



## Introduction

Gas Trade Review is a publication in which the shipping and contractual issues relevant to the global LNG trade and the European pipeline trade with natural gas are analyzed.

In this edition, you can read about the following topics:

- **Buyer's Remedy In Case Of Seller's Failure To Comply With His Timing Obligations In LNG FOB Sale Transactions**
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- **Charterparty Conditions For The Use Of Boil-Off Gas By LNG Ships As Propulsive Fuel**
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If you have any comments about the matters reviewed in this edition, please address them to [editor@commoditylaw.eu](mailto:editor@commoditylaw.eu)

## Buyer's Remedy In Case Of Seller's Failure To Comply With His Timing Obligations In LNG FOB Sale Transactions

by Vlad Cioarec, International Trade Consultant



### Remedy For Delays In Berthing And Commencement Of Loading

The buyer's obligation in LNG FOB sale transactions is to present the nominated ship with the cargo tanks in cool and ready to load condition within the scheduled arrival window specified in the Transaction Confirmation Notice.

The Master FOB LNG Sales Agreements published by GIIGNL, Trafigura and BP do not stipulate a time limit for the seller to berth the LNG ship and commence loading. The deadline for berthing the LNG ship should be the end of the scheduled arrival window provided that the LNG ship arrives and tenders NOR at the PBS of the loading port within the scheduled arrival window.

The LNG ship should retain sufficient LNG heel from previous cargo to be able to maintain the cargo tanks at the required temperature during the ballast voyage, the Notice time and time allowed for loading. If the buyer's ship is delayed in berthing and/or in the commencement of loading due to the fault of the seller or seller's facilities and thereby the time spent by the buyer's ship at loading port exceeds the contractual time limit during which the ship should maintain the cargo tanks at the required temperature<sup>1</sup>, the costs of LNG needed to cool down the ship's cargo tanks shall be for the seller's account<sup>2</sup>.

The Master FOB LNG Sale Agreement templates published by GIIGNL in 2011 and BP in 2019 provide that if the buyer's ship is delayed in berthing and/or in the commencement of loading due to the fault of the seller or seller's facilities beyond the contractual time limit stipulated in the sale agreement, the buyer shall be entitled to recover from the seller the amount due for excess boil-off. The Sub-Clause 6(13) of GIIGNL Master FOB LNG Sales Agreement stipulates that:

*“If a cool and ready to load LNG Vessel is delayed in berthing and/or commencement of loading (for reasons attributable to the Seller or the Seller's operator) and if as a result thereof the commencement of loading is delayed beyond twenty four (24) hours after the earlier of (A) six (6) hours from the time that Notice of Readiness has been given, or (B) 6:00 a.m. local time on the first day of the relevant Loading Date (provided the LNG Vessel arrives on or prior to such date), then, as from this time and until commencement of loading, the Seller shall pay the Buyer an amount, on account of excess boil-off, equal to the LNG Price for the relevant LNG Cargo multiplied by the MMBtus of excess boil-off. The MMBtus of excess boil-off shall be calculated by multiplying the Nominal Quantity for the relevant LNG Cargo by the deemed daily boil-off rate set forth in the applicable Confirmation Notice by the number of days between the commencement of loading and the time when excess boil-off commenced to count as set for in this Sub-clause 6(13).”*

The Sub-Clause 7.18 of BP Master FOB LNG Sale and Purchase Agreement stipulates that the seller shall be liable to buyer for excess boil-off only if the used laytime exceeds the allowed laytime and that the amount payable by the seller in respect of excess boil-off has to be equal to the product of: (i) 0.15%; (ii) the Nominal Quantity of the LNG Cargo sold; (iii) the applicable price in

1 The reference temperature for loading a membrane type LNG ship is -130°C. The reference temperature for loading a Moss type LNG ship is in the range between -110°C and -130°C. See Sub-section 2.6.2. “Cooling down operations” of GIIGNL – LNG Custody Transfer Handbook – Fifth Edition (2017).

2 See Sub-Clause 7.25 of BP Master FOB LNG Sale and Purchase Agreement and Sub-Clause 6(12) of GIIGNL Master FOB LNG Sales Agreement.

respect of such LNG Cargo; and (iv) the number of days, and pro rata for every hour of any partial day, by which the used laytime exceeds the allowed laytime.

### **Remedy For The Seller's Failure To Deliver The LNG Cargo Within The Contractual Delivery Window**

The seller's obligation in LNG FOB sale transactions is to deliver the LNG cargo (i.e. all the Nominated Quantity specified in the Transaction Confirmation Notice) within the contractual time limit.

GIIGNL Master FOB LNG Sales Agreement, Edition 2011, stipulates that the contractual time limit for delivery of LNG cargo should be set in function of the date when the buyer's ship must arrive at the loading port and when loading of LNG cargo is scheduled to commence (the Loading Date).

In line with the provisions of GIIGNL Master FOB LNG Sales Agreement, BP Master FOB LNG Sale and Purchase Agreement stipulates that the contractual time limit for the delivery of LNG cargo is 72 hours after the end of the Arrival Period (defined as the range of time within which the buyer's LNG ship must arrive at the PBS of the loading port), provided that the buyer's ship has tendered a valid NOR prior to the end of the Arrival Period. If the seller fails to deliver all the LNG cargo (quantity of LNG in MMBTUs specified in the Transaction Confirmation Notice) within 72 hours after the end of the Arrival Period for any other reason than a force majeure event, reasons attributable to buyer or buyer's ship including the ship's failure to tender a valid NOR prior to the expiry of the ship's Arrival Period or adverse weather, and the seller and buyer are unable to agree on a revised delivery date or if, having agreed on a revised delivery date, the seller fails to deliver the LNG cargo by the agreed revised delivery date, it shall be considered a "Failure to Deliver". In such case the buyer shall be entitled to recover as liquidated damages an amount equal to the product of: (i) 40%; (ii) the quantity of LNG in MMBTUs which the seller failed to deliver; and (iii) the applicable price in respect of the relevant LNG cargo<sup>3</sup>. The Sub-Clause 5.8 of BP Master FOB LNG Sale and Purchase Agreement stipulates that the payment by the seller of such amount, in addition to demurrage, shall be the buyer's sole and exclusive remedy for any delay or failure by the seller to deliver the LNG cargo specified in the Transaction Confirmation Notice and the seller shall not be obliged to deliver any replacement quantity of LNG to buyer.

It should have also mentioned that if the used laytime exceeds the allowed laytime, the seller shall have to pay, in addition to the amount of liquidated damages and the amount due for demurrage, the amount due for excess boil-off.

Trafigura Master LNG Sale and Purchase Agreement stipulates that the FOB seller must deliver the LNG cargo by the expiry of the allowed laytime<sup>4</sup> provided in the Transaction Confirmation Notice.

If the FOB seller fails to deliver the LNG cargo by the expiry of the allowed laytime for any other reason than a force majeure event, reasons attributable to buyer or buyer's ship including the ship's failure to tender valid NOR prior to the expiry of the ship's Arrival Window or adverse weather, it shall be considered a "Failure to Deliver"<sup>5</sup>.

In the event of a Failure to Deliver there shall be a further 48 hours period following the expiry of the allowed laytime<sup>6</sup> during which the seller may reschedule the delivery of LNG cargo subject to the seller's obligation to reimburse documented costs incurred by the buyer as a result of such rescheduling, i.e. the amount due for demurrage and the amount due for excess boil-off<sup>7</sup>. If the seller will be unable to reschedule the LNG cargo during the 48 hours' period, this shall be treated as a "Deemed Failure to Deliver".

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3 See Sub-Clause 5.7 of BP Master FOB LNG Sale and Purchase Agreement.

4 See Sub-Clause 6.3.1 of Trafigura Master LNG Sale and Purchase Agreement.

5 See Sub-Clause 6.3.1 of Trafigura Master LNG Sale and Purchase Agreement.

6 See Sub-Clause 5.3 of Schedule C to Trafigura Master LNG Sale and Purchase Agreement.

7 See Sub-Clause 6.3.2 of Trafigura Master LNG Sale and Purchase Agreement.

In Trafigura Master LNG Sale and Purchase Agreement, like in GIIGNL Master FOB LNG Sales Agreement, there is a distinction between the situation when the buyer is able to procure a replacement LNG cargo or natural gas quantity and the situation when the buyer is not able to procure a replacement LNG cargo or natural gas quantity.

