reasoned objective, trading platforms and TSOs typically already require traders to post adequate collateral. These collateral requirements differ in their amount. Counterparties generally require a collateral that covers the margin on the outstanding trading position, whereas TSOs require collateral in order to cover imbalance costs in case of default by the trader. Additionally, mere financial traders and traders who only trade with derivatives, typically do not threaten the security of supply. There is therefore no objective reason for them to be subject to requirements which aim to secure the supply of gas. In any case, TSOs are better equipped to deal with issues and problems relating to balancing fraud and system security, since they have more detailed and up-to-date information about network usage. Gas exchanges are in general very experienced in conducting know-your-customer checks and have to comply with financial market regulation which already provides for a standard. It can also be argued that collateral requirements in a trading licence would impose standards on non-standard products traded OTC and that a static collateral requirement does not reflect the needs of highly dynamic markets.¹¹⁴ The prohibition for NRAs to require wholesale traders to hold a minimum amount of capital or to pose collateral does not limit the possibility to require collateral or minimum capital from suppliers.

- Signing up to a grid code, concluding a transportation contract with the TSO, booking capacity or concluding a balancing contract (with a TSO or a Market Area Manager) should not be an obligation to obtain a wholesale licence, since it would constitute an unjustified burden for traders who do not plan on using the grid and ship gas.

Member States shall examine the procedures and formalities applicable to access and trade on the wholesale gas market. Where the procedures and formalities examined are not sufficiently simple or in compliance with the stipulated principles, Member States shall take measures to comply with them. Member States should verify that the requirements to enter and trade on the market satisfy the following conditions:

¹¹⁴ ACER/CEER (2019), *The Bridge Beyond 2025*, pp. 18-19.

- **Non-discrimination:** requirements must not be directly or indirectly discriminatory according to nationality or (for companies) according to the location of the registered office;
- **Necessity:** requirements must be justified by an overriding reason relating to the public interest;
- **Proportionality:** requirements must be suitable for securing the attainment of the objective pursued; they must not go beyond what is necessary to attain that objective and it must not be possible to replace those requirements with other, less restrictive measures which attain the same result.

9.2.2 *Benefits and drawbacks*

Benefits:

National licence/registration regimes would be constrained by a set of requirements, which (depending on the specifics) would lead to the abolishment of the most severe barriers market participants currently face. Minimum requirements ensure a general control of the quality of market participants and make them subject to effective supervision by NRAs. Overall, there would be a more level playing field with Member States retaining the ability to adopt market rules that satisfy their specific national demands.

The possibility to submit documents in electronic form simplifies the application procedure and reporting. The maximum process duration makes the commencement of trading activities easier to plan. The prohibition to require collateral (e.g. financial guarantees), trading exams or proof of having signed up to the grid code makes the compilation of application documents significantly easier. The collection of cost-based administrative fees rather than "tax-like" fees enhances transparency and leads to more level fees in the EU. Decoupling of wholesale licences and supply licences ensures that only requirements are applicable which are necessary for the wholesale gas market.¹¹⁵ Additionally, reporting obligations could be harmonised by introducing standard formats.

While some Member States have ex-ante checks of traders in place, others focus more on market monitoring and ex-post sanctions in order to protect the market from fraudulent behaviour. Ex-ante checks would be limited to some extent (e.g. no financial requirements) but the possibility to require documents and have a licensing system in place before traders can enter the market would still remain. The possibility to carry out ex-post controls and impose penalties would remain unaffected.

Drawbacks:

In principle, the fragmentation of market requirements would remain. Wholesale gas traders active or planning to become active in different markets would still have to obtain information on the requirements applicable in the respective Member State and meet these requirements.

Minimum requirements might lead to a higher bar for entering the market than already established in some Member States. This option could therefore not satisfy all stakeholders, especially since some international traders call for more harmonising measures.

Given the scale of the barriers identified in the Study, the implementation of the minimum requirements will take time due to the necessary revision of the national legal frameworks. This applies in particular to the requirement to examine whether procedures and formalities are non-discriminatory, necessary and proportionate.

¹¹⁵ For traders providing supply services and trading on the wholesale market, an integrated licence could still be made available, since this would make it easier for those market actors to become active in both branches.

The abolishment of specific requirements might cause Member States to implement new requirements which comply with EU law in order to provide for the desired level of regulation. It is hard to predict whether a substantial improvement of the wholesale gas market will be achieved or other unanticipated barriers will occur.

9.2.3 *Cost savings*

The prohibition of the obligation to hold a minimum amount of capital and the requirement to pose collateral reduces costs for traders when entering the market. Decoupling supply and wholesale licences generally reduces the amounts of documents which have to be provided, leading to the same effect. Another significant cost factor which would be addressed is the sometimes still existing requirement to provide the same information multiple times (REMIT and national obligation). Cost-based fees could also reduce the price of market entry and supervision. Additionally, traders could benefit from minor cost savings when licensing procedures and formalities are clear and up-to-date information is provided on the website of the competent authority. However, an assessment on the cost-savings for traders is difficult for this scenario, because Member States would still have some margin of discretion when implementing the minimum standards.

9.2.4 *Proportionality, effectiveness, efficiency*

This option does not result in full harmonisation of the gas market legal framework. It is limited to the essential aspects to ensure effective EU-wide market standards and the abolishment of the most severe barriers, while allowing the various Member State regimes to co-exist with all their distinctive characteristics.

Since the objective of this legislative option, namely the provision of a more harmonised framework to attain an integrated wholesale energy market, cannot be sufficiently achieved by the Member States but only at EU level, the EU may adopt such a measure in accordance with the principle of subsidiarity. Additionally, it does not exceed what is necessary to achieve the abolishment of many of the most severe barriers. However, it could be argued that the main barrier to a fully integrated market remains, namely the legal fragmentation of gas market regulation, which cannot be fully reconciled with the objectives of EU primary law.

The effectiveness and efficiency of this option are ensured by directly addressing requirements which were identified as market barriers and prohibiting their further application.

9.2.5 *Impact on barriers and new market entries*

Minimum requirements and the prohibition of specific barriers can have different impacts depending on their design. However, the following overview refers to the proposal discussed above:

Minimum requirements (and prohibition of specific requirements)		
Barriers that remain:	Mitigated barriers:	Eliminated barriers:
Licence requirements	Cross-border licence	Integrated Licence
Criminal records of management from specific MS	Licensing process	Licence limited in time
Import / Export fees	Length of licensing procedure	Licence renewal process
Storage obligation for cross-border licencees	Annual supervision fee	Business plan
		Availability of qualified staff

Other market obligations (e.g. trading obligations, diversification obligations)	Very detailed reporting obligations	Trading exam
	Communication with NRAs	Local establishment / presence requirements
	Transparency issues	Financial requirements
		Information duplicating REMIT
		Reporting to several authorities

Since most decarbonised renewable (and low-carbon) gases are produced and consumed locally and it is likely that on-site production of such gas will play an important role, lifting of entry barriers is crucial in order to promote trade with such local production. The table shows that the introduction of minimum standards has the potential to specifically facilitate market access for new traders. In particular the abolition of financial requirements substantially lowers the cost of market entry in some Member States and more transparency as well as separate wholesale licences simplify the process. The elimination of the requirement for a business plan and qualified staff, makes market entry easier for traders with limited or no experience in gas trading, such as small producers of decarbonised gas.

9.3 **Mutual recognition**

9.3.1 *Proposal*

To address the need to apply for a new licence in different Member States, a system of mutual recognition could be introduced. This policy option is best introduced as an addition to the minimum requirements and not as an alternative.

Once a licence is obtained in a Member State where a licence requirement exists, licence holders should be allowed to have this licence recognised in another Member State. Member States should ensure that this can be achieved by means of a simple recognition procedure requiring only the submission of the pre-existing licence. The recognition of a wholesale licence should be established by the NRA of the host Member State. Licence holders should not have to fulfil any additional requirements.

In order for such a system to function, it is advisable to define additional minimum standards for the licensing procedure.

Licence applications should include the following:

- company name;
- excerpt from the commercial and/or professional register;
- declaration that there is no bankruptcy/insolvency procedure;
- tax identification number;
- a confirmation from the bank on payment of the licence fee to the NRA (in case a fee is applicable).

The competent authority may withdraw the licence issued if a gas trader:

- has obtained the licence by making false statements or by any other irregular means;
- no longer meets the conditions under which the licence was granted;
- falls within any of the cases where national law, in respect of matters outside the scope of this policy measure, provides for withdrawal.

Mutual recognition requires that NRAs should not grant or should withdraw licences where a trader has opted for the legal system of a Member State to evade stricter standards in force in another Member State. This requires a close cooperation between NRAs in order

to be aware of the entry requirements in other Member States and increased monitoring by the Commission in order to detect such "cherry-picking" situations.

Another option would be to include registration processes in the mutual recognition system. If they were to be included, minimum requirements should be defined. However, since registration is usually not very burdensome, it does not appear to be necessary.

9.3.2 *Benefits and drawbacks*

Benefits

A system of mutual recognition would be very beneficial for traders active on several markets with a licensing requirement. According to this proposal, Member States without a licensing regime would not be obliged to introduce such a system. NRAs which deem it necessary to have the possibility to withdraw licences would retain this possibility.

