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EN

Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

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II

(Non-legislative acts)

REGULATIONS

COMMISSION REGULATION (EU) 2017/459

of 16 March 2017

establishing a network code on capacity allocation mechanisms in gas transmission systems and repealing Regulation (EU) No 984/2013

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EC) No 715/2009 of the European Parliament and of the Council on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005 ⁽¹⁾, and in particular Article 6(11) and 7(3) thereof,

Whereas:

- (1) Regulation (EC) No 715/2009 sets non-discriminatory rules for access conditions to natural gas transmission systems with a view to ensuring the proper functioning of the internal market in gas.
- (2) Duplication of gas transmission systems is in most cases neither economic nor efficient. Competition in natural gas markets therefore requires a transparent and non-discriminatory access to gas infrastructure for all network users. However, in large parts of the Union the lack of equal and transparent access to transmission capacity remains a major obstacle for achieving effective competition on the wholesale market. Furthermore, the fact that national rules differ from one Member State to another hampers the creation of a well-functioning internal market for gas.
- (3) Inefficient use of and limited access to the Union's high-pressure gas pipelines lead to suboptimal market conditions. A more transparent, efficient and non-discriminatory system of allocation of scarce transmission capacities needs to be implemented for the Union's gas transmission systems, so that cross-border competition can further develop and market integration can progress. Developing such rules has been consistently supported by stakeholders.
- (4) Bringing about effective competition between suppliers from inside and outside the Union requires that they are able to flexibly use the existing transmission systems to ship their gas according to price signals. Only a well-functioning network of interconnected transmission grids, offering equal access conditions to all, allows gas to flow freely across the Union. That in turn attracts more suppliers, increasing liquidity at the trading hubs and contributing to efficient price discovery mechanisms and consequently fair gas prices that are based on the principle of demand and supply.
- (5) Commission Regulation (EU) No 984/2013 ⁽²⁾ establishing a network code on capacity allocation mechanism in gas transmission systems aimed to achieve the necessary degree of harmonisation across the Union. The effective implementation of that Regulation furthermore relied on the introduction of tariff systems which are consistent with the capacity allocation mechanisms proposed in this Regulation, to ensure the implementation without detrimental effect on the revenues and cash flow positions of transmission system operators.

⁽¹⁾ OJ L 211, 14.8.2009, p. 36.

⁽²⁾ Commission Regulation (EC) No 984/2013 of 14 October 2013 establishing a Network Code on Capacity Allocation Mechanisms in Gas Transmission Systems and supplementing Regulation (EC) No 715/2009 of the European Parliament and of the Council (OJ L 273, 15.10.2013, p. 5).

- (6) This Regulation has wider scope than Regulation (EU) No 984/2013 principally in terms of the rules for the offer of incremental capacity and clarifies certain provisions related to the definition and offer of firm and interruptible capacities and to improving the alignment of contractual terms and conditions of respective transmission system operators for the offer of bundled capacity. Provisions in this Regulation relative to the coordination of maintenance and the standardisation of communication should be interpreted in the context of Commission Regulation (EU) 2015/703 ⁽¹⁾.
- (7) In order to allow network users to benefit from capacity allocation mechanisms harmonised to the widest extent in an integrated market, this Regulation should apply to non-exempted capacities in major new infrastructures which have received an exemption from Article 32 of Directive 2009/73/EC of the European Parliament and of the Council ⁽²⁾, to the extent the application of this Regulation does not undermine such an exemption and taking into account the specific nature of interconnectors when bundling capacity.
- (8) This Regulation should be without prejudice to application of Union and national competition rules, in particular the prohibitions of restrictive agreements (Article 101 of the Treaty on the Functioning of the European Union) and of abuse of a dominant position (Article 102 of the Treaty on the Functioning of the European Union). The capacity allocation mechanisms put in place should be designed in such a way as to avoid foreclosure of downstream supply markets.
- (9) In order to ensure that the offer of firm capacity is maximised by transmission system operators, a hierarchy of products should be observed by which yearly, quarterly and monthly interruptible capacity is only offered if firm capacity is not available.
- (10) Where the respective terms and conditions applicable to the offer of bundled capacity products by transmission system operators on two sides of an interconnection point differ substantially, the value and usefulness for network users of booking bundled capacity may be limited. A process should therefore be launched, guided by the Agency for the Cooperation of Energy Regulators ('the Agency') and the European Network of Transmission System Operators for Gas ('ENTSO-G'), by which such terms and conditions of transmission system operators across the Union for bundled capacity products should be assessed and aligned to the extent possible, with a view to creating a common template of terms and conditions.
- (11) A streamlined and harmonised Union-wide process for the offer of incremental capacity is necessary to react to possible market demand for such capacity. Such a process should consist of regular demand assessments followed by a structured phase of design and allocation, based on effective cooperation between transmission system operators and national regulatory authorities across Union borders. Any investment decision to be taken further to the assessment of market demand for capacity should be subject to an economic test to determine the economic viability. This economic test should in turn ensure that network users demanding capacity assume the corresponding risks associated with their demand to avoid captive customers from being exposed to the risk of such investments.
- (12) Capacity allocation in the context of standard incremental projects should be undertaken in the form of the standard auction allocation process in order to guarantee the highest level of transparency and non-discrimination. In the case of large and complex projects affecting several Member States, transmission system operators should however be allowed to use alternative allocation mechanisms. Those mechanisms should provide the necessary flexibility to enable the investment in case there is genuine market demand, but they should still be aligned across borders. In case an alternative allocation mechanism is allowed, market foreclosure must be prevented by requiring a higher quota of capacity to be set aside for short-term bookings.
- (13) In implementing complex entry-exit regimes, particularly with physical gas flows — destined for other markets — across those zones, transmission system operators have implemented and national regulatory authorities have approved different contractual approaches to firm capacity products the effect of which should be assessed in an Union-wide context.