If the buyer is able to procure a replacement LNG cargo or natural gas quantity, the buyer shall be entitled to recover the amount by which the buyer's cost to procure the replacement LNG cargo or natural gas quantity, plus the additional transportation and logistics costs, including demurrage charges and legal fees incurred by the buyer due to the seller's Failure to Deliver, exceeds the product of the quantity of LNG (MMBTU content) which the seller failed to deliver and the contract price of such LNG cargo<sup>8</sup>.

If the buyer is not able to procure a replacement LNG cargo or natural gas quantity, the buyer shall be entitled an amount equal to the buyer's direct costs incurred, such as charges, losses, damages, expenses, fees (including reasonable legal fees) and liabilities incurred that could not reasonably be avoided<sup>9</sup>. The maximum amount recoverable by the buyer for seller's Failure to Deliver shall not exceed an amount equal to 100% of the contract price multiplied by the MMBTU content of LNG quantity which the seller failed to deliver<sup>10</sup>.

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8 See Sub-Clause 6.3.4.1 of Trafigura Master LNG Sale and Purchase Agreement.

9 See Sub-Clause 6.3.4.2 of Trafigura Master LNG Sale and Purchase Agreement.

10 See Sub-Clause 6.3.5 of Trafigura Master LNG Sale and Purchase Agreement.

## Implications Of LNG Non-Compliance With Impurity Specifications In LNG FOB Sale Transactions



by Vlad Cioarec, International Trade Consultant

The LNG cargo delivered on board the buyer's ship in FOB sale transactions must comply with the maximum limits for impurities stipulated in the Transaction Confirmation Notice and be free from any other harmful contaminants which might cause damage to the carrying ship and receiving terminal. The specifications for impurities in FOB sale transactions are based on the specifications published by the receiving terminal in respect of LNG content of sulphur compounds (i.e. Hydrogen Sulphide, total sulphur, Mercaptan sulphur), carbon dioxide, water vapour and Mercury traces.

If the analysis of gaseous sample taken from the LNG cargo at the time of loading evidences that the LNG delivered on board the buyer's ship does not conform with the maximum limits stipulated for the impurities, the LNG cargo shall be considered off-specification.

The failure to detect and remove contaminants such as sulphur and mercury from the gas before liquefaction may have as consequence the corrosion or contamination of the ship's cargo tanks and damage to the receiving facilities. In such case, the buyer's remedy will be in function of whether the buyer or the operator of receiving terminal shall be able or not to treat the LNG cargo in order to meet the quality specifications for impurities.

GIIGNL and BP FOB LNG Sale Agreement templates provide that if the buyer will be able to treat the LNG cargo and remove the impurities in order to meet the quality specifications, the seller shall have to reimburse the buyer all documented direct costs and expenses incurred by the buyer for the treatment of such LNG cargo (or any other LNG contaminated by it) and for remedying any damage caused to the carrying ship and/or to the buyer's receiving facilities<sup>1</sup>.

If the buyer is unable to treat the LNG cargo in order to meet the quality specifications, the seller shall be deemed to have failed to deliver the LNG cargo and shall have to pay to the buyer the amount of liquidated damages the buyer is entitled to receive in case the seller fails to deliver the nominal quantity specified in the Transaction Confirmation Notice and in addition to that the seller shall have to reimburse all documented direct costs and expenses for disposing of the off-specification LNG and for remedying any damage caused to the carrying ship and/or to the buyer's receiving facilities<sup>2</sup>.

A difficult issue in LNG FOB sale transactions is the question of whether the FOB sellers could be held liable in the event that the LNG cargo found to be on specification at the time of loading turns out to be off-specification upon delivery to the buyer's receiving facilities.

Master LNG FOB Sale Agreement templates published by GIIGNL, Trafigura and BP provide that the LNG sold must comply with the quality specifications at the time of delivery to the buyer at the Delivery Point<sup>3</sup>, when converted into a gaseous state<sup>4</sup>, that is, provided that the sample analysis evidences that the LNG delivered on board the buyer's ship is within the contract quality specifications at the time and place of loading, the buyer cannot subsequently claim that the LNG delivered is off-specification.

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1 See Sub-Clause 4(3)(a) of GIIGNL Master FOB LNG Sales Agreement and Sub-Clause 6.6(a) of BP Master FOB LNG Sale and Purchase Agreement.

2 See Sub-Clause 4(3)(b) of GIIGNL Master FOB LNG Sales Agreement and Sub-Clause 6.6(b) of BP Master FOB LNG Sale and Purchase Agreement.

3 Delivery Point is defined in BP Master FOB LNG Sale and Purchase Agreement as the point where the outlet flanges of the loading lines of the Seller's Facilities connect with the inlet flanges of the loading lines of the LNG ship.

4 In order to determine the average composition of LNG cargo, the sample taken from the loading line is converted from its initial state, liquid at low temperature (-163°C), to gaseous state at ambient temperature.



This matter was explained by the English Court of Appeal in *KG Bominflot Bunkergesellschaft Für Mineralöle mbh & Co Kg v. Petroplus Marketing AG*<sup>5</sup>. In that case a cargo of gasoil sold on FOB terms was found to be within specification at the time of loading, but after arrival at discharge port it was found to be off-specification.

The FOB buyer brought a claim against the seller contending that:

- there was an implied term into the FOB sale contract under section 14(2) of the Sale of Goods Act of the United Kingdom that the cargo had to be of satisfactory quality not only when it was delivered on board the vessel but also for a reasonable time thereafter;
- there was an implied term at common law that the cargo had to be of satisfactory quality for a reasonable time after delivery on board the vessel and that the cargo had to remain in accordance with the contractual specifications for a reasonable time after delivery on board the vessel.

The English Court of Appeal held that if an alleged vice of the commodity is something for which the contract quality specifications and quality determination clauses provide and the commodity is found to be on specification at the time of delivery, the FOB buyers cannot subsequently claim a breach of the statutory implied term as to satisfactory quality or any similar term to be implied at common law. In a sale contract providing that the quality specifications have to be met at the time of delivery, the statutory implied condition of satisfactory quality stated in section 14(2) of the Sale of Goods Act of the United Kingdom applies only at the time of delivery. If the goods are of satisfactory quality at the time of delivery, the implied condition of satisfactory quality is fulfilled.

But if the alleged vice of the commodity could not have been picked up by the cargo surveyors with the tests required in the contract quality specifications, then the surveyors' determination of the cargo characteristics is not conclusive and the buyers may claim in such a case a breach of an implied term of satisfactory quality in the event of cargo deterioration due to the alleged vice.

In order to avoid the liability for breach of the statutory implied conditions, the FOB sellers can insert in the LNG FOB Sale Agreement an exclusion clause in which to state clearly that the liability for breach of the statutory implied conditions is excluded. An example of such clause is the Sub-Clause 5.4.2 of *Trafigura Master LNG Sale and Purchase Agreement* which has the following provisions:

*“Seller makes no representation or warranty as to the quality of the LNG delivered to Buyer other than as to the Specifications provided in the Confirmation Notice. All guarantees, undertakings, representations, **conditions**, warranties or other terms, express or implied (whether by statute, common law or otherwise), including without limitation those relating to the quality, merchantability, fitness or suitability of the LNG for any particular purpose or otherwise, are excluded to the fullest extent permissible by law.”*

Such an exclusion clause could preclude the implication of statutory conditions.

The FOB sellers should draft carefully the provisions of the exclusion clause taking into consideration the rules adopted by the Courts in this regard. For instance, the drafters of *GIIGNL Master FOB LNG Sales Agreement* template did not seem to be aware of these rules when they wrote the provisions of Sub-Clause 17(11) which stipulates that:

*“the Parties make no representation or warranty, written or oral, express or implied, including but not limited to, any representation or warranty that the LNG will be fit for a particular purpose, or will be of merchantable quality, and all such representations and warranties are expressly excluded to the fullest extent permitted by law.”*

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5 [2010] EWCA Civ 1145

In *KG Bominflot Bunkergesellschaft Für Mineralöle mbh & Co Kg v. Petroplus Marketing AG*<sup>6</sup> the sellers relied on a similar clause and both the English High Court and English Court of Appeal held that such provisions were inadequate and the clause was ineffective to exclude the conditions implied under the section 14 of the Sale of Goods Act of the United Kingdom.