Generally, Member States could maintain their system of ex-ante market entry checks, but this possibility would be limited in regard to traders only having their licence recognised.

Drawbacks

This option only addresses problems regarding international traders but does not provide for any benefits for domestic traders in the European Union. In case a trader's licence is withdrawn in one Member State, it may be prevented from trading in the Member States where its licence was recognized. This could lead to disproportionate negative effects for the concerned trader, because they subsequently would have to go through a licence procedure in the Member State where the recognised licence was withdrawn. Conversely, the withdrawal of a recognised licence would have no effect on the first licence issued, as it would only be withdrawn by the recognising Member State.

The ability to conduct ex-ante market entry checks would be limited in certain Member States by making it necessary to rely on the licensing procedure carried out by another Member States' NRA. It is very difficult to assess whether a trader is only applying for a licence in a Member State with less restrictive requirements in order to then have this licence recognised in the Member State where it planned to conduct trading to begin with. The possibility to carry out ex-post controls and impose penalties would remain unaffected.

9.3.3 *Cost savings*

International traders and traders planning to expand their business to other Member States would benefit from cost-savings as they only have to get their licence recognised without again going through a whole licensing procedure. Costs for legal advice and translations would be reduced or saved altogether.

9.3.4 *Proportionality, effectiveness, efficiency*

Mutual recognition does not result in full harmonisation of the gas market legal framework but merely addresses the major barrier of having to meet multiple licensing requirements in different Member States.

The objective of this legislative option cannot be achieved by national legislation and it does not exceed what is necessary to achieve the abolishment of the barriers arising from the legal fragmentation. The necessity for international traders to meet multiple entrance requirements is effectively addressed by a system of mutual recognition. It also is an efficient way to achieve a more integrated energy market because it is the least invasive policy providing that licence requirements only have to be met once.

9.3.5 *Impact on barriers and new market entries*

If a mutual recognition system would be introduced together with a set of minimum requirements, it would have the same impact as described under point 9.2.5 with the addition that licence holders would only have to gather the necessary licence documents once. This would constitute a significant mitigation of barriers related to licensing for traders active on several markets.

Traders who plan to trade gas only on an occasional basis are likely to start their trading activity in the Member State in which they are already established. If mutual recognition would be introduced without further measures, it would likely have no impact on market entries of such traders (e.g. local producers of decarbonised gas).

9.4 **Wholesale gas trading passport**

9.4.1 *MiFID II – Market in Financial Instruments Directive / MiFIR – Markets in Financial Instruments Regulation*

The evolution of financial markets has exposed the need to strengthen Directive 2004/39/EC for the regulation of markets in financial instruments ("**MiFID**"), including where trading in such markets takes place over-the-counter (OTC), in order to increase transparency, better protect investors, reinforce confidence, address unregulated areas, and ensure that supervisors are granted adequate powers to fulfil their tasks. Therefore, as of 3 January 2018, MiFID was partly recast as Directive 2014/65/EU on markets in financial instruments ("**MiFID II**"), and partly replaced by Regulation 600/2014/EU ("**MiFIR**"). MiFIR is closely linked to MiFID II and focuses primarily on disclosure of trade data to the public, transaction reporting to the competent authorities and transaction execution, such as clearing obligations and further details on the position limits regime. It applies to investment firms, authorised under MiFID II and credit institutions authorised under Directive 2013/36/EU. Together, both legal instruments form the legal framework governing the requirements applicable to investment firms, regulated markets, data reporting services providers and third-country firms providing investment services or activities in the European Union. Several Commission delegated and implementing acts have been adopted, including implementing technical standards (ITS) and regulatory technical standards (RTS).

MiFID II establishes requirements in relation to the following:

- authorisation and operating conditions for investment firms;
- provision of investment services or activities by third-country firms through the establishment of a branch;
- authorisation and operation of regulated markets;
- authorisation and operation of data reporting services providers; and
- supervision, cooperation and enforcement by competent authorities.¹¹⁶

MiFID II covers investment firms, market operators, data reporting services providers and third-country firms providing investment services or performing investment activities through the establishment of a branch in the EU.¹¹⁷ Certain provisions also apply to credit institutions that are authorised under Directive 2013/36/EU, when providing one or more investment services and/or performing investment activities.¹¹⁸

Investment firm means any legal person whose regular occupation or business is the provision of one or more investment services to third parties and/or the performance of

¹¹⁶ Art 1(2) Directive 2014/65/EU.

¹¹⁷ Art 1 Directive 2014/65/EU.

¹¹⁸ Art 1(3) Directive 2014/65/EU.

one or more investment activities on a professional basis.¹¹⁹ If a trader provides services, such as the reception and transmission of orders in relation to one or more financial instrument, or deals on its own account, it is generally considered an investment firm as defined by MiFID II.¹²⁰

Several energy products could qualify as financial instruments. The directive aims at including commodity derivatives and others which are constituted and traded in such a manner as to give rise to regulatory issues comparable to traditional financial instruments.¹²¹

Particularly relevant for wholesale gas trading are the following financial instruments:¹²²

- Options, futures, swaps, forwards and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties other than by reason of default or other termination event;
- Options, futures, swaps, and any other derivative contract relating to commodities that can be physically settled provided that they are traded on a regulated market, an MTF or an OTF, except for wholesale energy products traded on an OTF that must be physically settled;
- Options, futures, swaps, forwards and any other derivative contracts relating to commodities, that can be physically settled not otherwise mentioned in the above point and not being for commercial purposes, which have the characteristics of other derivative financial instruments.

It follows, that if none of the exemptions¹²³ under Articles 2 and 3 MiFID II apply, a trader is within the full scope of application of MiFID II and requires authorisation as an investment firm.¹²⁴

The scope of financial instruments includes physically settled energy contracts traded on an organised trading facility (OTF), except for those already regulated under REMIT. Under MiFID II, an investment firm authorised in its home Member State is entitled to provide investment services throughout the European Union without the need to seek a separate authorisation.

It follows from the above that energy transactions must be examined on a case-by-case basis to determine whether they constitute a financial instrument requiring authorisation and are subject to MiFID II or whether any exemptions apply.

Because certain energy contracts are already covered by MiFID II, the MiFID II passporting system provides a suitable basis for a similar policy for the European gas sector. It would be conceivable to merely extend the scope of MiFID II to all wholesale gas trades, both physically and financially settled. Nevertheless, this does not seem reasonable in view of the fact that wholesale energy contracts covered by REMIT are deliberately exempt, because these contracts are subject to a certain level of regulation and supervision comparable with financial markets legislation.¹²⁵ In light of the different objectives and scope of application of financial market regulation and wholesale gas market regulation, it

¹¹⁹ Art 4(1) Directive 2014/65/EU.

¹²⁰ Annex 1 Section A Directive 2014/65/EU.

¹²¹ Recital (8) Directive 2014/65/EU.

¹²² Annex 1 Section C 2014/65/EU.

¹²³ Ancillary activities, TSOs and trades covered by REMI are exempt.

¹²⁴ Art 5 Directive 2014/65/EU.

¹²⁵ See European Commission MEMO/14/305 Question 15.

seems more practical to adopt a passport system for the gas market with different requirements. Such a system is explained in the following chapter.

9.4.2 *Wholesale gas trading passport*

An EU wholesale gas trading passport system should, similar to MiFID II, contain provisions governing the licensing of wholesale traders, the exercise of the freedom of establishment and of the freedom to provide services, the powers of supervisory authorities of home and host Member States and the regime for imposing sanctions. We propose that such a system includes the following provisions:

- Persons who want to trade on the wholesale gas market are subject to licensing by their home Member States. A gas trader licensed in its home Member State should be entitled to trade throughout the EU without the need to seek a separate licence in the Member State in which it wishes to trade. Member States shall not impose any additional requirements on such traders in respect of the matters covered by the passport system. The licensing of market participants is without prejudice to obligations to comply with trading and network rules.
- Licensing fees should be cost-based. Fees should be proportionate to the cost of the procedures and formalities the NRA performs.

This should not prevent Member States from the simultaneous collection of other administrative fees, such as fees to finance the supervisory activities of the NRA. Nevertheless, "supervision" should only cover activities such as monitoring and fact finding, problem-solving, enforcement and imposition of sanctions and subsequent follow-up activities related to the wholesale gas market.

- An applicant shall be informed whether or not the licence has been granted within two months of the submission of a complete application.
- An applicant seeking a licence shall submit to the competent authority an application that includes the following information:
 - General information (name, copies of corporate documents and evidence of registration with the national register of companies, where applicable);
 - Information on capital and where available, evidence on the sources of capital available (e.g. details on the use of private financial resources) – this does not mean applicants have to meet a certain minimum capital requirement but they are merely required to provide information on the company;
 - Information on shareholders (e.g. the list of persons with a direct or indirect qualifying holding in the investment firm);
 - Information on the management body and persons who direct the business (personal details);
 - Information on the organisation of the firm (structure, a list of the outsourced functions, etc.);
 - Confirmation from the bank on payment of the licence fee to the NRA.
- The competent authority shall refuse the licence application if it is not satisfied that the members of the management body of the investment firm are of sufficiently good repute or if there are objective and demonstrable grounds for believing that the management body of the firm may pose a threat to its effective, sound and prudent management and to the adequate consideration of the interest of its clients and the integrity of the market.
- It shall refuse the licence application if the laws, regulations or administrative provisions of a third country governing one or more natural or legal persons with which the undertaking has close links, or difficulties involved in their enforcement, prevent the effective exercise of its supervisory functions.