⁽¹⁾ Commission Regulation (EU) 2015/703 of 30 April 2015 establishing a network code on interoperability and data exchange rules (OJ L 113, 1.5.2015, p. 13).

⁽²⁾ Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (OJ L 211, 14.8.2009, p. 94).

- (14) National regulatory authorities and transmission system operators should have regard to best practices and endeavours to harmonise processes for the implementation of this Regulation. Acting in accordance with Article 7 of Regulation (EC) No 713/2009 of the European Parliament and of the Council ⁽¹⁾, the Agency and the national regulatory authorities should ensure that capacity allocation mechanisms are implemented at the applicable interconnection points across the Union in the most effective way.
- (15) The measures provided for in this Regulation are in accordance with the opinion of the Committee established pursuant to Article 51 of Directive 2009/73/EC,

HAS ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter

This Regulation establishes a network code setting up capacity allocation mechanisms in gas transmission systems for existing and incremental capacity. This Regulation shall set out how adjacent transmission system operators cooperate in order to facilitate capacity sales, having regard to general commercial as well as technical rules related to capacity allocation mechanisms.

Article 2

Scope

1. This Regulation shall apply to interconnection points. It may also apply to entry points from and exit points to third countries, subject to the decision of the relevant national regulatory authority. This Regulation shall not apply to exit points to end consumers and distribution networks, entry points from 'liquefied natural gas' (LNG) terminals and production facilities, and entry points from or exit points to storage facilities.
2. The standardised capacity allocation mechanisms set up in accordance with this Regulation shall include an auction procedure for relevant interconnection points within the Union and the standard capacity products to be offered and allocated. Where incremental capacity is offered, alternative allocation mechanisms may also be used, subject to the conditions set out in Article 30(2).
3. This Regulation shall apply to all technical and interruptible capacity at interconnection points as well as to additional capacity in the meaning of point 2.2.1 of Annex I of Regulation (EC) No 715/2009 and to incremental capacity. This Regulation shall not apply to interconnection points between Member States where one of these Member States holds a derogation on the basis of Article 49 of Directive 2009/73/EC.
4. Where an alternative capacity allocation mechanism according to Article 30 is applied, Article 8(1) to (7), Articles 11 to 18, Article 19(2) and Article 37 shall not be applicable to the offer levels, unless decided otherwise by the relevant national regulatory authorities.
5. Where implicit capacity allocation methods are applied, national regulatory authorities may decide not to apply Articles 8 to 37.
6. In order to prevent foreclosure of downstream supply markets, national regulatory authorities may, after consulting network users, decide to take proportionate measures to limit up-front bidding for capacity by any single network user at interconnection points within a Member State.

⁽¹⁾ Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators (OJ L 211, 14.8.2009, p. 1).

*Article 3***Definitions**

For the purposes of this Regulation, the definitions in Article 2 of Regulation (EC) No 715/2009, Article 3 of Commission Regulation (EU) 2017/460 ⁽¹⁾ and Article 2 Directive 2009/73/EC shall apply. In addition, the following definitions shall apply:

1. 'incremental capacity' means a possible future increase via market-based procedures in technical capacity or possible new capacity created where none currently exists that may be offered based on investment in physical infrastructure or long-term capacity optimisation and subsequently allocated subject to the positive outcome of an economic test, in the following cases:
 - (a) at existing interconnection points;
 - (b) by establishing a new interconnection point or points;
 - (c) as physical reverse flow capacity at an interconnection point or points, which has not been offered before;
2. 'interconnection point' means a physical or virtual point connecting adjacent entry-exit systems or connecting an entry-exit system with an interconnector, in so far as these points are subject to booking procedures by network users;
3. 'alternative allocation mechanism' means an allocation mechanism for offer level or incremental capacity designed on a case-by-case basis by the transmission system operators, and approved by the national regulatory authorities, to accommodate conditional demand requests;
4. 'standard capacity product' means a certain amount of transport capacity over a given period of time, at a specified interconnection point;
5. 'offer level' means the sum of the available capacity and the respective level of incremental capacity offered for each of the yearly standard capacity products at an interconnection point;
6. 'implicit allocation method' means a capacity allocation method where, possibly by means of an auction, both transmission capacity and a corresponding quantity of gas are allocated at the same time;
7. 'bidding round' means the period of time during which network users can submit, amend and withdraw bids;
8. 'large price step' means a fixed or variable amount that is defined per interconnection point and standard capacity product;
9. 'incremental capacity project' means a project to increase the amount of technical capacity at an existing interconnection point or to establish a new interconnection point based on capacity allocation in the preceding incremental capacity process;
10. 'economic test' means a test applied to assess the economic viability of incremental capacity projects;
11. 'incremental capacity process' means a process to assess the market demand for incremental capacity that includes a non-binding phase, in which network users express and quantify their demand for incremental capacity, and a binding phase, in which binding commitments for contracting capacity are requested from network users by one or more transmission system operators;
12. 'bundled capacity' means a standard capacity product offered on a firm basis which consists of corresponding entry and exit capacity at both sides of every interconnection point;
13. 'interconnection agreement' means an agreement entered into by adjacent transmission system operators, whose systems are connected at a particular interconnection point, which specifies terms and conditions, operating procedures and provisions, in respect of delivery and/or withdrawal of gas at the interconnection point with the purpose of facilitating efficient interoperability of the interconnected transmission networks, as set out in Chapter II of Regulation (EU) 2015/703;

⁽¹⁾ Commission Regulation (EU) 2017/460 of 16 March 2017 establishing a network code on harmonised transmission tariff structures for gas (see page 29 of this Official Journal).