The statutory and common law conditions are not excluded by this clause because it refers to “warranties” and not to “conditions”. The statutory and common law implied conditions cannot be excluded by reference to warranties but only by provisions which expressly refer to conditions.

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6 [2010] EWCA Civ 1145

## Charterparty Conditions For The Use Of Boil-Off Gas By LNG Ships As Propulsive Fuel



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The LNG cargoes are transported by ships at the temperature of  $-163^{\circ}\text{C}$ , below the boiling point of LNG's main component, methane ( $-161.5^{\circ}\text{C}$ ).

The cargo tanks of the LNG carriers are thermally insulated to minimize the heat input from the outside. Despite the cargo tanks' insulation, a small amount of LNG evaporates or boils off during the transportation by sea due to the slight heat input from the atmospheric environment. The LNG that evaporates or boils off during the transportation by sea is referred to as "*boil-off gas*".

The amount of LNG that evaporates per day is referred to as the "*daily boil-off rate*" and is stated as a percentage of the gross cargo capacity of the vessel's cargo tanks. The daily boil-off rate depends on the effectiveness of the cargo tanks' insulation and the weather conditions encountered by the vessel during the voyage.

The steam turbine vessels with Moss Containment System have a daily boil-off rate of 0.25%.

The steam turbine vessels with Membrane Containment System have a daily boil-off rate of 0.15%.

The vessels with dual-fuel or tri-fuel diesel electric engines have a daily boil-off rate between 0.10 and 0.125%.

The vessels with low-pressure two stroke engines, known as X-DF vessels, have a daily boil-off rate of 0.085%.

The vessels with high-pressure two stroke engines, known as ME-GI vessels, have a daily boil-off rate of 0.035%.

The boil-off gas generated by the evaporation of the LNG has to be removed from the cargo tanks in order to maintain the pressure and temperature constant and depending on the type of vessel's propulsion system, it can be used either as fuel or it can be re-liquefied and returned as LNG to the cargo tanks.

The Q-Max and Q-Flex type LNG carriers do not use the boil-off gas for propulsion. These vessels are equipped with full re-liquefaction plants to re-liquefy the boil-off gas.

All other types of LNG carriers, i.e. the steam turbine vessels, the vessels with dual-fuel or tri-fuel diesel electric engines, the vessels with two stroke engines, can operate with both the boil-off gas and fuel oil, as well with marine diesel oil.

Until 1 January 2020, the practice has been to use natural boil-off gas as propulsive fuel and to supplement it with high-sulphur fuel oil. Since 1 January 2020, the ships can no longer use high-sulphur fuel oil as bunker fuel due to the Prohibition adopted by the IMO's Marine Environment Protection Committee on 26 October 2018<sup>1</sup> that bans the use of fuel oil with a sulphur content greater than 0.5%.

In LNG time charterparties, the charterers will decide the type of fuel to be used and in which quantities since they provide and pay for both the LNG and fuel oil. In a laden voyage, the choice of fuel to be used will depend on the prices of LNG and fuel oil/marine diesel oil and the time available to reach the receiving terminal at the scheduled date and time for berthing.

In LNG time charterparties, the fuel consumption is calculated taking into consideration not only the fuel oil and marine diesel oil consumption but also the LNG cargo loss through boil-off.

ShellLNGTime 1 (Shell LNG Time Charter Party form) provides that for the purpose of calculation of the fuel consumption for a voyage, the term "fuel" is used to refer to its two components, the fuel oil and boil-off gas, measured in metric tonnes of Fuel Oil Equivalent.

<sup>1</sup> See Resolution MEPC.305 (73) – Regulation 14 from MARPOL Annex VI.



The Clause 6(a) of Appendix C of ShellLNGTime 1 has the following provisions:

*“The actual fuel consumption on a Voyage shall [...] be the sum of,  
(i) the fuel oil consumed during the Voyage (expressed in tonnes) [...]; and  
(ii) the fuel equivalent of the total volume of cargo lost as Boil-Off during the Voyage (expressed in tonnes of Fuel Oil Equivalent) [...].”*

This is the reason why the shipowner's warranties relating to the fuel consumption are not limited to the fuel oil component but it would also cover the boil-off gas used as fuel.

ShellLNGTime 1 provides that the shipowners may use the boil-off gas as propulsive fuel free of charge subject to the compliance with the maximum limits stipulated in the charterparty:

- Maximum Laden Boil-Off Rate, i.e. the daily guaranteed maximum Boil-Off for fully laden sea passages, stated as a percentage of the gross cargo capacity of the vessel's tanks. The daily natural boil-off of the LNG cargo must not exceed the warranted boil-off daily rate stated in the charter party.

- Guaranteed Maximum Boil-Off For The Sea Passage, calculated as the product of the daily guaranteed maximum Boil-Off and the number of days between the gaugings at the loading port and discharge port (i.e. the expected duration of the transportation of LNG cargo by sea)<sup>2</sup>.

The actual amount of Boil-Off used by the LNG vessel during a voyage (sea passage) is calculated after the completion of voyage as a difference between the LNG cargo volume measured after loading (before the sea passage) and the LNG cargo volume measured before discharge (after the sea passage). The actual amount of Boil-Off is then compared with the Guaranteed Maximum Boil-Off For The Sea Passage to see if there was any amount used in excess or any saving<sup>3</sup>.

The Sub-Clause 8(d) from Appendix C of ShellLNGTime 1 stipulates that:

*“At the conclusion of the charter period or annually (whichever occurs first) (the “Performance Period”), the quantities of excess Boil Off and the quantities of Boil-Off saved on all trips in the Performance Period shall each be added up. The total Boil-Off saved for any such period shall then be subtracted from the total excess Boil-Off in the same period and if the balance is positive Charterers may deduct from hire due under Clause 11 an amount calculated by multiplying the said balance by the LNG Price or, if more than one LNG Price is applicable during the Performance Period, the arithmetical average of such LNG Prices. If the balance is zero or negative, then Owners shall be deemed to have complied with this Clause for the Performance Period.”*

BIMCO GIIGNL LNGVOY (BIMCO and GIIGNL LNG Voyage Charter Party form) provides that the shipowners may use the boil-off gas as propulsive fuel free of charge subject to the compliance with the following warranties:

- Daily Boil-Off Cap Warranty, stated as a percentage of the gross cargo capacity of the vessel's tanks. The daily natural boil-off of the LNG cargo must not exceed the warranted boil-off daily cap stated in the charter party.

- Boil-Off Cap Warranty For The Sea Passage, calculated as the product of the daily Boil-Off rate and the number of days between the gaugings at loading port and discharge port (i.e. the expected duration of the transportation of LNG cargo by sea).

The actual amount of Boil-Off used by the LNG ship during the voyage (sea passage) is calculated after the completion of voyage as a difference between the LNG cargo volume measured after loading and LNG cargo volume measured before discharge. The actual amount of Boil-Off is then compared with the Boil-Off Cap Warranty For The Sea Passage to see if there was any amount used in excess or any saving.

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<sup>2</sup> See ShellLNGTime 1, Appendix C – Clause 8.

<sup>3</sup> See ShellLNGTime 1, Appendix C – Clause 8(a).

The quantity of LNG consumed by the vessel as boil-off gas in excess of the Boil-Off Cap shall be calculated using the LNG Conversion Factor (i.e. the rate used to convert the cubic meters to MMBTU) and must be paid by the shipowners to charterers at the LNG price.

The Daily Boil-Off Cap Warranty applies not only during the sea passage but also during the time spent by the LNG vessel at the discharge port following the service of NOR, i.e. the time between the service of NOR and the measurement of cargo volume before discharge. If after the vessel's arrival at the Pilot Boarding Station the port authorities or consignees prohibit the LNG vessel from proceeding to the berth during the night time, the shipowners shall have to comply with the Daily Boil-Off Cap Warranty also during such night-time restrictions. However, if the LNG vessel is delayed in berthing due to port congestion, the boil-off gas consumed by the LNG vessel while waiting for berth at the discharge port shall not count towards the Boil-Off Cap Warranty For The Sea Passage because the shipowners are not liable for the boil-off caused by the charterers' breach of the charter party<sup>4</sup>.