This would help to prevent gas traders from third countries from evading law enforcement.

The competent authority may withdraw the licence issued if a gas trader:

- has obtained the licence by making false statements or by any other irregular means;
- no longer meets the conditions under which the licence was granted;
- falls within any of the cases where national law, in respect of matters outside the scope of this policy measure, provides for withdrawal.

Cross-border activities can be carried out either through a branch (freedom of establishment) or remotely by way of freedom to provide services.

Freedom to provide services

Even though no additional licence or registration is required, any wholesale trader wishing to be active within the territory of another Member State for the first time, must communicate certain information to the competent authorities of its home Member State:

- the Member State in which it intends to operate;
- whether trading is to take place permanently in another Member State or whether only certain transactions are to be carried out in the respective Member State.

The competent authority of the home Member State shall, within one month of receiving the information, forward it to the competent authority of the host Member State. The trader may then start the activities concerned in the host Member State. Moreover, the competent authority of the host Member State shall add the trader to the list of traders licensed in another Member State. Stakeholders will then be able to verify that a trader is licensed in one Member State by checking the list before entering into transactions with them. Changes in the initially communicated information shall be communicated to the competent authority of the home Member State.

Establishment of a branch

Member States shall ensure that wholesale trade may be provided within their territories through the right of establishment by the establishment of a branch in a Member State outside its home Member State.

Any trader wishing to establish a branch within the territory of another Member State shall notify the competent authority of its home Member State and provide it with the following information:

- the Member States within the territory of which it plans to establish a branch;
- whether trading is to take place permanently in the host Member State or whether only for a limited period of time;
- where established, the organisational structure of the branch;
- the address in the host Member State from which documents may be obtained;
- the names of those responsible for the management of the branch.

Unless the competent authority of the home Member State has reason to doubt the adequacy of the administrative structure of a trader, taking into account the activities envisaged, it shall, within one month of receiving all the information, communicate that information to the competent authority of the host Member State and inform the trader concerned accordingly.

On receipt of a communication from the competent authority of the host Member State, or failing such communication from the latter at the latest after one month from the date of transmission of the communication by the competent authority of the home Member State, the branch may be established and the trader may commence business. Moreover, the competent authority of the host Member State shall add the trader to the list of traders licensed in another Member State. Stakeholders will then be able to verify that a trader is

licensed in one Member State by checking the list before entering into transactions with them. Changes shall be communicated to the competent authority of the home Member State.

Supervision, cooperation and enforcement by competent authorities

In principle, it is the responsibility of the home Member State authority to carry out the supervision. Member States shall ensure that the competent authorities monitor the activities of traders so as to assess compliance with the market rules. Competent authorities shall be given all supervisory powers, including investigatory powers and powers to impose remedies, necessary to fulfil their duties, including, among others, the powers to:

- have access to any document or other data which the competent authority considers could be relevant for the performance of its duties;
- require or demand the provision of information from any person and if necessary summon and question a person with a view to obtaining information;
- carry out on-site inspections or investigations;
- require the temporary prohibition of professional activity;
- require the suspension of certain gas trades.

The principles of mutual recognition and of home Member State supervision require that the Member States' competent authorities should not grant or should withdraw licences where a trader has opted for the legal system of one Member State to evade stricter standards in force in another Member State.

By way of derogation from the principle of home Member State licensing, supervision and enforcement of obligations in respect of the operation of branches, it is appropriate for the authority of the host Member State to assume responsibility for enforcing certain obligations in relation to business conducted through a branch, since that authority is closest to the branch, and is better placed to detect and intervene in respect of infringements of rules governing the operations of the branch.

Traders active in several Member States should be required to contribute to the financing of market monitoring and supervision in the Member States they operate in.

Any decision to refuse a licence application or the revocation of a licence must be properly reasoned and subject to the right of appeal before a tribunal.

To avoid double regulation, a wholesale gas trading passport system should be coordinated with financial market regulations. It is recommended that individual gas transactions are only covered either by MiFID II or a gas trading passport.

9.4.3 *Opting out for small/national traders*

A European gas passport would introduce higher market entry criteria in Member States where no licence or only registration is required.

As an addition to an EU passport system, Member States could be allowed to continue not to require licences or registration or grant national licences to traders who are exclusively active on the domestic market. The possibility for Member States to opt-out could cover (small) domestic traders or businesses whose main business is not wholesale trade. Nevertheless, it could be difficult to define limits, e.g. trading volume, up to which traders do not require an EU passport.

9.4.4 *Benefits and drawbacks*

Benefits

The main and most effective benefit a passport system has for achieving an integrated gas market is the abolishment of the requirement to comply with the different licensing and registration schemes in the EU. With a single licence application, traders can trade on all European markets. Bureaucratic procedures would be curtailed. A trading passport would contribute to eliminating the competitive advantages enjoyed by incumbent participants and could thus encourage new market entries. Overall, there would be a level playing field on the wholesale gas market.

A wholesale gas trading passport would provide for a set of market entry standards and ensure better market supervision in Member State where no licence or only registration is required. Regulatory authorities could withdraw the licence in case a trader does not comply with market rules. It can be argued that mere fines for non-compliance with market rules are less effective because traders might carry out a cost/benefit analyses and, in case the fine was set too low, take the risk of being fined. The withdrawal of a licence constitutes a more severe penalty which makes it an effective means to address fraudulent behaviour. Unlike court injunctions, the withdrawal of a licence is usually a simple administrative procedure. Also, insolvent traders could be banned from the market by a simple withdrawal of the licence.

In all Member States a system of ex-ante market entry checks would be in place in order to avoid fraudulent behaviour. The possibility to carry out ex-post controls and impose penalties would remain unaffected. Nevertheless, the main supervision tasks would be carried out by the home Member State authority, which makes effective communication between authorities important.

Drawbacks

A European gas passport would introduce higher market entry criteria in Member States where no licence or only registration is required. Small suppliers and traders participating in the wholesale market within their respective capabilities would be particularly affected by this option, because they might not have the resources and know-how to comply with a licence system.

The principle of home Member State supervision makes functioning and quick communication between NRAs necessary, which could lead to an increased organisational challenge for NRAs. In any case, not only traders but also NRAs in Member States where no licence or only registration exists would be burdened with additional work.

It is possible that in Member States where TSOs, gas exchanges or market area managers have previously supervised market entry, but not NRAs, the same requirements will have to be met repeatedly. It is therefore necessary that TSOs, gas exchange and other entry requirements are revised or even considered in the design of a passport system. How a passport that also covers private sector services could be designed and which aspects would need to be considered is not within the scope of this Study.

Barriers in relation to reporting, fees and storage obligations would not be addressed by this option.

9.4.5 *Cost savings*

The manifold entry requirements identified in task 1 of this Study can create substantial costs for traders active in several markets, whereas the exact amount highly depends on the markets a trader is active in. Since traders would only have to apply for a licence in their home Member State, translation costs are avoided. Nevertheless, if a licence holder wants to become active in another market, the documents provided in the licensing procedure might still have to be translated into the language of the host Member State

NRA. This is still an improvement on the current situation, because the initial communication and potential legal clarifications during the first licence application are carried out in the language of the home Member State. International traders and traders planning to expand their business to another Member State would therefore benefit from cost savings. The costs for market entry in some Member States on the other hand might increase significantly because traders would now be obliged to gather documents needed for the licence and potentially have to get legal advice. In Member States with licensing systems, the costs would stay approximately the same.

9.4.6 *Proportionality, effectiveness, efficiency*

A wholesale gas trading passport is the most harmonising of the options presented. Licensing would be obligatory in all Member States and the licensing requirements would be standardised.

The objective of an integrated gas market would be directly addressed by allowing traders to passport their licence from one Member State to another without having to meet additional requirements. Given the current market fragmentation, this measure is necessary in order to achieve a functioning European gas market. It may be argued that the introduction of a licensing regime in functioning markets which do not have such a system at present is effective but not efficient, since a more limited policy could achieve the same goal. That being said, a passport system appears to be efficient in enhancing transnational gas trade and achieving an integrated market.

9.4.7 *Impact on barriers and market entries*

Wholesale gas trading passport		
Barriers that remain:	Mitigated barriers:	Eliminated barriers:
Import / Export fees	Licence requirements	Business plan
Reporting to several authorities	Licensing process	Availability of qualified staff
Annual supervision fee	Length of licensing procedure	Criminal records of management from specific Member States
Very detailed reporting obligations	Communication with NRAs	Financial requirements
Transparency issues		Cross-border licence
Information duplicating REMIT		Integrated Licence
Other market obligations (e.g. storage, trading and diversification obligations)		Licence limited in time
		Licence renewal process
		Trading exam
		Local establishment / presence requirements

The introduction of an EU wholesale gas trading passport without financial requirements could substantially lower the cost of market entry in some Member States and therefore help to promote market entry of new trader with limited financial means. The fact that no business plan, qualified staff or trading exam is required simplifies market access for non-

professional traders. Nevertheless, in Member States with currently very low entry requirements, commencement of trade becomes more time consuming and costly because of the required licence. This could influence the decision on whether market entry is viable for inexperienced traders (e.g. small producers of renewable gas).