14. 'competing capacities' means capacities for which the available capacity at one point of the network cannot be allocated without fully or partly reducing the available capacity at another point of the network;
15. 'auction calendar' means a table displaying information relating to specific auctions which is published by ENTSOG by January of every calendar year for auctions taking place during the period of March until February of the following calendar year and consisting of all relevant timings for auctions, including starting dates and standard capacity products to which they apply;
16. 'gas day' means the period from 5.00 to 5.00 UTC the following day for winter time and from 4.00 to 4.00 UTC the following day when daylight saving is applied;
17. 'within-day capacity' means capacity offered and allocated after the closure of the day-ahead capacity auctions with respect to that day;
18. 'ascending clock auction' means an auction in which a network user places requested quantities against defined price steps, which are announced sequentially;
19. 'uniform-price auction' means an auction in which the network user in a single bidding round bids price as well as quantity and all network users, who are successful in gaining capacity, pay the price of the lowest successful bid;
20. 'reserve price' means the eligible floor price in the auction;
21. 'small price step' means a fixed or variable amount that is defined per interconnection point and standard capacity product which is smaller than the large price step;
22. 'first-time undersell' means an occurrence where the aggregate demand across all network users is less than the capacity offered at the end of the second bidding round or a subsequent bidding round;
23. 'virtual interconnection point' means two or more interconnection points which connect the same two adjacent entry-exit systems, integrated together for the purposes of providing a single capacity service;
24. 'f-factor' means the share of the present value of the estimated increase in the allowed or target revenue of the transmission system operator associated with the incremental capacity included in the respective offer level as set out in Article 22(1)(b) to be covered by the present value of binding commitments of network users for contracting capacity calculated as set out in Article 22(1)(a);
25. 'over-nomination' means the entitlement of network users who fulfil minimum requirements for submitting nominations to request interruptible capacity at any time within-day by submitting a nomination which increases the total of their nominations to a level higher than their contracted capacity.

CHAPTER II

PRINCIPLES OF COOPERATION

Article 4

Coordination of maintenance

Where maintenance of a pipeline or part of a transmission network has an impact on the amount of transmission capacity which can be offered at interconnection points, the transmission system operator(s) shall fully cooperate with their adjacent transmission system operator(s) regarding their respective maintenance plans in order to minimise the impact on potential gas flows and capacity at an interconnection point.

Article 5

Standardisation of communication

1. Transmission system operators shall coordinate the implementation of standard communication procedures, coordinated information systems and compatible electronic on-line communications, such as shared data exchange formats and protocols, as well as agree principles as to how this data is treated.
2. Standard communication procedures shall include, in particular, those relating to network users' access to the transmission system operators' auction system or a relevant booking platform and the review of auction information provided. The timing and content of the data to be exchanged shall be compliant with the provisions set out in Chapter III.

3. The standard communication procedures adopted by transmission systems operators shall include an implementation plan and duration of applicability, which shall be in line with the development of booking platform(s) as set out in Article 37. Transmission systems operators shall ensure confidentiality of commercially sensitive information.

Article 6

Capacity calculation and maximisation

1. The maximum technical capacity shall be made available to network users, taking into account system integrity, safety and efficient network operation.

(a) In order to maximise the offer of bundled capacity through the optimisation of the technical capacity transmission system operators shall take the following measures at interconnection points, giving priority to those interconnection points where there is contractual congestion pursuant to point 2.2.3(1) of Annex I to Regulation (EC) No 715/2009: the transmission system operators shall establish and apply a joint method, setting out the specific steps to be taken by the respective transmission system operators to achieve the required optimisation:

(1) the joint method shall include an in-depth analysis of the technical capacities, including any discrepancies therein on both sides of an interconnection point, as well as the specific actions and detailed timetable — including possible implications and containing the regulatory approvals required to recover costs and adjust the regulatory regime — necessary to maximise the offer of bundled capacity. Such specific actions shall not be detrimental to the offer of capacity at other relevant points of the concerned systems and points to distribution networks relevant for security of supply to final customers, such as those to storage facilities, LNG terminals and protected customers as defined in Regulation (EU) No 994/2010 of the European Parliament and of the Council ⁽¹⁾;

(2) the calculation methodology and the rules of making available the capacity, adopted by the transmission system operators, shall address specific situations where competing capacities across systems involve interconnection points and exit points to storage facilities;

(3) this in-depth analysis shall take into account assumptions made in the Union-wide 10-year network development plan pursuant to Article 8 of Regulation (EC) No 715/2009, national investment plans, relevant obligations under the applicable national laws and any relevant contractual obligations;

(4) the relevant transmission system operators shall apply a dynamic approach to re-calculating technical capacity, where appropriate in conjunction with the dynamic calculation applied for additional capacity on the basis of point 2.2.2.2 of Annex I to Regulation (EC) No 715/2009, jointly identifying the appropriate frequency for re-calculation per interconnection point and having regard to the particular specificities thereof;

(5) in the joint method, adjacent transmission system operators shall consult other transmission system operators specifically affected by the interconnection point;

(6) transmission system operators shall have regard to information that network users may provide with regard to expected future flows when re-calculating the technical capacity.