In such case the charterers should recover the excess boil-off from the Ex Ship buyers. The amount payable by the Ex Ship buyers on account of the excess boil-off shall be the product of the price for the relevant LNG cargo and MMBTUs of the excess boil-off. The MMBTUs of the excess boil-off shall be calculated by multiplying the Nominal Quantity for the relevant LNG cargo by the deemed daily boil-off rate set forth in the Transaction Confirmation Notice by the number of days and pro rata for every hour of any partial day by which the Used Laytime exceeds the Allowed Laytime<sup>5</sup>.

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4 See Clause 23 of BIMCO GIIGNL LNGVOY.

5 See Sub-Clause 7.18 of BP Master Ex-Ship Sale And Purchase Agreement and Sub-Clause 6(12) of GIIGNL Master Ex-Ship Sales Agreement.

# Reporting Obligations Of European LNG Traders

by Vlad Cioarec, International Trade Consultant



## **Obligation To Report LNG Transaction Data**

LNG trading companies which supply and purchase LNG for delivery in the European Union are considered to be “market participants” under REMIT<sup>1</sup> and must report each transaction for the supply or purchase of LNG they enter into to ACER (EU Agency for the Cooperation of Energy Regulators), pursuant to the provisions of Article 8(1) of REMIT<sup>2</sup>.

The reporting of wholesale energy market transactions such as LNG sale transactions is mandatory for both parties to the transaction, seller and buyer. According to Article 8(1) of REMIT, the information reported shall include the precise identification of the wholesale energy products bought and sold (i.e. LNG), the price and quantity agreed, the dates and times of execution, the parties to the transaction, the beneficiaries of the transaction and any other relevant information.

Prior to entering into an LNG transaction which is required to be reported to ACER in accordance with the Article 8(1) of REMIT, the LNG trading companies must register as “market participants” with the national regulatory authority in the EU Member State in which they are established or resident or, if they are not established or resident in the EU, in an EU Member State in which they are active<sup>3</sup>. The obligation to register as “market participants” pursuant to Article 9(1) of REMIT with the competent national regulatory authority and to report LNG transaction data to ACER in accordance with Article 8(1) of REMIT also applies to non-EU and non-EEA trading companies which supply LNG to EU<sup>4</sup>. Such trading companies must register as “market participants” with the national regulatory authority in the EU Member State to which they deliver the LNG.

At the time of registration as “market participants”, LNG trading companies can either indicate a third party RRM (registered reporting mechanism) to which they delegate the responsibility of reporting on their behalf or indicate their “Intention to become a Reporting Entity” (i.e. a self-reporting market participant) or select both options. If an LNG trading company decides to delegate the task of reporting its transaction data to one or more RRMs, it should indicate which RRM(s) it intends to use for this purpose.

The LNG trading companies which intend to report directly their LNG transactions should indicate this in the electronic registration form when registering as “market participants” with the relevant national regulatory authority.

## **What LNG Transactions Are Reportable**

The LNG sale transactions providing for delivery of LNG at or after the entry flange of an EU LNG terminal of an EU LNG terminal are considered contracts with delivery in the EU and must be

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1 See Sub-section 3.4 of ACER Guidance on the application of REMIT (EU Regulation No. 1227/2011 on wholesale energy market integrity and transparency).

2 For the purpose of market monitoring, Article 8(1) of REMIT imposes an obligation on market participants to report to ACER the wholesale energy market transactions (“transaction data”). The purpose of transaction reporting under REMIT is to enable ACER and national regulatory authorities in EU Member States to monitor trading activity in wholesale energy products to detect and prevent suspected market abuse (insider trading and market manipulation).

3 See the provisions of Article 9(1) and (4) of REMIT.

4 See Sub-section 3.5 of ACER Guidance on the application of REMIT.

reported to ACER pursuant to the provisions of Article 8(1) of REMIT and Article 3(1) of the EU Commission Implementing Regulation No. 1348/2014<sup>5</sup>.

The LNG sale transactions with the delivery point at an EU LNG terminal can be:

- **Ex Ship or DAP sale transactions**, regardless of whether the title to the LNG cargo passes at the time of delivery or in international waters before the delivery<sup>6</sup>;
- **In tank transfers**, i.e. the sale transactions where the title to the LNG cargo is transferred by the seller to buyer while the LNG cargo is held in storage tanks at an EU LNG terminal<sup>7</sup>;
- **FOB sale transactions** involving reloading of LNG cargoes previously discharged at EU LNG terminals used as hubs for further distribution in EU<sup>8</sup>.

### **Rules For Reporting LNG Transaction Data**

The contracts for the delivery of LNG at EU LNG terminals are “non-standard contracts” because these contracts are not traded at an organised market place<sup>9</sup>.

The Article 5(1) of the EU Commission Implementing Regulation No. 1348/2014 stipulates that the non-standard contracts for the supply of natural gas must be reported to ACER with the details set out in Table 2 of the Annex and that the details of transactions executed within the framework of non-standard contracts specifying at least an outright volume and price must be reported to ACER with Table 1 of the Annex.

The Article 7(4) of the EU Commission Implementing Regulation No. 1348/2014 stipulates that the details of non-standard contracts including any modification or termination of the contract as well as the transactions executed within the framework of non-standard contracts specifying at least an outright volume and price must be reported to ACER no later than one month following the conclusion, modification or termination of the contract.

This means that the Ex Ship or DAP sale transactions providing for delivery of LNG at an EU LNG terminal must be reported to ACER initially as non-standard contracts with Table 2 based on the contracted volume within one month from the day when the delivery in EU was agreed and subsequently with Table 1 as an execution (delivery) within one month from the day when the final volume and price are known (invoicing date).

The in tank transfers, i.e. the sale transactions where the title to the LNG cargo is transferred by the seller to buyer while the LNG cargo is held in storage tanks at an EU LNG terminal, should be reported to ACER with Table 1 as non-standard contracts with outright volume and price within one month from the day when the volume and price are known (invoicing date), because these transactions involve a fixed quantity of gas with a spot delivery at a fixed price.

The FOB sale transactions providing for delivery of LNG at EU LNG terminals must be reported to ACER using Table 2 and then Table 1 because the actual volume and thereby the price of such LNG cargoes will be known to the contracting parties only after the delivery of LNG cargo at the EU LNG terminal.

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5 See ACER Answer to Question 3.1.21 in ACER document “Frequently Asked Questions (FAQs) on REMIT transaction reporting (11th Edition)” available on REMIT Portal: <https://www.acer-remit.eu/portal/home>.

6 See ACER Answer to Question 3.1.49 in ACER document “Frequently Asked Questions (FAQs) on REMIT transaction reporting (11th Edition)” available on REMIT Portal: <https://www.acer-remit.eu/portal/home>.

7 See ACER Answers to Questions 1.1.8 and 3.1.22 in ACER document “Frequently Asked Questions (FAQs) on REMIT transaction reporting (11th Edition)” available on REMIT Portal: <https://www.acer-remit.eu/portal/home>.

8 See ACER Answer to Question 3.1.24 in ACER document “Frequently Asked Questions (FAQs) on REMIT transaction reporting (11th Edition)” available on REMIT Portal: <https://www.acer-remit.eu/portal/home>.

9 According to Article 2(2) and (3) of the EU Commission Implementing Regulation No. 1348/2014, “non-standard contract” means a contract concerning any wholesale energy product that is not a standard contract, i.e. a contract concerning a wholesale energy product admitted to trading at an organised market place, irrespective of whether or not the transaction actually takes place on that market place.

The transaction data reporting must be done through ACER's REMIT Information System (ARIS) which is the ACER's IT system for data collection, data sharing and automatic screening and monitoring of trading activities in wholesale energy products.