9.5 Abolishment of licence requirement

9.5.1 Proposal

An option would be to prohibit licensing altogether. The abolishment of licensing would mean that Member States are not allowed to request a wholesale trading licence in order to become active on the market. There are two different scenarios possible for the abolishment of the licence requirement: on the one hand, only the licence requirement could be prohibited, leaving the Member State with the option to have a registration or notification obligation on top of any REMIT registration. On the other hand, the abolishment of the licence requirement could be combined with the prohibition of any additional registration or notification requirement apart from REMIT. Registration with the home NRA and the provision of certain information is already foreseen by REMIT. All Member States have the possibility to access the information under REMIT and thus know who is active on their market.

Regardless of whether a registration or notification requirement would prevail, the abolishment of the licence requirement would have no influence on the contractual requirements of the TSO or a hub. Moreover, the abolishment of the wholesale trade licence requirement would have no influence on any supply licence requirements. For those Member States, where only an integrated licence is available, the first step towards the abolishment of the licence requirement would mean that wholesale trade must be separated from any supply activities.

9.5.2 Benefits and drawbacks

Benefits

The abolishment of the licence requirement would constitute a level playing field for all market participants, as there would be no administrative limitations to market entry at all. It would also mean that all barriers deriving from the obligation to obtain a licence would be removed. When abolishing the licence requirement and any registration or notification requirement on top of REMIT, traders would not need to undertake any additional action before entering the wholesale market. This would avoid any bureaucratic barriers.

If a registration or notification requirement on top of REMIT were to prevail, the benefits would be limited. Traders would still be required to provide certain information to the NRA and the registration or notification process would take some time and involve at least some costs. However, the benefits of the abolishment of a very time-consuming and costly licence requirement would still outweigh the remaining bureaucratic barriers of a registration or notification.

Drawbacks

Abolishing licensing altogether would mean that the possibilities of the NRA to monitor the market will be limited. Abolishing the licensing requirement would leave the NRAs without the ability to conduct ex-ante checks of the trader's financial fitness, good conduct or qualifications of the trader. Moreover, NRAs will no longer have the ability to withdraw a licence. The withdrawal of the licence is seen as a useful tool to regulate the market and prevent criminal or unfit traders from being active on the market. The threat of the loss of a licence also works as a tool to increase compliance with the national regulations. Even though monetary fines could be put in place for any violations of the regulations or fraudulent behaviour, they might not be as effective. Moreover, monetary fines may tempt

traders to make a trade-off and calculate how much a violation of certain regulations would be worth for them.

Another downside for NRAs could be that they will lose any revenues they were generating through the licensing process. NRAs would be limited to the information provided under REMIT and would not be able to request any additional information from traders. In case a national registration or notification requirement on top of REMIT would prevail, the desired level playing field would not be created as some Member States would still require additional steps to be taken in order to become active on the market and others would not. Each Member State requesting different information would again lead to different bureaucratic burdens across Member States.

Moreover, it is hard to foresee whether the abolishment of the licensing requirement would not lead to the introduction of new burdensome requirements in those Member States where a licensing framework is currently in place (e.g. more severe penalties, the possibility to ban players from the market or additional reporting obligations). It is therefore unclear whether the abolishment would lead to the desired result of removing barriers to access and trade on the market. Also, the abolishment of licensing alone would not touch other barriers such as reporting obligations.

9.5.3 *Cost savings*

Together with the requirement to obtain a licence, costs related to licensing would be abolished. This not only includes licensing fees, but also any other costs related to the process such as translation costs, costs for legal support, costs for the gathering of documents and information, etc.

9.5.4 *Proportionality, effectiveness, efficiency*

The abolishment of the licensing requirement is an effective tool to address most of the barriers detected. All barriers related to licensing would be removed, as there would not be any bureaucratic requirements to enter and trade on the wholesale gas market. Only barriers unrelated to licensing, such as reporting obligations, transparency or communication issues would prevail. Moreover, the abolishment of the licensing requirement would be effective and easily manageable, as it does not require the introduction of any new systems. The abolishment of the wholesale licence requirement would only require the separation of wholesale activities from supply activities in Member States which currently only have an integrated licence.

However, the abolishment of the licence requirement would also mean that NRAs are limited in their market monitoring abilities and have less control over the market. It is no longer possible to administer ex-ante checks on market participants. Only ex-post controls are possible. Therefore the appropriate levels of checks would not be performed by the NRA, but most likely by the TSO and/or the hub.¹²⁶ This limits the efficiency of the option. Nevertheless, it can be argued that if the checks shift to other players, the duplication of checks is prevented and that this constitutes a benefit for market participant which do not use the hub or TSO.

Since the objective of this legislative option, namely the abolishment of the licensing requirement altogether to achieve an integrated wholesale energy market, cannot be sufficiently achieved by the Member States but only on EU level, the EU may adopt such a measure in accordance with the principle of subsidiarity. However, abolishing licensing altogether might not be necessary in order to achieve an integrated wholesale energy market and other options, such as mutual recognition or an EU passport system would also

¹²⁶ Germany does not have any licence or registration requirement. However, the TSO and the hub require a certain registration and admission procedure. The necessary checks for network use or trading activities therefore are performed by the TSO or the hub.

have the same effects and would still leave the NRAs with the ability to perform ex-ante checks on potential market actors.

9.5.5 *Impact on barriers and new market entries*

Abolishing the licensing requirement altogether may have different effects depending on whether any registration or notification requirement on top of REMIT will be prohibited too or whether Member States would still be able to request certain information from potential market actors in addition to the REMIT registration. Nevertheless, the table below shows the potential impact on the barriers for both options:

Abolishment of licence requirement		
Barriers that remain:	Mitigated barriers:	Eliminated barriers:
Reporting obligations	Burdensome registration processes	Licensing requirement
Import / Export fees	Administrative fees	
Storage obligations	Communication with NRAs	
Other market obligations (e.g. trading obligations, diversification obligations)		
Transparency issues		

Since this option has a direct impact on cost- and time-intensive licensing processes, it contributes most significantly to the market entry of new, especially small and inexperienced traders. As mentioned above, cost savings are not only related to the licensing fee but also to the effort associated with meeting the requirements.

9.6 *Information system / blacklist*

9.6.1 *Proposal*

A less invasive proposal would be to set-up a centralized information system including a blacklist. The centralised information system could provide TSOs, NRAs, ACER and ENTSOG with information on creditworthiness, information on the status of the validity of licences as well as appropriate behaviour of trading parties. The blacklist would contain information on traders convicted of fraudulent behavior (e.g. balancing and tax fraud) in one or more Member States. The blacklist could be combined with ex-ante measures, such as increased information sharing between TSOs and NRAs in order to prevent fraudulent market actors from performing fraud in different Member States. Harmonised procedures and requirements for network users could be another ex-ante measure. Such uniform rules or guidelines seem very difficult to achieve due to the wide range of contractual agreements with TSOs and different legislative frameworks currently in place for network usage.¹²⁷

A blacklist, as an ex-post measure, could impose measures too late in order to prevent a trader from performing fraud in more than one Member State and rather serves as a sanctioning tool. The ex-ante measures of increased information sharing, however, would enable the blocking of market actors having shown fraudulent behavior in another Member State. In order to be effective, information would need to be shared at the earliest possible time.

¹²⁷ The harmonisation of network access would require a detailed examination of the requirements TSOs currently have in place. An analysis thereof is not within the scope of this Study, which focuses on regulatory and administrative barriers.

This option could be implemented in addition to an EU passport or mutual recognition system or on its own. In case the information system and the blacklist would be established without introducing an EU passport or a system of mutual recognition, the platform could also provide information on the requirements to enter and trade on the wholesale market in the various Member States. The information could be made available in English¹²⁸ and kept up-to-date by the NRAs. The platform could be centrally operated by the European Commission or ACER. Basic information on traders is already covered by the European register of market participants which ACER established under REMIT. In case ACER would operate the centralised platform, the already established communication tools under REMIT could be used.

The information system could contain the following information:

- Information on the trader (name, national registration number, REMIT registration number, contact details, etc.);
- Information on the management of the trader (name, contact details);
- Information on the financial fitness and creditworthiness of the trader (e.g. credit rating, information on collaterals etc.);
- Information on how to become active on the market for each Member State;
- Information on traders who were convicted of fraud or found to be in breach of their licence requirements.