(b) the transmission system operators shall jointly assess at least the following parameters and where appropriate adjust them:

(1) pressure commitments;

(2) all relevant demand and supply scenarios, including details on reference climatic conditions and network configurations associated with extreme scenarios;

(3) calorific value.

⁽¹⁾ Regulation (EU) No 994/2010 of the European Parliament and of the Council of 20 October 2010 concerning measures to safeguard security of gas supply and repealing Council Directive 2004/67/EC (OJ L 295, 12.11.2010, p. 1).

2. Where the optimisation of technical capacity causes costs to the transmission system operators, particularly costs that unevenly impact transmission system operators on either side of an interconnection point, transmission system operators shall be allowed to recover such efficiently incurred costs via the regulatory framework established by the relevant regulatory authorities in accordance with Article 13 of Regulation (EC) No 715/2009 and Article 42 of Directive 2009/73/EC. Article 8(1) of the Regulation (EC) No 713/2009 shall apply.
3. Where appropriate, national regulatory authorities shall consult network users on the applied calculation method and joint approach.
4. Changes in the amount of bundled capacity offered at interconnection points as a result of the process pursuant to paragraph 1 shall be included in the report of the Agency published pursuant to point 2.2.1(2) of Annex I to Regulation (EC) No 715/2009.

Article 7

Exchange of information between adjacent transmission system operators

1. Adjacent transmission system operators shall exchange nomination, re-nomination, matching and confirmation information at relevant interconnection points on a regular basis.
2. Adjacent transmission system operators shall exchange information about the maintenance of their individual transmission network in order to contribute to the decision making process with regard to the technical use of interconnection points. The procedures to exchange data between transmission system operators shall be integrated in their respective interconnection agreement.

CHAPTER III

ALLOCATION OF FIRM CAPACITY PRODUCTS

Article 8

Allocation methodology

1. Auctions shall be used for the allocation of capacity at interconnection points, except where the alternative allocation methodology pursuant to Article 30 is applied.
2. At all interconnection points the same auction design shall apply. The relevant auction processes shall start simultaneously for all concerned interconnection points. Each auction process, relating to a single standard capacity product, shall allocate capacity independently of every other auction process except where incremental capacity is offered or where, subject to the agreement of the directly involved transmission system operators and the approval of relevant national regulatory authorities, competing capacity is allocated. The national regulatory authority of any adjacent and affected Member State may provide a position which shall be considered by the relevant national regulatory authority. In case incremental capacity is offered, the independent allocation shall not apply to the simultaneous auction processes for the respective offer levels, since these are dependent on each other, as only one offer level can be allocated.
3. The standard capacity products shall follow a logical order by which products covering yearly capacity shall be offered first, followed by the product with the next shortest duration for use during the same period. The timing of the auctions provided for in Articles 11 to 15 shall be consistent with this principle.
4. The rules on standard capacity products as set out in Article 9 and auctions as set out in Articles 11 to 15 shall apply to bundled capacity and unbundled capacity at an interconnection point.
5. For a given auction, the availability of the relevant standard capacity products shall be communicated in accordance with Articles 11 to 15 and according to the auction calendar.
6. An amount at least equal to 20 % of the existing technical capacity at each interconnection point shall be set aside and offered in accordance with paragraph 7. If the available capacity is less than the proportion of technical capacity to be set aside, the whole of any available capacity shall be set aside. This capacity shall be offered in accordance with point (b) of paragraph 7, while any remaining capacity set aside shall be offered in accordance with point (a) of paragraph 7.

7. Any capacity set aside pursuant to paragraph 6 shall be offered, subject to the following provisions:
- (a) an amount at least equal to 10 % of the existing technical capacity at each interconnection point shall be offered no earlier than in the annual yearly capacity auction as provided for in Article 11 held in accordance with the auction calendar during the fifth gas year preceding the start of the relevant gas year; and
 - (b) a further amount at least equal to 10 % of the existing technical capacity at each interconnection point shall first be offered no earlier than the annual quarterly capacity auction as provided for in Article 12, held in accordance with the auction calendar during the gas year preceding the start of the relevant gas year.
8. In the case of incremental capacity, an amount at least equal to 10 % of the incremental technical capacity at the concerned interconnection point shall be set aside and offered no earlier than the annual quarterly capacity auction as provided for in Article 12, held in accordance with the auction calendar during the gas year preceding the start of the relevant gas year.
9. The exact proportion of capacity to be set aside pursuant to paragraphs 6 and 8 shall be subject to a stakeholder consultation, alignment between transmission system operators and approval by national regulatory authorities at each interconnection point. National regulatory authorities shall in particular consider setting aside higher shares of capacity with a shorter duration to avoid foreclosure of downstream supply markets.
10. Capacity created via non-market based procedures and for which the final investment decision has been taken without prior commitments from network users shall be offered and allocated as available standard capacity products as set out in this Regulation.