### **Rules For Reporting LNG Transaction Data For Diverted Cargoes**

In Ex Ship sale contracts, the flexible destination clauses will usually provide a range within which the receiving terminal may be nominated prior to each shipment and give the buyers the option to demand delivery of LNG cargoes at any receiving terminal from the respective range.

ACER considers that in case of a cargo diversion requested by an European LNG importer to an alternative receiving terminal the following scenarios can occur:

1. The contracting parties conclude a sale transaction with the delivery point at an EU LNG terminal. The LNG transaction should be reported to ACER initially as a non-standard contract with Table 2 based on the contracted volume within one month from the day when the delivery in the EU was agreed. If subsequently the buyer exercises the option to nominate an alternative receiving terminal and thereby the LNG cargo is diverted from the EU LNG terminal already notified to ACER to another EU LNG terminal, the cargo diversion to the latter EU LNG terminal should be reported to ACER as a lifecycle event the Action type "M" for Modify<sup>10</sup> (modification of details of the previously reported contract), stating the EIC W Code of the LNG terminal<sup>11</sup>.

Once the LNG cargo is delivered to the latter EU LNG terminal and the quantity and price are known, the market participants (seller and buyer) should report with Table 1 the execution under the framework of the non-standard contract within one month from the day when the final volume and price are known (invoicing date).

2. The contracting parties conclude a sale transaction with the delivery point at a non-EU LNG terminal. The buyer subsequently nominates an alternative receiving terminal in EU. The LNG transaction should be reported to ACER initially as a non-standard contract with Table 2 based on the contracted volume within one month from the day when the delivery in the EU was agreed and subsequently with Table 1 for the Execution (delivery) within one month from the day when the final volume and price are known (invoicing date)<sup>12</sup>.

3. The contracting parties conclude a sale transaction with the delivery point at an EU LNG terminal. The LNG transaction should be reported to ACER initially as a non-standard contract with Table 2 based on the contracted volume within one month from the day when the delivery in the EU was agreed. If subsequently the buyer exercises the option to nominate an alternative receiving terminal and thereby the LNG cargo is diverted from the EU LNG terminal already notified to ACER to a non-EU LNG terminal, the cargo diversion to the non-EU LNG terminal should be reported to ACER as a lifecycle event the Action type "C" (Cancel) within one month from the day when it was agreed to deliver the cargo to a non-EU LNG terminal.

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10 See ACER Answer to Question 3.1.25 in ACER document "Frequently Asked Questions (FAQs) on REMIT transaction reporting (11th Edition)" available on REMIT Portal: <https://www.acer-remit.eu/portal/home>.

11 See ACER Answers to Question 3.1.2 and Question 3.1.23 in ACER document "Frequently Asked Questions (FAQs) on REMIT transaction reporting (11th Edition)" available on REMIT Portal: <https://www.acer-remit.eu/portal/home>.

12 See ACER Answer to Question 3.1.22 in ACER document "Frequently Asked Questions (FAQs) on REMIT transaction reporting (11th Edition)" available on REMIT Portal: <https://www.acer-remit.eu/portal/home>.

## **Obligation To Report Fundamental Data Relating To The Use Of EU LNG Facilities**

LNG trading companies which supply and purchase LNG for delivery in the European Union have the obligation as “market participants” under REMIT to report to ACER and national regulatory authorities the information related to the use of LNG facilities. This information is referred to as “fundamental data” in Article 2(1) of the EU Commission Implementing Regulation No. 1348/2014. The purpose of fundamental data reporting under REMIT is to enable ACER and national regulatory authorities in the EU Member States to monitor trading activity in wholesale energy markets.

The details on how to report fundamental data on LNG are provided in ACER's Manual of Procedures on transaction data, fundamental data and inside information reporting. According to ACER's Manual of Procedures on transaction data, fundamental data and inside information reporting, the LNG trading companies must provide to ACER, and on request, to the national regulatory authority the following reports:

- **the LNG Participant Activity Report;** and
- **the LNG Planned Usage Report.**

In **the LNG Participant Activity Report**, the LNG trading companies must provide daily updates with regard to the movement of LNG into and out of each LNG terminal they use within a gas day. The LNG Participant Activity Report must contain the information required in the Article 9(5)(a) of the EU Commission Implementing Regulation No. 1348/2014 in respect of unloading and reloading of LNG cargoes at EU LNG terminals: i.e.

- (i) date of unloading or reloading;
  - (ii) volumes unloaded and/or reloaded per ship, converted in GWh;
  - (iii) the name of the terminal customer if different from the reporting party (the name and identification code provided by the national regulatory authority or ACER to the market participant who has an access contract with the LNG terminal operator and is the recipient of the unloaded LNG cargo or the provider of the reloaded LNG cargo);
  - (iv) name of the LNG ships unloading or reloading LNG cargoes at the LNG terminal (i.e. the IMO Code of the ships unloading or reloading LNG cargoes at the LNG terminal); and the size of the LNG ships unloading or reloading LNG cargoes, i.e. the total cargo tank capacity as a volume (m<sup>3</sup>);
- The LNG Participant Activity Report should also mention:

- lngFacilityIdentifier (EIC W Code assigned by ENTSOG to the LNG terminal<sup>13</sup>);
- marketParticipantIdentifier (name and identification code of the LNG trading company which has the reporting obligation);
- terminalCustomerIdentifier (name and identification code of the market participant who has an access contract with the LNG terminal operator and is the recipient of the unloaded LNG or the provider of the reloaded LNG).

The LNG Participant Activity Report must be provided daily by the LNG trading companies, but no later than the next working day following unloading or reloading of LNG cargoes.

The LNG trading companies can delegate their reporting obligation to LNG terminal operators or to any other RRM (Registered Reporting Mechanism).

In **the LNG Planned Usage Report**, the LNG trading companies must provide in accordance with the Article 9(5)(b) of the EU Commission Implementing Regulation No. 1348/2014 a monthly forecast of the planned usage of each EU LNG terminal they use, with details of the expected deliveries and planned unloading and reloading dates for the month ahead.

The LNG Planned Usage Report should also mention:

- lngFacilityIdentifier (EIC W Code assigned by ENTSOG to the LNG terminal);

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13 European Network of Transmission System Operators for Gas.



- marketParticipantIdentifier (name and identification code of the LNG trading company which has the reporting obligation);
- terminalCustomerIdentifier (name and identification code of the market participant who has an access contract with the LNG terminal operator, if different from the reporting party);
- deliveryVolume (the volume of LNG the market participant is intending to unload or reload converted in GWh).

The LNG Planned Usage Report should be submitted once a month no later than the last day of the month preceding the calendar month to which the report relates to<sup>14</sup>.

The LNG trading companies can delegate their reporting obligation to LNG terminal operators or to any other RRM (Registered Reporting Mechanism).

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14 See ACER Answer to Question 3.2.8 in ACER document “Frequently Asked Questions (FAQs) on REMIT fundamental data and inside information collection (6th Edition)” available on REMIT Portal: <https://www.acer-remit.eu/portal/home>.

# Reporting Obligations Of European LNG System Operators

by Vlad Cioarec, International Trade Consultant



## Who Would Qualify As LNG System Operator?

Pursuant to the Article 2(12) of the EU Directive No. 73/2009, “LNG system operator” means a natural or legal person who carries out the function of liquefaction of natural gas, or the importation, offloading, and regasification of LNG and is responsible for operating a LNG facility. Article 2(11) of the EU Directive No. 73/2009 stipulates that “LNG facility” means a terminal which is used for the liquefaction of natural gas or the importation, offloading, and regasification of LNG, and includes ancillary services and temporary storage necessary for the regasification process and subsequent delivery to the transmission system, *but does not include any part of LNG terminals used for storage.*

This means that the European LNG terminal operators have the obligation to report only the inside information and fundamental data relating to the regasification capacity of LNG terminals, and not the inside information and fundamental data relating to their storage capacity.

Article 2(1) paragraph (24) of the EU Regulation No. 715/2009 stipulates that “LNG facility capacity” means capacity at an LNG terminal for the liquefaction of natural gas or the importation, offloading, ancillary services, temporary storage and regasification of LNG.

## Obligation To Report Inside Information

The LNG system operators are explicitly mentioned as “market participants” in the Article 3(4)(b) of REMIT<sup>1</sup> and are therefore considered market participants if they enter into transactions in one or more wholesale energy markets for the sale or purchase of natural gas<sup>2</sup>.