Even though a blacklist is welcomed by the NRAs, the provision of such sensitive data is to be treated with caution, because it would mean that the trader could be banned from trading all over the EU. Once a trader is put on the list by one NRA, the other NRAs will be informed and would then be permitted to exclude the trader from the respective market. The information provided on the blacklist would need to be screened very sensitively before being communicated. Only those traders, who after due process, were found to be in breach of the licence requirements or who have been convicted of fraud should be put on the blacklist. This again raises the problem that investigations and convictions take time and one intention of the blacklist is to already warn other Member States of the suspected trader before such a long procedure is finished, to avoid the same misconduct happening there as well. The blacklist itself may not be the tool to install an early warning system for other Member States, because the risk of damage for traders who were put wrongfully on the blacklist outweighs the benefits. However, as an additional measure and in order to warn other NRAs of potentially fraudulent behavior, NRAs could be required to inform ACER and/or CEER once they initiate an investigation procedure against a trader. The information that an investigation has been started would not allow the other NRAs to ban the trader from the respective market, but would allow them to be cautious about suspicious behavior and maybe start an investigation too. Thereby the other NRAs would have an early warning, but the damage to the (potentially) fraudulent trader would be kept to a minimum.

Once the NRA has concluded the investigation and the trader is convicted of fraudulent behavior, the company or individual would be put on the blacklist. The information on the blacklist should include information on the management/board members responsible for the fraudulent behaviour of the trader at the time of the conviction and any potential subsidiaries of the trader. This would also prevent criminals from founding a new trading company and committing the same fraud again, which is necessary to preempt simple changes of name and management. All information on personal data of the management would need to be in line with data protection regulations. Moreover, access to the blacklist could be restricted only to NRAs and TSOs or hubs, whereas the information on market participants and on how to access the market could be made available to the general public. The same caution has to be applied with regard to the ex-ante measures as the sharing of information on fraudulent behavior at a very early stage, even before regulatory authorities would start their investigations, could have serious impact on the trader's business.

¹²⁸ Providing information in English would also help to mitigate communication issues without requiring Member States to provide information in English on the website of the NRA.

In order to implement the information system and especially the blacklist, a process for removing traders from the information system and the blacklist would need to be put in place. Individuals and trading companies must have the option to seek removal from the blacklist. In order to seek removal the individual or trading company may initiate a review of the listing before the NRA, which put the trader on the list. Such a review must be available for all individuals and trading companies listed in order to provide an acceptable level of due process. The act of listing an individual or a trading company thus would need to be executed in a way that allows for judicial review of the listing decision, either by national courts or by the ACER board of appeals. ACER or the European Commission could be managing the blacklist and thus would also be responsible for any removal procedure. However, an appeal to the European Court of Justice against the decision of the ACER board of appeal should also be foreseen in order to be in line with the fundamental rights prescribed in the Charter.

9.6.2 *Benefits and drawbacks*

Benefits

The benefits of an information platform are twofold. On the one hand the platform would provide NRAs, TSOs and other market actors with more detailed information on market participants and as such could speed up the registration or licensing process and thereby reduce document requests by the licensing or registering authority. This again would help applicants and market entrants, because they would not need to provide the same information again for each Member State they want to become active in. Moreover, the information platform would help to mitigate communication issues and relieve NRAs from the burden to provide information on how to access and trade on the market in English. At the same time, traders would also benefit from the centralised information, as they no longer need to research the information for each Member State separately and language issues will no longer exist with regard to the information provided.

On the other hand, the blacklist and a system of increased information sharing on suspected fraud included on the platform would help to avoid that the cost of fraud and/or default is socialised among network users, as is currently the case. Together, ex-post (blacklist) and ex-ante (information sharing) measures constitute effective means to fight balancing and tax fraud. Fraud prevention would be made easier for NRAs and TSOs, because they would automatically be informed by the blacklist of every new entry and thus could react faster to potentially fraudulent activities.

Drawbacks

The major downside of this option is that it does not harmonise access to the wholesale market and traders would still be required to follow the market access regulations for each Member States they want to become active in. The option does not change any existing requirements and thus would also have very little impact on existing barriers.

Moreover, the blacklist and the system of increased information sharing among TSOs, NRAs, ACER and ENTSG could have negative effects. First, any breach of data protection requirements could lead to liability questions. Traders who were put on the blacklist or named by a Member State by mistake, who – after appealing against the listing decision – would then be deleted from the list and not found guilty of fraud in a final instance may seek compensation for any damages that occurred during the time they were listed or blocked by other Member States. The question of who would then be held liable for the damages and how such claims could be prevented would need to be answered before implementing the blacklist. Second, in order to keep such damage claims to a minimum, NRAs would need to perform a thorough investigation which then would need to be followed by a conviction of the trader. Only after the trader has been convicted (in first instance) of fraudulent behavior it could be listed. This takes a lot of time and could thwart the warning purpose of the blacklist, as trader might have already committed the same fraud in another Member State. It might be hard to find the right balance between the two interests.

A centralised platform and blacklist would require Member State NRAs and other competent bodies in the EU (e.g. ACER, EFET, ENTSOG) to quickly, frequently and accurately report data and updates to a central point. This results in a lot of work not only for the reporting bodies, but particularly for the central body that has to process a large amount of data in a timely manner.

9.6.3 *Cost savings*

Implementing an information system could have some limited impact on the costs for becoming active on the market. The costs for information gathering and translations, and in some Member States the costs for local support by lawyers could be reduced. If Member States reduce entry requirements due to better flow of information, further costs could be saved.

On the other hand, the blacklist could raise costs for traders active on the market, as they would need to monitor it in order to make sure no mistakes are made. In the event of a listing, costs for legal representation in potential appeal procedures could be incurred. On top, any trader listed and subsequently banned from trading on the respective markets would have to face the costs of not being able to do business until removed from the blacklist.

9.6.4 *Proportionality, effectiveness, efficiency*

Having the overall goal of an integrated European gas market in mind, this option is neither effective nor efficient because it does not change the current status quo in regard to the current entry and trade requirements. However, the information system and the blacklist could be combined with a system of mutual recognition or EU passporting and would then provide additional value. The costs of establishing and administrating the information system have to be closely evaluated in order to assess the proportionality of the measure.

The introduction of a blacklist in combination with a system of increased information sharing as an ex-ante measure would be an effective and efficient tool to prevent fraudulent traders from trying to perform the same behaviour in other Member States, too. This would also foster communication between the NRAs, TSOs and other market players. A blacklist that also includes information on the management/board of the trader is also an effective tool to prevent fraudsters from founding a new company and trying to engage in the same behaviour again. Combined with the above-mentioned due process requirements, the blacklist and the system of increased information sharing are also a proportionate tool to prevent fraud on the wholesale gas market, which ultimately helps the functioning of the market.

9.6.5 *Impact on barriers and new market entries*

The impact of this option on the identified barriers is limited, as the current system for the access to the wholesale gas market would not be changed. However, the table below shows which barriers would be mitigated:

Information system / blacklist		
Barriers that remain:	Mitigated barriers:	Eliminated barriers:
Burdensome registration requirements	Transparency issues	
Licensing requirements	Communication with NRAs	
Administrative fees		

Reporting obligations		
Import / Export fees		
Storage obligations		
Other market obligations (e.g. trading obligations, diversification obligations)		

As the table shows, no barriers directly related to market entry would be lifted. Market entry would only be facilitated if the centralised platform leads to reduced document requests by licensing or registering authorities. Whether this is the case highly depends on the specific design of the platform and whether Member States subsequently simplify entry requirements due to the information available on the platform. First-time traders would most likely not benefit from information provided in English, because they usually start trading in the country in which they are already established and therefore speak the local language. The only way market entry is directly affected, is when traders expand their business to another Member State, as they no longer need to research entry requirements in the respective language but can use information provided on the centralized platform.

10 CONCLUSION

In this section we present our conclusions with regard to the identified requirements and barriers and the options to mitigate the identified barriers.

10.1 *Requirements and barriers*

The in-depth analyses of the requirements for entry and trade on the wholesale gas market in the selected 12 Member States clearly shows the fragmentation of the administrative and regulatory framework. Many of the requirements also constitute a barrier for traders to enter or stay on the market. The following conclusions may be drawn from our assessment:

- Member States take different approaches to entry and trade on the wholesale gas market. In most Member States a licence is required to become active on the market.
- Licence procedures vary between Member States. The length of the licensing process and the number of requested documents are crucial factors when assessing whether the licence requirements constitutes a barrier or not.
- Communication and transparency issues are present in almost all Member States, even in those without any licensing or registration requirements. EU-wide measures to mitigate this barrier would be very timely.
- The justifications and common principles underlying the regulatory requirements are manifold; however, market surveillance, market protection and fraud prevention are the most common justifications for regulatory and administrative requirements.
- Not every requirement constitutes a barrier. Registration or notification requirements do not constitute a barrier per se; the same holds true for administrative fees and penalties.
- The frequency of the barrier is irrelevant to the burden the barrier represents. A very frequent barrier, such as the provision of criminal records of the management during the licensing process, is only perceived as a relatively small burden by traders. Very infrequent barriers, such as an import/export licence place a heavy burden on market entrants and traders active on the market.
- Barriers placing many time constraints on the market actor are also usually very cost intensive.

- Inefficiencies occur from most barriers, either requiring the trader to duplicate the work (e.g. reporting obligations, collaterals), meet different requirements in each Member State (staff qualifications, financial requirements) or to obtain a licence for activities it will not perform (e.g. integrated licence).