Article 9

Standard capacity products

1. Transmission system operators shall offer yearly, quarterly, monthly, daily and within-day standard capacity products.
2. Yearly standard capacity products shall be the capacity which may be applied for, in a given amount, by a network user for all gas days in a particular gas year (starting on 1 October).
3. Quarterly standard capacity products shall be the capacity which may be applied for, in a given amount, by a network user for all gas days in a particular quarter (starting on 1 October, 1 January, 1 April or 1 July respectively).
4. Monthly standard capacity products shall be the capacity which may be applied for, in a given amount, by a network user for all gas days in a particular calendar month (starting on the first day of each month).
5. Daily standard capacity products shall be the capacity which may be applied for, in a given amount, by a network user for a single gas day.
6. Within-day standard capacity products shall be the capacity which may be applied for, in a given amount, by a network user from a start time within a particular gas day until the end of the same gas day.

Article 10

Applied capacity unit

The capacity offered shall be expressed in energy units per unit of time. The following units shall be used: kWh/h or kWh/d. In case of kWh/d a flat flow rate over the gas day is assumed.

Article 11

Annual yearly capacity auctions

1. The yearly capacity auctions shall be held once a year.

2. Capacity for each yearly standard capacity product shall be auctioned through the annual yearly capacity auction using an ascending-clock auction algorithm in accordance with Article 17.
3. The auction process shall offer capacity at least for the upcoming 5 gas years and for no longer than the upcoming 15 gas years for existing capacity. When offering incremental capacity, the offer levels may be offered in yearly capacity auctions for a maximum of 15 years after the start of operational use.
4. As from 2018, annual yearly capacity auctions shall start on the first Monday of July each year unless otherwise specified in the auction calendar.
5. During the annual yearly capacity auction network users shall be able to participate in one or several concurrent auctions in relation to each interconnection point in order to apply for standard capacity products.
6. The capacity to be offered during the annual yearly capacity auction shall be equal to:
$$A - B + C + D + E - F$$
Where:
A is the transmission system operator's technical capacity for each of the standard capacity products;
B for annual yearly auctions offering capacity for the next 5 years, is the amount of technical capacity (A) set aside in accordance with Article 8(7); for annual yearly auctions for capacity beyond the first 5 years, is the amount of technical capacity (A) set aside in accordance with Article 8(7);
C is the previously sold technical capacity, adjusted by the capacity which is re-offered in accordance with applicable congestion management procedures;
D is additional capacity, for such year, if any.
E is the incremental capacity for such year included in a respective offer level, if any;
F is the amount of incremental capacity (E), if any, set aside in accordance with Article 8(8) and (9).
7. The capacity to be offered may be either bundled capacity or unbundled capacity in accordance with Article 19. This also applies to all other auctions as set out in Articles 12 to 15.
8. At least 1 month before the auction starts, transmission system operators shall notify network users about the amount of firm capacity to be offered for each year for the upcoming annual yearly capacity auction.
9. The bidding rounds of each auction shall take place between 8.00 UTC to 17.00 UTC (winter time) or 7.00 UTC to 16.00 UTC (daylight saving) on all relevant gas days. Bidding rounds shall be opened and closed within each gas day, as specified in Article 17(2).
10. The allocation results of the auction shall be made available, as soon as reasonably possible, and no later than the next business day after the closing of the bidding round, simultaneously to individual network users participating in the respective auction.

In case of incremental capacity, the binding commitments of network users for contracting capacity, including whether the conditions for a repeated auction pursuant to Article 29(3) are met, shall be made available no later than the next business day after the closing of the bidding round, simultaneously to individual network users participating in the respective auction. The results of the economic tests shall be made available no later than 2 business days after the closing of the bidding round, simultaneously to individual network users participating in the respective auction.

11. Aggregated information on auction results shall be published to the market.

Article 12

Annual quarterly capacity auctions

1. Four annual quarterly capacity auctions shall be held during each gas year.
2. Capacity for each quarterly standard capacity product shall be auctioned through the annual quarterly capacity auctions using an ascending-clock auction algorithm in accordance with Article 17.

3. Capacity for quarters of the upcoming gas year shall be auctioned via concurrent auctions for each quarter and in relation to each interconnection point as follows:

- (a) for quarters one (October-December) through four (July-September) in the first annual quarterly capacity auction;
- (b) for quarters two (January-March) through four (July-September) in the second annual quarterly capacity auction;
- (c) for quarters three (April-June) through four (July-September) in the third annual quarterly capacity auction;
- (d) for the last quarter (July-September) in the fourth annual quarterly capacity auction.

For each annual quarterly auction network users shall be able to participate in all of the concurrent auctions.

4. Each gas year the annual quarterly capacity auctions shall start on the following days, unless otherwise specified in the auction calendar:

- (a) the first annual quarterly capacity auctions shall start on the first Monday of August;
- (b) the second annual quarterly capacity auctions shall start on the first Monday of November;
- (c) the third annual quarterly capacity auctions shall start on the first Monday of February;
- (d) the fourth annual quarterly capacity auction shall start on the first Monday of May.

5. The capacity to be offered in all annual quarterly capacity auctions shall be equal to:

$$A - C + D$$

Where:

A is the transmission system operator's technical capacity for each of the standard capacity products;

C is the previously sold technical capacity, adjusted by the capacity which is re-offered in accordance with applicable congestion management procedures;

D is additional capacity, for such quarter, if any.

6. Two weeks before the auctions start, transmission system operators shall notify network users about the amount of capacity to be offered for each quarter for the upcoming annual quarterly capacity auction.

7. The bidding rounds of each auction, shall take place between 8.00 UTC to 17.00 UTC (winter time) or 7.00 UTC to 16.00 UTC (daylight saving) on all relevant gas days. Bidding rounds shall be opened and closed within each gas day, as specified in Article 17(2).