According to the Article 4(1) of REMIT, the LNG system operators have the obligation as “market participants” to publicly disclose in an effective and timely manner the inside information<sup>3</sup> which they possess in respect of their business or facilities, particularly the information related to the capacity and use of their LNG facilities, including the planned or unplanned unavailability of these facilities.

The inside information related to the planned or unplanned unavailability of LNG facilities has to be reported in the form of Urgent Market Messages (UMMs) via web feeds on the LNG terminal operator's web site and on a platform for the disclosure of inside information<sup>4</sup>.

The Article 10(1) of the EU Commission Implementing Regulation No. 1348/2014 stipulates that the market participants disclosing inside information on their website or service providers disclosing such information on market participants' behalf shall provide web feeds to enable the ACER to collect efficiently inside information for market monitoring purposes.

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1 EU Regulation No. 1227/2011 on wholesale energy market integrity and transparency.

2 See Sub-section 3.4 of ACER Guidance on the application of REMIT.

3 According to the Article 2(1) of REMIT, “inside information” means information of a precise nature which has not been made public, which relates, directly or indirectly, to one or more wholesale energy products and which, if it were made public, would be likely to significantly affect the prices of those wholesale energy products.

4 A platform for the disclosure of inside information is an electronic system for the delivery of information which allows multiple market participants to share information with the wide public. See Sub-section 7.1 of ACER's Manual of Procedures on transaction data, fundamental data and inside information reporting. The list of the third party inside information platforms is available on REMIT Portal: <https://www.acer-remit.eu/portal/home>.

ACER shall identify the location of the web feed through the URL address provided by the LNG terminal operator at the time of registration as “market participant”<sup>5</sup>.

The reporting schema for the disclosure of inside information related to the planned or unplanned unavailability of LNG facilities is presented in Annex VII of REMIT Manual of Procedures on transaction data, fundamental data and inside information reporting<sup>6</sup>. The schema contains 18 fields: In the Field 1 “Message ID” must be inserted the unique identifier of the UMM.

In the Field 2 “Event Status” must be stated the status of the UMM, i.e. Active, Dismissed or Inactive. The term “Active” must be inserted when referring to an event that will occur in the future or is occurring. The term “Dismissed” refers to an UMM that was cancelled and is not valid anymore. The term “Inactive” has to be inserted when referring to an event that already occurred in the past. The UMM related to an event may be updated several times before, during or after the event, whenever the Event Status changes. However, it is not mandatory to insert the term “Inactive” when the date and time of the event have expired. The status value “Active” can be maintained for UMMs referring to past events<sup>7</sup>.

In the Field 3 “Type of Unavailability” must be stated whether the unavailability was planned or not, using the words “planned” or “unplanned” to indicate the type of unavailability. A planned unavailability occurs in case of scheduled maintenance works. An unplanned unavailability occurs in case of LNG unloading delays caused by adverse weather or force majeure events.

In the Field 4/b “Type of Event”, the LNG terminal operators can state the subject of the unavailability as “Regasification plant unavailability” or “Other unavailability”, as the case may be.

In the Field 5 “Publication date/time” it is shown the date and time when the UMM was made publicly available, i.e. when the inside information was disclosed to the public through the UMM. This information is generated automatically when the UMM is published.

In the Field 6 “Event Start”, the LNG terminal operators must state the expected (if it is a future event) or actual starting time and date of the relevant event. If the exact time of the “Event Start” is not known at the time of the publication of UMM, the LNG terminal operators should insert an estimated time rounded to the nearest hour and the UMM should be updated once the information on the event allows the LNG terminal operator to provide more accurate information as to the starting time.

In the Field 7 “Event Stop”, the LNG terminal operators must state the expected (if it is a future event) or actual time and date at which the relevant event stops. If the exact time of the “Event Stop” is not known at the time of the publication of UMM, the LNG terminal operators should insert an estimated time rounded to the nearest hour and the UMM should be updated once the information on the event allows the LNG terminal operator to provide more accurate information.

In the Field 8 “Unit of measurement”, the LNG terminal operators must state the unit used for reporting the maximum regasification capacity as well as the unavailable capacity and available capacity of the regasification plant during the unavailability period (GWh/day).

In the Field 9 “Unavailable capacity”, the LNG terminal operators must state the daily regasification capacity of the LNG terminal that will be unavailable due to the event.

In the Field 10 “Available capacity”, the LNG terminal operators must state the daily regasification capacity of the LNG terminal that will remain available during the event.

In the Field 11/b “Technical capacity”, the LNG terminal operator must state the maximum regasification capacity (i.e. daily regasification capacity of the LNG terminal).

In the Field 12 “Reason for the unavailability”, the LNG terminal operator must provide an explanation on the cause of the unavailability. For instance, in case of a planned unavailability

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5 The URL address must be provided in the Section 1 of the registration form under the field “Publication of inside information”.

6 See the schema for UMMs related to “Unavailability of gas facilities”.

7 See ACER Answer to Question 5.1.3 in ACER document “Frequently Asked Questions (FAQs) on REMIT fundamental data and inside information collection (6th Edition)” available on REMIT Portal: <https://www.acer-remit.eu/portal/home>.

event, the reason for unavailability should be stated as “Planned Terminal Outage”. In case of an unplanned unavailability event, the reason for unavailability should be stated as “Unplanned Terminal Outage”.

In the Field 13 “Remarks”, the LNG terminal operator must provide more detailed information of the event to allow a full understanding of its potential impact on the wholesale energy prices, e.g. whether the technical capacity will be affected by the event.

In the Field 15/b “Balancing Zone”, the LNG terminal operator must identify the balancing zone where the LNG terminal is located, using the EIC Y Code for the respective balancing zone.

In the Field 16 “Affected Asset or Unit”, the LNG terminal operator must state the official name of the LNG terminal where the event is about to occur.

In the Field 17 “Affected Asset or Unit EIC Code”, the LNG terminal operator must state the EIC W Code of the LNG terminal that is unavailable.

In the Field 18 “Market Participant”, it must be inserted the official name of the market participant that is responsible for the public disclosure of the inside information (i.e. LNG terminal operator) related to the event described in the UMM.

In the Field 19 “Market Participant Code”, the LNG terminal operator must provide the ACER registration code, which the LNG terminal operator received when it registered as “market participant” with the national regulatory authority.

The UMMs should be stored for a time period of at least 90 days after the submission via the web feeds.

### **Obligation To Report LNG Fundamental Data**

The LNG terminal operators have the obligation to report to ACER, and on request, to the national regulatory authorities the information related to the capacity of LNG facilities they operate, including any planned or unplanned unavailability of these facilities. This information is referred to as “fundamental data” in Article 2(1) of the EU Commission Implementing Regulation No. 1348/2014.

The purpose of fundamental data reporting under REMIT is to enable ACER and national regulatory authorities in the EU Member States to monitor trading activity in wholesale energy markets.

The details on how to report LNG fundamental data are provided in ACER's Manual of Procedures on transaction data, fundamental data and inside information reporting. According to ACER's Manual of Procedures on transaction data, fundamental data and inside information reporting, the LNG terminal operators must provide to ACER, and on request, to the national regulatory authority the following reports:

- **the LNG Facility Report;** and
- **the LNG Unavailability Report.**

In **the LNG Facility Report**, the LNG terminal operator must provide daily updates with regard to the aggregated data of the LNG terminal, as required in the Article 9(3)(a) and (b) of the EU Commission Implementing Regulation No. 1348/2014, including the information on the technical, contracted and available capacity of the LNG terminal and the send-out and inventory of the LNG terminal.

“Technical capacity” is the daily firm regasification capacity that the LNG terminal operator can offer to the terminal users, taking into account the system integrity and the operational requirements of the terminal. The technical capacity must be reported in GWh/day.

“Contracted capacity” is the capacity that the LNG terminal operator has allocated to terminal users by means of a contract. The contracted capacity must be reported in GWh/day.

“Available capacity” is the part of the technical capacity that has not been allocated to terminal users and is still available. The available capacity must be reported in GWh/day.