10.2 Options

The evaluation as well as the analyses of the benefits and drawbacks of each option show that there is not one single option that is clearly the best way forward. With each option, one group of market actors will have more benefits while another group may be more affected by the drawbacks. However, the analysis shows that some options will eliminate and mitigate more barriers than others. These options should be looked at in more detail.

Even though an EU passporting system would bring an enormous benefit for many traders within the EU, it would also lead to more bureaucracy in those Member States which currently have no licence or only a registration requirement. As the analysis shows, an EU passport system would not eliminate or mitigate all identified barriers as it only addresses barriers related to licensing. Issues with transparency, language or reporting would remain unchanged. The same holds true for the annual supervision fee or import/export fees. However, a system of mutual recognition in combination with a minimum set of requirements and the prohibition of certain requirements would lead to a situation where many major barriers would be eliminated. The mutual recognition would also not lead to an increase in bureaucracy in those Member States which currently do not require a licence or merely require registration. The same holds true for the abolishment of licensing altogether. It would abolish all licence-related barriers, but not barriers related to reporting, transparency or language issues. Nor would it directly address storage obligations or import-export fees.

In conclusion, it should be noted that none of the proposed options would address all identified barriers, as they are situated in very different areas of market access and trading activity.

11 BIBLIOGRAPHY AND REVIEWED STUDIES

Document	Abbreviation
ACER/CEER (2019), Market Monitoring Report 2018	ACER/CEER (2019), ACER Market Monitoring Report
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Wolf Theiss (2018), The Wolf Theiss Guide to: Licensing of Electricity and Gas Wholesale Activities in Central, Eastern & Southeastern Europe	

Table 3 Reviewed studies

12 ANNEXES

- Annex 1: Overview table on all identified requirements
- Annex 2: Evaluation of responses to the online questionnaire
- Annex 3: Grouping of barriers
- Annex 4: Sample online questionnaires

12.1 Annex 1 Overview table

	Austria	Belgium	Bulgaria	Croatia	Cyprus	Czech Republic	Denmark	Estonia	Finland	France	Germany	Greece	Hungary	Ireland	Italy	Latvia	Lithuania	Luxembourg	Malta	Netherlands	Poland	Portugal	Romania	Slovakia	Slovenia	Sweden	Spain	United Kingdom
Registration /Notification	✓				N/A			✓				✓			✓	✓	✓						✓				✓	✓
Licence					N/A																							
Integrated License				✓		✓				✓			✓					✓				✓	✓			✓		
Shipper license										✓				✓														✓
Wholesale license				✓									✓								✓				✓			✓
Cross-border license																						✓						
Recognition of EU license			✓			✓							✓												✓	✓		

Availability of qualified staff	Business plan	Competent Authority	Licensing / Registration process	Length of licensing procedure	New application for renewal	Licence limited in time	
✓		NRA					Austria
							Belgium
	N/A						Bulgaria
✓	✓	NRA		4-8 weeks	✓	✓	Croatia
			N/A				Cyprus
✓		NRA		4-8 weeks		✓	Czech Republic
							Denmark
		NRA					Estonia
							Finland
✓	✓	Ministere de l'Environnement		4-8 weeks			France
							Germany
							Greece
	✓	NRA		2-4 months			Hungary
✓	✓	NRA		4-6 months			Ireland
							Italy
							Latvia
	N/A						Lithuania
✓		Ministry of Energy		4-8 weeks		✓	Luxembourg
							Malta
				2-4 months			Netherlands
		TSO (Gazunie Transport Services)		2-4 months			Poland
✓	✓	NRA		4-8 weeks		✓	Portugal
✓		DG Energy and Geology (DGEG)		2-4 weeks			Romania
							Slovakia
✓		NRA		2-4 weeks	✓	✓	Slovenia
		NRA		4-8 weeks			Sweden
							Spain
	✓	Ministry		2-4 months			United Kingdom

	Austria	Belgium	Bulgaria	Croatia	Cyprus	Czech Republic	Denmark	Estonia	Finland	France	Germany	Greece	Hungary	Ireland	Italy	Latvia	Lithuania	Luxembourg	Malta	Netherlands	Poland	Portugal	Romania	Slovakia	Slovenia	Sweden	Spain	United Kingdom
Criminal records of management	✓			✓		✓				✓								✓				✓				✓		
Local address of management				✓						✓				✓				✓					✓		✓			
Trading track record										✓				✓								✓	✓		✓	✓		
Trading exams										✓													✓					
Agreement with TSO													✓															
Local Establishment			✓		N/A	✓	N/A				N/A									N/A		✓						
Local company address																												
Contact person on the ground / post service agent	✓												✓															

	Austria	Belgium	Bulgaria	Croatia	Cyprus	Czech Republic	Denmark	Estonia	Finland	France	Germany	Greece	Hungary	Ireland	Italy	Latvia	Lithuania	Luxembourg	Malta	Netherlands	Poland	Portugal	Romania	Slovakia	Slovenia	Sweden	Spain	United Kingdom
Local office (without own legal personality)	✓					✓								✓								✓			✓			
Establishment of a local company office (legal entity founded in the respective MS)						✓																						
Establishment for EU (branch or local corporation)						✓																						
Establishment for Non-EU/EEA	✓		✓	✓		✓				✓		✓	✓	✓				✓			✓				✓	✓		
Financial Requirements			N/A		N/A		N/A			✓	N/A	N/A						N/A		N/A	✓			✓				
Minimum capital requirement	✓			✓						✓				✓							✓		✓		✓			✓
Collateral (e.g. financial guarantees)	✓	✓		✓						✓			✓	✓	✓							✓	✓		✓		✓	✓
Availability sufficient funds		✓		✓		✓				✓												✓	✓		✓			

	Austria	Belgium	Bulgaria	Croatia	Cyprus	Czech Republic	Denmark	Estonia	Finland	France	Germany	Greece	Hungary	Ireland	Italy	Latvia	Lithuania	Luxembourg	Malta	Netherlands	Poland	Portugal	Romania	Slovakia	Slovenia	Sweden	Spain	United Kingdom
Minimum financial rating		✓																		✓								
Business report													✓															
Administrative Fees					N/A		N/A					N/A								N/A						✓		
Licensing / Registration Fee	✓			✓		✓							✓	✓								✓	✓		✓	✓		
NRA supervision fee / recurring fee			✓										✓	✓	✓	✓					✓			✓				
VTP fee		✓																									✓	
Fees set on retroactive basis																					✓				✓			
Other fees			✓													✓											✓	

	Austria	Belgium	Bulgaria	Croatia	Cyprus	Czech Republic	Denmark	Estonia	Finland	France	Germany	Greece	Hungary	Ireland	Italy	Latvia	Lithuania	Luxembourg	Malta	Netherlands	Poland	Portugal	Romania	Slovakia	Slovenia	Sweden	Spain	United Kingdom
Reporting Obligations			✓		N/A															N/A								
Information additional to REMIT	✓													✓	✓	✓	✓					✓	✓		✓	✓	✓	✓
Statistical data										✓								✓					✓					
Trade orders and transactions										✓												✓	✓			✓		
Quantities / prices													✓			✓						✓	✓				✓	✓
Separate accounting for licence activities			✓																									
Imported quantities gas															✓							✓						
Financial Statements			✓										✓	✓											✓			

	Austria	Belgium	Bulgaria	Croatia	Cyprus	Czech Republic	Denmark	Estonia	Finland	France	Germany	Greece	Hungary	Ireland	Italy	Latvia	Lithuania	Luxembourg	Malta	Netherlands	Poland	Portugal	Romania	Slovakia	Slovenia	Sweden	Spain	United Kingdom
Monthly reports													✓												✓			✓
Quarterly reports																✓					✓							
Annual reports										✓			✓		✓										✓			✓
Penalties					N/A		N/A	N/A							N/A			✓		N/A								✓
Fines	✓					✓							✓	✓		✓						✓	✓		✓	✓	✓	✓
Trading restrictions										✓							✓											
Licence revocation										✓			✓										✓		✓	✓		
Trading ban																	✓											

	Austria	Belgium	Bulgaria	Croatia	Cyprus	Czech Republic	Denmark	Estonia	Finland	France	Germany	Greece	Hungary	Ireland	Italy	Latvia	Lithuania	Luxembourg	Malta	Netherlands	Poland	Portugal	Romania	Slovakia	Slovenia	Sweden	Spain	United Kingdom
Requirements for Cross-Border Activities					N/A																							
Import / Export Fees		✓	✓											✓		✓						✓					✓	
Additional Reporting Obligations																												
VAT registration	✓	✓						✓			✓			✓	✓								✓			✓		
Security of supply obligation regarding import/export																						✓						
Authorization of long-term import contracts															✓													
Transparency / Communication with competent authority					N/A																							
Incomplete information by NRA			✓							✓			✓															