8. The allocation results of the auction shall be published, as soon as reasonably possible, and no later than the next business day after the closing of the bidding round, simultaneously to individual network users participating in the respective auction.

9. Aggregated information on the auction results shall be published to the market.

Article 13

Rolling monthly capacity auctions

1. The rolling monthly capacity auction shall be held once a month.

2. Capacity for each monthly standard capacity product shall be auctioned through the rolling monthly capacity auction using an ascending-clock auction algorithm according to Article 17. Each month, the monthly standard capacity product for the following calendar month shall be auctioned.

3. During the rolling monthly capacity auction network users shall be able to apply for one monthly standard capacity product.

4. Rolling monthly capacity auctions shall start on the third Monday of each month for the following monthly standard capacity product unless otherwise specified in the auction calendar.

5. The capacity to be offered in the rolling monthly capacity auction shall be, each month, equal to:

$$A - C + D$$

Where:

A is the transmission system operator's technical capacity for each of the standard capacity products;

C is the previously sold technical capacity, adjusted by the capacity which is re-offered in accordance with applicable congestion management procedures;

D is additional capacity, for such month, if any.

6. One week before the auction starts, transmission system operators shall notify network users about the amount of capacity to be offered for the upcoming rolling monthly capacity auction.

7. The bidding rounds of each auction shall take place between 8.00 UTC to 17.00 UTC (winter time) or 7.00 UTC to 16.00 UTC (daylight saving) on all relevant gas days. Bidding rounds shall be opened and closed within each gas day, as specified in Article 17(2).

8. The allocation results of the auction shall be published, as soon as reasonably possible, and no later than the next business day after the closing of the bidding round, simultaneously to individual network users participating in the respective auction.

9. Aggregated information on the auction results shall be published to the market.

Article 14

Rolling day-ahead capacity auctions

1. The rolling day-ahead capacity auction shall be held once a day.

2. Every day, a standard capacity product for the following gas day shall be auctioned through the rolling day-ahead capacity auction.

3. Capacity for each daily standard capacity product shall be auctioned through the rolling day-ahead capacity auction using a uniform price auction algorithm according to Article 18. Each day, the daily standard capacity product for the following gas day shall be auctioned.

4. During the rolling day-ahead capacity auction network users shall be able to apply for capacity for one daily standard capacity product.

5. The bidding round shall open every day at 15.30 UTC (winter time) or 14.30 UTC (daylight saving).

6. A capacity bid for the daily standard capacity product for the rolling day-ahead capacity auction shall be handled as follows: submission, withdrawal or amendment from 15.30 UTC to 16.00 UTC (winter time) or 14.30 UTC to 15.00 UTC (daylight saving).

7. The capacity to be offered in the rolling day-ahead capacity auction shall be, each day, equal to:

$$A - C + D$$

Where:

A is the transmission system operator's technical capacity for each of the standard capacity products;

C is the previously sold technical capacity, adjusted by the capacity which is re-offered in accordance with applicable congestion management procedures;

D is additional capacity, for such day, if any.

8. At the time the bidding round opens, transmission system operators shall notify network users about the amount of capacity to be offered for the upcoming rolling day-ahead capacity auction.

9. The allocation results of the auction shall be published, no later than 30 minutes after the closing of the bidding round, simultaneously to individual network users participating in the respective auction.
10. Aggregated information on the auction results shall be published to the market.

Article 15

Within-day capacity auctions

1. Subject to capacity being made available, a within-day capacity auction shall be held every hour during gas day using a uniform price auction algorithm in accordance with Article 18.
2. The first bidding round shall open directly on the next hour bar following the publication of results of the last day-ahead auction (including interruptible capacity if offered) in accordance with Article 14. The first bidding round closes at 1.30 UTC (winter time) or 0.30 UTC (daylight saving) before the gas day. The allocation of successful bids shall be effective from 5.00 UTC (winter time) or 4.00 UTC (daylight saving) on the relevant gas day.
3. The last bidding round shall close at 0.30 UTC (winter time) or 23.30 UTC (daylight saving) on the relevant gas day.
4. Network users shall be entitled to place, withdraw or amend bids from the opening of each bidding round until closure of that bidding round.
5. Each hour on the relevant gas day, capacity effective from the hour + 4 shall be auctioned as within-day capacity.
6. Each bidding round shall open at the start of every hour on the relevant gas day.
7. The duration of each bidding round shall be 30 minutes as of the opening of the bidding round.
8. The capacity to be offered in the within-day capacity auction shall be, each hour, equal to:

$$A - C + D$$

Where:

A is the transmission system operator's technical capacity for each of the standard capacity products;

C is the previously sold technical capacity, adjusted by the capacity which is re-offered in accordance with applicable congestion management procedures;

D is additional capacity, if any.

9. Transmission system operators shall publish the available amount of within-day firm capacity on offer, after closure of the last day-ahead auction and in accordance with Article 32(9).
10. Transmission system operators shall provide network users who bid in the day-ahead auctions with the option to have valid unsuccessful bids automatically entered into the subsequent within-day auction.
11. The capacity shall be allocated within 30 minutes of the closure of the bidding round provided that the bids are accepted and the transmission system operator runs the allocation process.
12. The results of the auction shall be made available simultaneously to individual network users.
13. Aggregated information on the auction results shall be published at least at the end of each day.