“Send-out” is the aggregated daily gas flow (regasified LNG) from the LNG terminal into the gas transmission system. It must be reported in GWh.

“Inventory” is the total volume of LNG in the LNG storage tanks at the end of the previous gas day, expressed in GWh<sup>8</sup>.

The LNG Facility Report should also mention:

- the LNG Facility Identifier – EIC W Code assigned by ENTSOG to the LNG terminal; and
- the LNG Facility Operator Identifier – EIC X Code assigned by ENTSOG to the LNG terminal operator.

**The LNG Unavailability Report** should be used by the LNG terminal operators to report any planned or unplanned unavailability of an LNG terminal to market participants for the unloading and reloading of LNG for a gas day or period within a gas day in accordance with the Article 9(3) (c) of the EU Commission Implementing Regulation No. 1348/2014.

The LNG terminal operator must state in the LNG Unavailability Report the date(s) and period(s) of time when the planned or unplanned outage(s) of the LNG terminal will occur, the unavailable capacity expressed as a volume per day (GWh/day), the cause of the unavailability and the unavailability type, i.e. whether the outage is planned or unplanned.

The LNG Unavailability Report must be sent as soon as the information becomes available.

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8 See the definitions provided by ACER in the Manual of Procedures on transaction data, fundamental data and inside information reporting and the Answer to Question 3.2.3 in ACER document “Frequently Asked Questions (FAQs) on REMIT fundamental data and inside information collection (6th Edition)” available on REMIT Portal: <https://www.acer-remit.eu/portal/home>.

# Reporting Obligations Of European Gas TSOs

by Vlad Cioarec, International Trade Consultant



## Obligation To Report Transportation Transaction Data

According to the Article 6(2) of the EU Commission Implementing Regulation No. 1348/2014, the gas TSOs or third parties acting on their behalf (i.e. RRM)s have the obligation to report to ACER the details of gas transportation contracts concluded as a result of a primary explicit capacity allocation by or on behalf of the gas TSOs.

The Article 7(5) of the Regulation stipulates that the details of these contracts must be reported no later than the working day following the availability of the allocation results.

The gas transportation contracts must be reported to ACER with the details set out in the Table 4 of the Annex to the Regulation<sup>1</sup>.

Only the details of gas transportation contracts between the entry and exit points located in balancing zones need to be reported to ACER. The details of gas transportation contracts between delivery points located in non-balancing zones or between a delivery point located in a non-balancing zone and a delivery point located in a balancing zone do not need to be reported to ACER<sup>2</sup>.

According to the Section 7 of REMIT Transaction Reporting User Manual (TRUM), the transportation transaction data should be provided for the following bookable points of the gas transmission system:

- (a) all interconnection points;
- (b) entry points of production facilities;
- (c) exit points connected to the end customers with a consumption capacity greater than 600 GWh per year;
- (d) entry and exit points to and from storage;
- (e) entry and exit points to and from LNG facilities and physical hubs<sup>3</sup>.

In case of transport contracts for bundled capacity at the cross-border interconnection points, each TSO involved at the interconnection point should report its contractual part of the bundled transaction<sup>4</sup>.

In the event that the network users who are parties to unbundled transport contracts at an interconnection point reach an agreement on the bundling of the capacity, they will have to inform the TSOs involved at the respective interconnection point<sup>5</sup>. Both the network users and TSOs shall report to the relevant national regulatory authorities the bundling arrangements reached by the parties to the existing transport contracts<sup>6</sup>.

In the event that a transport contract for unbundled capacity is modified by converting the unbundled capacity into bundled capacity, the modification should be reported to ACER.

1 See the Article 5(1)(d) of the EU Commission Implementing Regulation No. 1348/2014. For details of how to report the gas transportation contracts see the Annex III.IV (Data fields for gas transportation data reporting) of REMIT Manual of Procedures on transaction data, fundamental data and inside information reporting and REMIT Transaction Reporting User Manual (TRUM) – Annex II – Section 3 Part III available on REMIT Portal: <https://www.acer-remit.eu/portal/home>.

2 See ACER Answers to Questions 4.2.19 and 4.2.20 in ACER document “Frequently Asked Questions (FAQs) on REMIT transaction reporting (11th Edition)” available on REMIT Portal: <https://www.acer-remit.eu/portal/home>.

3 See Section 7 of REMIT Transaction Reporting User Manual (TRUM).

4 See Section 7 of REMIT Transaction Reporting User Manual (TRUM).

5 See the provisions of Article 21 paragraphs 1 and 4 of the EU Commission Regulation No. 459/2017

6 See the provisions of Article 21 paragraphs 1 and 4 of the EU Commission Regulation No. 459/2017.



ACER has considered two approaches for reporting a fully converted contract<sup>7</sup>:

#### 1. By Reporting A New Contract

If the capacity amount of the unbundled transport contract is reduced to zero, this should be reported to ACER as a modification of the existing contract. In addition, a new contract should be reported – the transport contract for bundled capacity that contains the whole amount of the capacity.

#### 2. Without Reporting A New Contract

The conversion of unbundled capacity into bundled capacity is reported as a modification of the existing transport contract. In such case, the TSOs or RRM reporting on their behalf should update the information filled in the Table 4 Data Fields No. 2 – 13 (information covering the allocation process), the information filled in the Table 4 Data Fields No. 14 (information on the lifecycle reporting), the information filled in the Table 4 Data Fields No. 21 (information on the premium price) and the information filled in the Table 4 Data Fields No. 26 (information on the specifications of bundling and on the counter TSO).

In the event of conversion of only part of the unbundled capacity into bundled capacity, ACER recommends the following procedure:

- the original transport contract is modified by reducing the capacity amount by the part of the capacity that is converted into bundled capacity (updating the information in Table 4 Data Field No. 15); and
- the part of the capacity that is converted into bundled capacity is reported as a new transport contract for bundled capacity<sup>8</sup>.

Any modification of the gas transportation contracts such as those involving the conversion of unbundled capacity into bundled capacity must be reported no later than the working day following the modification.

The gas TSOs have also the obligation to report to ACER the options, futures, swaps and any other derivatives of contracts relating to the transportation of natural gas in the European Union.

### **Obligation To Report Fundamental Data**

#### **Reporting Of Fundamental Data Relating To The Capacity And Use Of Facilities For Transmission Of Natural Gas (Gas Transmission Data)**

TSOs shall provide the fundamental data relating to the capacity and use of facilities for transmission of natural gas, including any planned and unplanned unavailability of these facilities, through ENTSOG Transparency Platform in accordance with the provisions of Article 9(1) of the EU Commission Implementing Regulation No. 1348/2014. The information required to be provided through ENTSOG Transparency Platform is stipulated in points 3.3(1) and 3.3(5) of Annex I to EU Regulation No. 715/2009: i.e.

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7 See ACER Answers to Questions 4.2.23 in ACER document “Frequently Asked Questions (FAQs) on REMIT transaction reporting (11th Edition)” available on REMIT Portal: <https://www.acer-remit.eu/portal/home>.

8 See ACER Answers to Questions 4.2.23 in ACER document “Frequently Asked Questions (FAQs) on REMIT transaction reporting (11th Edition)” available on REMIT Portal: <https://www.acer-remit.eu/portal/home>.

- a) the daily situation of the technical, contracted and available firm capacity<sup>9</sup> at each relevant point of the transmission system operated by the TSO;
- b) the daily situation of the total, contracted and available interruptible capacity at each relevant point of the transmission system operated by the TSO;
- c) the aggregated day-ahead nominations and final re-nominations for each relevant point of the transmission system operated by the TSO for each reported gas day;
- d) physical flow at each relevant point for each reported gas day;
- e) planned and actual interruption of interruptible capacity at each relevant point of the transmission system operated by the TSO;
- f) planned and unplanned interruptions to firm services.

Notices with regard to the interruptions caused by the planned maintenance of the transmission system and the estimated duration of such interruptions must be published by TSOs at least 42 days in advance. During the maintenance periods, TSOs must provide updates on the details of and expected duration and effect of the maintenance.

ENTSOG shall make such information available to ACER as soon as it becomes available on the ENTSOG Transparency Platform.