	Austria	Belgium	Bulgaria	Croatia	Cyprus	Czech Republic	Denmark	Estonia	Finland	France	Germany	Greece	Hungary	Ireland	Italy	Latvia	Lithuania	Luxembourg	Malta	Netherlands	Poland	Portugal	Romania	Slovakia	Slovenia	Sweden	Spain	United Kingdom
Information not or only partly available in English				✓		✓				✓								✓				✓	✓		✓	✓		
Language requirements	✓		✓	✓		✓		✓		✓			✓			✓						✓	✓		✓	✓	✓	✓
Certified translations	✓			✓						✓												✓	✓		✓	✓		✓
Apostilled documents				✓		✓																✓						✓
Lack of (timely) consultation																												
Other barriers					N/A																							
Trading obligation																						✓			✓		✓	✓
Storage obligation																							✓			N/A		

	Austria	Belgium	Bulgaria	Croatia	Cyprus	Czech Republic	Denmark	Estonia	Finland	France	Germany	Greece	Hungary	Ireland	Italy	Latvia	Lithuania	Luxembourg	Malta	Netherlands	Poland	Portugal	Romania	Slovakia	Slovenia	Sweden	Spain	United Kingdom
Permission requirement for access to power exchange																					✓							
Balance Group membership				✓				✓	✓		✓						N/A	✓					✓					

12.2 Annex 2 Evaluation of the traders' online questionnaire

	Belgium (unfinished questionnaire)	Czechia	France	Hungary	Hungary	Italy	Poland	Poland	Poland	Romania
Time on the market	More than 3	More than 3		More than 3	More than 3	Less than 3	More than 3	Exited the market	More than 3	
General Assessment of administrative and regulatory requirements to enter and trade	useful	minor barrier		neutral / no opinion	barrier	barrier	barrier	barrier	severe barrier	barrier
Registration						✓				
Licence	✓	✓	✓	✓	✓		✓	✓	✓	✓
Integrated license	✓				✓					✓
Shipper license										
Wholesale license	useful	minor barrier		neutral / no opinion	barrier	barrier	barrier	barrier	severe barrier	
Cross-border license						✓				
Licence limited in time							✓		✓	✓
Licence renewal process							barrier		severe barrier	barrier
Licensing / Registration process	useful	somewhat useful		somewhat useful	barrier	minor barrier	barrier	barrier	barrier	severe barrier
Competent Authority	NRA	NRA		NRA	NRA		NRA	NRA	NRA	NRA
Instructions in English		✓	no	yes	no		no	no	no	

	Belgium (unfinished questionnaire)	Czechia	France	Hungary	Hungary	Italy	Poland	Poland	Poland	Romania
Most burdensome aspect(s)	language requirement				submission process, document requirements, language requirements		submission process, document requirements, language requirements	language requirements	document requirements	submission process, document requirements, language requirements
Business plan		✓	N/A	neutral / no opinion	barrier	N/A	barrier		barrier	
Availability of qualified staff				neutral / no opinion	barrier		barrier			barrier
Criminal records of management				neutral / no opinion			barrier			
Local address of management				neutral / no opinion					neutral / no opinion	
Trading track record				neutral / no opinion	useful		useful			useful
Trading exam				neutral / no opinion			barrier		barrier	
Recognition of EU license		✓								
Length of the procedure	minor barrier	neutral	minor barrier	minor barrier	barrier		barrier	barrier	severe barrier	barrier
Local Establishment	N/A	✓	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
Local company address or contact person		barrier								barrier
Establishment of a local branch office		barrier								severe barrier
Establishment of a local company		barrier								severe barrier

	Belgium (unfinished questionnaire)	Czechia	France	Hungary	Hungary	Italy	Poland	Poland	Poland	Romania
Establishment for EU (branch or local corporation)										
Establishment for Non-EU/EEA		✓			neutral / no opinion		neutral / no opinion			somewhat useful
Financial Requirements	N/A	N/A	N/A							N/A
Minimum capital requirement				neutral / no opinion						
Collateral (e.g. financial guarantees)				neutral / no opinion	barrier	severe barrier				
Availability sufficient funds							✓			
Availability sufficient funds		✓								barrier
Administrative Fees	N/A		N/A							
Licensing / Registration Fee		✓			barrier		✓	✓	✓	
NRA supervision fee / recurring fee					barrier	barrier	✓		barrier	✓
Title transfer fee					barrier					
Clearing house fees				barrier						
Other fees										
Reporting Obligations						✓				
Information additional to REMIT						barrier	✓	✓	✓	barrier

	Belgium (unfinished questionnaire)	Czechia	France	Hungary	Hungary	Italy	Poland	Poland	Poland	Romania
Reporting to Ministry						barrier	✓	✓		
Reporting only in national language						✓	✓	✓	✓	
Monthly reports				✓			✓	✓	✓	✓
Quarterly reports							✓		✓	✓
Annual reports				✓		✓	✓	✓		✓
Penalties										
Fines						✓	✓	✓	✓	✓
Licence revocation							✓		✓	✓
Trading ban						✓				
Requirements for Cross-Border Activities										
Import / Export Fees		neutral / no opinion		barrier				✓	✓	minor barrier
Additional Reporting Obligations										
VAT registration		neutral / no opinion		neutral / no opinion				✓		
Security of supply obligation regarding import/export							barrier	✓	barrier	
Branch office								✓		minor barrier

	Belgium (unfinished questionnaire)	Czechia	France	Hungary	Hungary	Italy	Poland	Poland	Poland	Romania
Transparency / Communication with competent authority										
Language requirements		✓			barrier	minor barrier			neutral / no opinion	barrier
Certified translations				✓	✓				✓	
Apostilled documents					✓					
NRA webpage up to date	very bad	neutral / no opinion	good	good		neutral / no opinion	neutral / no opinion	very bad	bad	neutral / no opinion
Information provided in English	excellent	neutral / no opinion	neutral / no opinion	bad		excellent	very bad	very bad	very bad	very bad
Quality and quantity of Information provided		neutral / no opinion	somewhat useful	minor barrier		barrier	barrier	barrier	poor	barrier
Availability of data on market specifics		neutral / no opinion	useful	minor barrier		minor barrier	minor barrier	minor barrier	insufficient	barrier
Availability of data critical for operation		neutral / no opinion	somewhat useful	neutral / no opinion		minor barrier	neutral / no opinion	neutral / no opinion	poor	neutral / no opinion
Information accompanying statistical data or other published data		neutral / no opinion	neutral / no opinion	neutral / no opinion		neutral / no opinion	barrier	neutral / no opinion	insufficient	barrier
Consultation process	no consultation	yes	yes	no consultation		no consultation	no consultation	no consultation	no consultation	no consultation

	Belgium (unfinished questionnaire)	Czechia	France	Hungary	Hungary	Italy	Poland	Poland	Poland	Romania
Other barriers										
Costs				clearing house process						
Trading obligation				✓	✓				✓	✓
Storage obligation						✓		✓		

12.3 Annex 3 Grouping of barriers¹²⁹

Grouping of Barriers							
Barrier	Burden on existing market actors			Burden on potential market actors			Frequency
	Costs	Time constraints	Inefficiencies	Costs	Time constraints	Inefficiencies	
Licence requirement	Not applicable	Not applicable	Not applicable	Unnecessary bureaucracy increases the costs for market entrants.	Time consuming requirement	Administrative entry barrier hinders the development of the market and liquidity	Frequent
Integrated License	Fulfilling requirements originally addressed to suppliers adds costs	Additional time consuming reporting obligations addressed at suppliers	Licence requires market players to fulfil requirements addressed to supply only	More costs involved than for applying for a mere wholesale license, because additional requirements have to be met	Fulfilling additional requirements addressed to suppliers only is time consuming	No benefit for a wholesale trader to obtain an integrated license, if no supply activities are foreseen	Frequent

¹²⁹ Colour scheme: The most severe burdens are marked in a dark colour shade, severe burdens are marked in a medium shade and slight burdens are marked in a light shade. The same concept is applied to frequency. Very frequent barriers are marked in a dark colour shade, frequent barriers in a medium shade and infrequent barriers in a light shade.