Article 16

Auction algorithms

1. If several standard capacity products are offered during an auction, the respective allocation algorithm shall be applied separately for each standard capacity product when it is being allocated. Bids for the different standard capacity products shall be considered independently from each other in the application of the auction algorithm.

2. For annual yearly, annual quarterly and rolling monthly capacity auctions, an ascending clock auction algorithm, with multiple bidding rounds, as provided for in Article 17, shall be applied.
3. For rolling day-ahead capacity auctions and within-day capacity auctions, a uniform-price auction algorithm, with a single bidding round, shall be applied in accordance with Article 18.

Article 17

Ascending clock auction algorithm

1. Ascending clock auctions shall enable network users to place volume bids against escalating prices announced in consecutive bidding rounds, starting at the reserve price P_0 .
2. The first bidding round, with an associated price equal to the reserve price P_0 , shall have a duration of 3 hours. Subsequent bidding rounds shall have a duration of 1 hour. There shall be a period of 1 hour between bidding rounds.
3. A bid shall specify:
 - (a) the identity of the network user applying;
 - (b) the concerned interconnection point and direction of the flow;
 - (c) the standard capacity product for which the capacity is applied for;
 - (d) per price step, the amount of capacity for the respective standard capacity product applied for;
 - (e) where incremental capacity is offered, the concerned offer level.
4. A bid shall be considered valid if it is submitted by a network user and complies with all provisions of this Article.
5. In order for network users to participate in an auction, it shall be mandatory for network users to place a volume bid in the first bidding round.
6. Transmission system operators shall provide network users with the option to enter bids automatically against any price step.
7. Once the relevant bidding round closes, no modification, withdrawal or variation to valid bids shall be accepted. All valid bids shall become binding commitments of a network user to book capacity to the amount requested per announced price, provided the clearing price of the auction is that which is announced in the relevant bidding round.
8. The volume bid in any bidding round per network user shall be equal or smaller to the capacity offered in a specific auction. The volume bid per network user at a specific price shall be equal to or less than the volume bid placed by this network user in the previous round, except where paragraph 16 applies.
9. Bids may be freely entered, modified and withdrawn during a bidding round, providing all bids comply with paragraph 8. Valid bids shall remain valid until modified or withdrawn.
10. A large price step and a small price step shall be defined per interconnection point and per standard capacity product and shall be published in advance of the relevant auction. The small price step shall be set such that an increase by an integer number of small price steps is equal to an increase by a large price step.
11. The determination of the large price step shall seek to minimise, as far as reasonably possible, the length of the auction process. The determination of the small price step shall seek to minimise, as far as reasonably possible, the level of unsold capacity where the auction closes at a price higher than the reserve price.
12. If the aggregate demand across all network users is less than or equal to the capacity offered at the end of the first bidding round, the auction shall close.
13. If the aggregate demand across all network users is greater than the capacity offered at the end of the first bidding round or a subsequent bidding round, a further bidding round shall be opened with a price equal to the price in the previous bidding round, plus the large price step.

14. If the aggregate demand across all network users is equal to the capacity offered at the end of the second bidding round or a subsequent bidding round, the auction shall close.
15. If a first-time undersell occurs, a price reduction shall take place and a further bidding round shall be opened. The further bidding round will have a price equal to the price applicable in the bidding round preceding the first-time undersell, plus the small price step. Further bidding rounds with increments of the small price step shall then be opened until the aggregate demand across all network users is less than or equal to the capacity offered, at which point the auction shall close.
16. The volume bid per network user in all bidding rounds where small price steps are applied shall be equal to or less than the volume bid placed by this network user in the bidding round which preceded the first-time undersell. The volume bid per network user for a specific small price step shall be equal to or smaller than the volume bid placed by this network user in the previous bidding round of small price steps. The volume bid per network user in all bidding rounds where small price steps are applied shall be equal to or greater than the volume bid placed by this network user during the bidding round in which the first-time undersell occurred.
17. If the aggregate demand across all network users is greater than the capacity offered in the bidding round with a price equal to that which led to the first-time undersell, minus one small price step, the auction shall close. The clearing price shall be the price that led to the first-time undersell and the successful bids shall be those submitted during the original bidding round in which the first-time undersell occurred.
18. After each bidding round, the demand of all network users in a specific auction shall be published as soon as reasonably possible in an aggregated form.
19. The price announced for the last bidding round in which the auction closes shall be considered as the clearing price of the specific auction, except cases where paragraph 17 applies.
20. All network users who have placed valid volume bids at the clearing price shall be allocated the capacity according to their volume bids at the clearing price. Where incremental capacity is offered, the allocation of incremental capacity shall be subject to the outcome of the economic test according to Article 22. Successful network users shall pay the clearing price of the specific auction, which may be a fixed or a floating payable price approach set out in Article 24 of Regulation (EU) 2017/460, and any other possible charges applicable at the time when the capacity allocated to them can be used.
21. Following every closed auction, the final auction result including the aggregation of allocated capacities and the clearing price shall be published. Successful network users shall be informed about the amount of capacities they are allocated, individual information shall be communicated only to concerned parties. Where incremental capacity is allocated, this paragraph shall only apply to the auction results of the offer level offering the largest amount of capacity that resulted in a positive economic test according to Article 22(3).
22. If an ascending clock auction has not ended by the scheduled starting point (according to the auction calendar) of the next auction for capacity covering the same period, the first auction shall close and no capacity shall be allocated. The capacity shall be offered in the next relevant auction.