### **Reporting Of Fundamental Data Relating To Gas Nominations (Gas Nomination Data)**

According to the Article 9(2) of the EU Commission Implementing Regulation No. 1348/2014, the gas TSOs have the obligation to report to ACER, and on request, to the national regulatory authorities the day-ahead nominations and final re-nominations of booked capacities specifying the identity of the market participants (network users) involved and the allocated quantities.

The gas nomination data should be provided for the following points of the transmission system:

- (a) all interconnection points;
- (b) entry points of production facilities including of upstream pipelines;
- (c) exit points connected to the end customers with a consumption capacity greater than 600 GWh per year;
- (d) entry and exit points to and from storage;
- (e) entry and exit points to and from LNG facilities;
- (f) entry and exit points to and from physical and virtual hubs.

The gas nomination data must be reported using the data fields presented in the Annex IV.IV of REMIT Manual of Procedures on transaction data, fundamental data and inside information reporting.

The gas nomination data should be reported by the end of the working day following the end of the reporting gas day. Taking into consideration the fact that a gas day runs from 06:00 a.m. of one day to 06:00 a.m. of the following day, for instance, from 06:00 a.m. on 28 January 2021 to 06:00 a.m. on 29 January 2021, the gas nomination data should be reported no later than the end of the following working day, i.e. by the end of 30 January 2021.

### **Obligation To Report Inside Information**

The European gas TSOs are considered to be “market participants” under REMIT<sup>10</sup> if they enter into transactions in one or more wholesale energy markets<sup>11</sup>.

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9 “Technical capacity” is the maximum firm capacity that the transmission system operator can offer to the network users, taking account of system integrity and the operational requirements of the transmission network. “Contracted capacity” is the capacity that the transmission system operator has allocated to a network user by means of a transport contract. “Available capacity” is the part of the technical capacity that is not allocated and is still available to the system at that moment. See Article 2(1) of EU Regulation No. 715/2009.

10 EU Regulation No. 1227/2011 on wholesale energy market integrity and transparency.

11 See Sub-section 3.4 of ACER Guidance on the application of REMIT.

According to the Article 4(1) of REMIT, the EU gas TSOs have the obligation as “market participants” to publicly disclose in an effective and timely manner the inside information<sup>12</sup> which they possess in respect of their business or facilities, including the maintenance information which is required to be made public in accordance with the EU Regulation No. 715/2009 and the information relating to the planned or unplanned unavailability of facilities for transmission of natural gas.

The inside information related to the planned or unplanned unavailability of facilities for transmission of natural gas has to be reported in the form of Urgent Market Messages (UMMs) via web feeds on the TSO's web site and on a platform for the disclosure of inside information<sup>13</sup>.

The Article 10(1) of the EU Commission Implementing Regulation No. 1348/2014 stipulates that the market participants disclosing inside information on their website or service providers disclosing such information on market participants' behalf shall provide web feeds to enable the ACER to collect efficiently inside information for market monitoring purposes.

ACER shall identify the location of the web feed through the URL address provided by the TSO at the time of registration as “market participant”<sup>14</sup>.

The reporting schema for the disclosure of inside information related to the planned or unplanned unavailability of facilities for transmission of natural gas is presented in Annex VII of REMIT Manual of Procedures on transaction data, fundamental data and inside information reporting<sup>15</sup>. The schema contains 18 fields:

In the Field 1 “Message ID” must be inserted the unique identifier of the UMM.

In the Field 2 “Event Status” must be stated the status of the UMM, i.e. Active, Dismissed or Inactive. The term “Active” must be inserted when referring to an event that will occur in the future or is occurring. The term “Dismissed” refers to an UMM that was cancelled and is not valid anymore. The term “Inactive” has to be inserted when referring to an event that already occurred in the past. The UMM related to an event may be updated several times before, during or after the event, whenever the Event Status changes. However, it is not mandatory to insert the term “Inactive” when the date and time of the event have expired. The status value “Active” can be maintained for UMMs referring to past events<sup>16</sup>.

In the Field 3 “Type of Unavailability” must be stated whether the unavailability was planned or not, using the words “planned” or “unplanned” to indicate the type of unavailability. A planned transmission system unavailability occurs in case of scheduled maintenance or repair works. An unplanned transmission system unavailability occurs in case of the occurrence of exceptional events.

In the Field 4/b “Type of Event”, the TSOs can state the subject of the unavailability as “Transmission system unavailability” or “Compressor station unavailability”, as the case may be. In case of other types of unavailability, the TSOs can state the subject of the unavailability as “Other unavailability”.

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12 According to the Article 2(1) of REMIT, “inside information” means information of a precise nature which has not been made public, which relates, directly or indirectly, to one or more wholesale energy products and which, if it were made public, would be likely to significantly affect the prices of those wholesale energy products.

13 A platform for the disclosure of inside information is an electronic system for the delivery of information which allows multiple market participants to share information with the wide public. See Sub-section 7.1 of ACER's Manual of Procedures on transaction data, fundamental data and inside information reporting. The list of the third party inside information platforms is available on REMIT Portal: <https://www.acer-remit.eu/portal/home>.

14 The URL address must be provided in the Section 1 of the registration form under the field “Publication of inside information”.

15 See the schema for UMMs related to “Unavailability of gas facilities”.

16 See ACER Answer to Question 5.1.3 in ACER document “Frequently Asked Questions (FAQs) on REMIT fundamental data and inside information collection (6th Edition)” available on REMIT Portal: <https://www.acer-remit.eu/portal/home>.

In the Field 5 “Publication date/time” it is shown the date and time when the UMM was made publicly available, i.e. when the inside information was disclosed to the public through the UMM. This information is generated automatically when the UMM is published.

In the Field 6 “Event Start”, the TSOs must state the expected (if it is a future event) or actual starting time and date of the relevant event. If the exact time of the “Event Start” is not known at the time of the publication of UMM, the TSOs should insert an estimated time rounded to the nearest hour and the UMM should be updated once the information on the event allows the TSO to provide more accurate information as to the starting time.

In the Field 7 “Event Stop”, the TSOs must state the expected (if it is a future event) or actual time and date at which the relevant event stops. If the exact time of the “Event Stop” is not known at the time of the publication of the UMM, the TSOs should insert an estimated time rounded to the nearest hour and the UMM should be updated once the information on the event allows the TSO to provide more accurate information.

In the Field 8 “Unit of measurement”, the TSO must state the unit used for reporting unavailable capacity, available capacity and technical capacity at the connection point affected by the reported event during the unavailability period, which can either be kWh/h or kWh/d.

In the Field 9 “Unavailable capacity”, the TSOs must state the technical capacity that will be unavailable due to the reported capacity restriction.

In the Field 10 “Available capacity”, the TSOs must state the technical capacity that will remain available during the reported capacity restriction.

In the Field 11/b “Technical capacity”, the TSO must state the maximum firm capacity that it can offer to the network users at the connection point affected by the reported event.

In the Field 12 “Reason for the unavailability”, the TSO must provide an explanation on the cause of the unavailability, e.g. curtailment of capacities due to planned maintenance works or the occurrence of exceptional events.

In the Field 13 “Remarks”, the TSO must provide more detailed information of the event to allow a full understanding of its potential impact on the wholesale energy prices. For instance, in case of planned maintenance at conversion installations, there will be a lesser amount of nitrogen available for conversion of high-quality gases into lower-quality gases. In case of planned maintenance works, there will be a lesser capacity available at the named connection point.

In the Field 15/b “Balancing Zone”, the TSO must identify the balancing zone where the affected asset is located using the EIC Y Code for the respective balancing zone.

In the Field 16 “Affected Asset or Unit”, the TSO must state the connection point name where the event is about to occur or is occurring.

In the Field 17 “Affected Asset or Unit EIC Code”, the TSO must state the EIC Z Code of the connection point that is unavailable.

In the Field 18 “Market Participant”, it must be inserted the official name of the market participant that is responsible for the public disclosure of the inside information (i.e. transmission system operator) relating to the event described in the UMM.

In the Field 19 “Market Participant Code”, the TSO must provide the ACER registration code, which the TSO received when it registered as “market participant” with the national regulatory authority.

The UMMs should be stored for a time period of at least 90 days after the submission via the web feeds.