Grouping of Barriers

Barrier	Burden on existing market actors			Burden on potential market actors			Frequency
	Costs	Time constraints	Inefficiencies	Costs	Time constraints	Inefficiencies	
Cross-border license	Costs for maintaining cross-border licence	Annual reporting obligations for cross-border activities	Duplicates workload for reporting, licence maintenance, etc	Additional costs for cross-border licence	Adds time to the licensing process to prepare for yet another application	Duplicates licence requirement and does not add any value, as almost the same information is required as for a national licence	Infrequent
Licence limited in time	Costs for renewal process or new application	Renewing the licence is time consuming	Short licence validity, complicated renewal process	Preparation for renewal process	Preparation for renewal process	Short validity of the licence	Infrequent
Licence renewal process	Costs for gathering all requested documentation (again)	Preparing a new application when only renewing the licence is time consuming	Renewal process is the same as the original application process.	Not applicable	Not applicable	Not applicable	Infrequent

Grouping of Barriers

Barrier	Burden on existing market actors			Burden on potential market actors			Frequency
	Costs	Time constraints	Inefficiencies	Costs	Time constraints	Inefficiencies	
Licensing process	Not applicable	Not applicable	Not applicable	Large amounts of documents, translations, external support drive up the costs for licensing	Gathering a large amount of documents, detailed document requests and special submission formats are time intensive steps in the licensing process	Submitting a licence proposal in every Member State and preparing the licence application according to the specific requests of each NRA is inefficient as it duplicates work unnecessarily	Frequent
Business plan	No additional costs for existing market actors	No additional time constraints for existing market actors	No inefficiencies once the licence is obtained	Costs for drawing up a tailor-made business plan along the requirements of the NRA (eg specially audited, national language, etc)	Drawing-up a tailor-made business plan along the requirements of the NRA is time consuming	Individual requirements towards the business plan for each Member State are inefficient	Frequent

Grouping of Barriers

Barrier	Burden on existing market actors			Burden on potential market actors			Frequency
	Costs	Time constraints	Inefficiencies	Costs	Time constraints	Inefficiencies	
Availability of qualified staff	Costs for maintaining qualified staff might be higher	No additional time constraints for existing market actors	Different qualifications for each Member State are inefficient, because they require market actors to employ additional staff for each Member State	Costs for hiring additional staff if additional qualifications are needed	Evaluating the requirements for each Member State is time consuming, hiring additional staff	Different qualifications for each Member State are inefficient, because they require market actors to employ additional staff for each Member State	Frequent
Criminal records of management	Not applicable	Not applicable	Not applicable	Costs for obtaining the document, additional costs for certified translations and/or apostilled documents	Gathering documents from the entire management might be very time consuming	No major inefficiencies	Very frequent
Trading exam	Not applicable	Not applicable	Not applicable	Exam costs and costs for preparing for the exam, costs for hiring staff able to take the exam	Time consuming to prepare and take the exam, extra time to find competent staff	Exams in national languages only or no recognition of foreign trading exams	Infrequent

Grouping of Barriers

Barrier	Burden on existing market actors			Burden on potential market actors			Frequency
	Costs	Time constraints	Inefficiencies	Costs	Time constraints	Inefficiencies	
Length of licensing procedure	Not applicable	Not applicable	Not applicable	Costs for additional time spent with the licensing procedure and sometimes frequent contacts with the NRA	Postpones all trading activities until the licensing is completed	Unattractive for short time business opportunities, as they might have passed	Frequent
Local postal service agent / contact person	Costs for the contract with the postal service agent / local contact person	Minor time constraints to maintain the contract with local postal service / contact person	Unnecessary additional requirement in times of electronic communications	Additional costs to research and contract with a local postal service agent / contact person	Time consuming to research and contract with a local postal service agent / contact person	Unnecessary additional requirement in times of electronic communications	Infrequent
Establishment of local branch	Costs for additional staff, office space and maintaining a local branch (eg taxation, etc) occur	Additional time to manage an additional branch	Unnecessary requirement, especially in times of electronic communications	Additional costs for setting up a local branch, including costs for legal advice, auditing, registration, taxation, etc	Upfront very time consuming to set up	Unnecessary requirement for potential market players within the EU	Infrequent
Establishment of local company	Costs for additional staff, office space and maintaining an additional company (eg auditing, etc) occur	Additional time to manage an additional company	Unnecessary requirement, especially in times of electronic communications	Additional costs for setting up a local company, including costs for legal advice, auditing, registration, taxation, etc	Upfront very time consuming to set up a local company and requires sometimes weeks until a local company is set up	Unnecessary requirement for potential market players within the EU	Infrequent

Grouping of Barriers

Barrier	Burden on existing market actors			Burden on potential market actors			Frequency
	Costs	Time constraints	Inefficiencies	Costs	Time constraints	Inefficiencies	
Collaterals for license	Minor costs of keeping the collaterals	Not time consuming for existing market players	Minor inefficiencies for existent market players	High amount to be paid for collaterals	Additional time needed to obtain collaterals, especially if they have to be from a certain bank	Unnecessary burden, because usually TSO / VTP require collaterals too	Frequent
Annual supervision fee	High costs for payment of fee, costs for calculating the fee	Workload to gather information on annual fees and calculation of the fee	Frequent changes in the amount and the calculation method. Unnecessary administrative requirement.	Costs for calculating the fee, even before paying the fee	Workload to gather information on annual fees and calculation of the fee	Frequent changes in the amount and the calculation method. May create disincentives.	Infrequent
Very detailed reporting obligations	Costs for additional staff and gathering and processing data	Gathering detailed data is very time consuming	Reported data includes information irrelevant to NRA	No costs for potential market actors	Not time consuming for potential market actors	Not applicable to potential market actors	Infrequent

Grouping of Barriers

Barrier	Burden on existing market actors			Burden on potential market actors			Frequency
	Costs	Time constraints	Inefficiencies	Costs	Time constraints	Inefficiencies	
Information duplicating REMIT	Costs for additional staff, more work and costs for data collection and processing	Additional time to spend on collecting and processing the same data again	Duplicating work already done, data already available to NRA and thus no additional value to NRA. Uncertainty when preparing a large number of financial statements for activities in specific countries.	No costs for potential market actors	Not time consuming for potential market actors	Not applicable to potential market actors	Very frequent
Reporting to several authorities	Costs for additional work load and different data processing formats	Additional time to spend on submitting data in different formats	Providing the same data in different formats	No costs for potential market actors	Not time consuming for potential market actors	Not applicable to potential market actors	Infrequent
Import / Export Fees	Additional costs for the fee itself and the administration	Administration of the fee is time consuming	Administration of additional fees next to tax requirements. Serious obstacle for liquidity and market coupling.	Not applicable	Not applicable	Not applicable	Infrequent

Grouping of Barriers

Barrier	Burden on existing market actors			Burden on potential market actors			Frequency
	Costs	Time constraints	Inefficiencies	Costs	Time constraints	Inefficiencies	
Storage obligation for cross-border licensees	Additional costs for storage, providing required documentation	Gathering required documentation to prove the compliance with the obligation is time consuming	Requirements to prove the compliance with the obligation are unnecessary high, storage obligation is impossible to fulfil due to lacking storage	Envisaged costs for storage have a deterring effect	Envisaged time needed to prove compliance with the obligation has a deterring effect	Impossibility to comply with the storage obligation has a deterring effect	Infrequent
Language requirements for reporting / communication with NRA	Costs for translations, certified translations and involvement of local language experts	Preparation of reporting data in several languages is time consuming	Involvement of local lawyers, translators etc and duplication of work by preparing reporting data in several languages	Not applicable	Not applicable	Not applicable	Very frequent
Webpage of the NRA not up to date	Costs for gathering information are higher, local lawyers have to be involved	Gathering information becomes more burdensome and time-consuming	Outdated information is inefficient for traders and the NRA, as they will get more direct requests for information	More costs involved for preparing the licence application	Gathering information becomes more burdensome and time-consuming	Outdated information is inefficient for traders and the NRA, as they will get more direct requests for information	Very frequent

Grouping of Barriers

Barrier	Burden on existing market actors			Burden on potential market actors			Frequency
	Costs	Time constraints	Inefficiencies	Costs	Time constraints	Inefficiencies	
Missing information in English	Costs for translations and local support	Gathering information becomes more burdensome and time-consuming	More direct requests to NRA for information	Costs for translations and local support	Gathering information becomes more burdensome and time-consuming	More direct requests to NRA for information	Frequent
Poor quality and quantity of information by NRA	Additional costs for gathering information	Gathering information becomes more burdensome and time-consuming	Market actors cannot work efficiently without the provision of adequate information	Additional costs for gathering information	Gathering information becomes more burdensome and time-consuming	Deterring effect on potential market actors	Frequent
Missing data on market specifics	Additional costs for gathering information	Gathering information becomes more burdensome and time-consuming	Market actors cannot work efficiently without the provision of adequate information	Additional costs for gathering information	Gathering information becomes more burdensome and time-consuming	Deterring effect on potential market actors	Frequent
Missing data critical for operation	Additional costs for gathering information	Gathering information becomes more burdensome and time-consuming	Market actors cannot work efficiently without the provision of adequate information	Additional costs for gathering information	Gathering information becomes more burdensome and time-consuming	Deterring effect on potential market actors	Frequent

Grouping of Barriers

Barrier	Burden on existing market actors			Burden on potential market actors			Frequency
	Costs	Time constraints	Inefficiencies	Costs	Time constraints	Inefficiencies	
Missing information on statistical data	Additional costs for gathering information	Gathering information becomes more burdensome and time-consuming	Market actors cannot work efficiently without the provision of adequate information	Additional costs for gathering information	Gathering information becomes more burdensome and time-consuming	Deterring effect on potential market actors	Frequent
Poor / missing consultation process	Legal uncertainty, quick changes in the regulation are cost intensive	Quick changes in the regulation without warning/involvement add work to the daily business	Quick changes in regulation and the lack of involvement may lead to the duplication of work	Legal uncertainty and quick changes in the regulation are cost intensive when happening during a licensing procedure or when planning business decisions	Quick changes in the regulation without warning/involvement add work to the preparation of the market entry	Legal uncertainty and the lack of involvement have a deterring effect on potential market actors	Frequent

12.4 *Annex 4 Sample online questionnaires*

The sample online questionnaires is available online at https://ec.europa.eu/energy/studies/requirements-entry-and-trade-gas-wholesale-markets_en.

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