Article 18

Uniform-price auction algorithm

1. In a uniform-price auction, there is a single bidding round in which the network user bids price as well as quantity.
2. During the bidding round of a given auction, network users may submit up to 10 bids. Each bid shall be treated independently from other bids. After the closure of the bidding round, remaining bids may not be modified or withdrawn.
3. A bid shall specify:
 - (a) the identity of the network user applying;
 - (b) the concerned interconnection point and direction of the flow;

- (c) the standard capacity product for which the capacity is applied for;
 - (d) the amount of capacity for the respective standard capacity product applied for, which shall be equal to or smaller than the capacity offered in a specific auction;
 - (e) the minimum amount of capacity for the respective standard capacity product which the network user is willing to be allocated according to the relevant algorithm in case the network user is not allocated the amount requested in accordance with point (d);
 - (f) the bid prices, which shall not be less than the reserve price applicable for the relevant standard capacity product, which the network user is willing to pay in respect of the capacity applied for. Bids with a bid price below the reserve price shall not be accepted.
4. The transmission system operator shall rank all bids relating to a given standard capacity product according to their bid price, the highest price ranking first.
5. All remaining bids at bidding round closing time shall be considered as binding on those network users that are allocated at least the minimum amount of capacity requested in accordance with point (e) of paragraph 3.
6. Following the ranking of the bids in accordance with paragraph 4, and subject to paragraphs 7 to 10, capacity shall be allocated to the bids in function of their price ranking. All bids for which capacity is allocated shall be considered as successful. After the allocation of capacity, the remaining unallocated capacity shall be reduced by such quantity.
7. Following the application of paragraph 6 and subject to paragraph 9, where the amount of capacity bid for by a network user exceeds the remaining unallocated capacity (after capacity has been allocated to network users placing higher bids), this network user shall be allocated capacity equal to the remaining unallocated capacity.
8. Following the application of paragraph 7 and subject to paragraph 9, where each of two or more bids specifies the same bid price, and the amount of relevant capacity remaining applied for in aggregate under such bids exceeds the remaining unallocated amount, the remaining unallocated amount shall be allocated pro rata to the amounts applied for in each such bid.
9. Where the amount to be allocated in respect of a bid pursuant to paragraphs 6, 7 or 8 is less than the minimum amount of capacity according to point (e) of paragraph 3, the bid shall be considered unsuccessful, and a revised allocation shall be made between remaining equal price bid(s) under paragraph 8, or an allocation shall be made in respect of the next priced bid, pursuant to paragraph 6.
10. Where the remaining amount to be allocated in respect of any bid pursuant to paragraphs 6, 7, 8 or 9 is equal to zero, no further capacity shall be allocated to the remaining bids. Those bids shall be considered unsuccessful.
11. The clearing price shall be defined as the price of the lowest successful bid, if the demand exceeds the offer at the reserve price. In all other cases, the clearing price shall be equal to the reserve price. Successful network users shall pay the clearing price of the specific auction, which may be a fixed or floating payable price approach as set out in Article 24 of Regulation (EU) 2017/460 and any other possible charges applicable at the time when the capacity allocated to them can be used.

CHAPTER IV

BUNDLING OF CAPACITY AT INTERCONNECTION POINTS

Article 19

Bundled capacity products

Adjacent transmission system operators shall jointly offer bundled capacity products, according to the following principles:

1. on both sides of an interconnection point all firm capacity shall be offered as bundled capacity, in so far as there is available firm or incremental capacity on both sides of the interconnection point;

2. transmission system operators shall offer capacity for the relevant standard capacity product on a booking platform, in accordance with Article 37 and in accordance with the applicable allocation procedure, as set out in Chapter III;
3. the bundled capacity to be offered by the transmission system operators concerned at an interconnection point shall be contracted through a single allocation procedure;
4. network users shall comply with applicable terms and conditions of the transport contract(s) of the transmission system operators concerned as from the time the transport capacity is contracted;
5. where there is more available firm capacity on one side of an interconnection point than on the other side for any period considered, the transmission system operator with the most available firm capacity may offer such extra capacity to the network users as an unbundled product in accordance with the auction calendar and the following rules:
 - (a) where there is an existing unbundled transport contract at the other side of the interconnection point, capacity may be offered on an unbundled basis not exceeding the amount and duration of the existing transport contract at the other side;
 - (b) where such extra capacity does not fall under point (a) of paragraph 5, it may be offered for a maximum period of 1 year;
6. any unbundled capacity allocated in accordance with paragraph 5 may be used and nominated as such. It may also be traded on the secondary market;
7. adjacent transmission system operators shall establish a joint nomination procedure for bundled capacity, providing network users with the means to nominate the flows of their bundled capacity via a single nomination;
8. the obligations to offer bundled capacity also apply, to the extent that they are relevant, to secondary capacity markets. Without prejudice to paragraph 1, capacity originally allocated as bundled capacity can only be resold as bundled capacity on the secondary market;
9. where two or more interconnection points connect the same two adjacent entry-exit systems, the adjacent transmission system operators concerned shall offer the available capacities at the interconnection points at one virtual interconnection point. In case more than two transmission system operators are involved because capacity in one or both entry-exit systems is marketed by more than one transmission system operator, the virtual interconnection point shall include all of these transmission system operators, to the extent possible. In all cases a virtual interconnection point shall be established only if the following conditions are met:
 - (a) the total technical capacity at the virtual interconnection points shall be equal to or higher than the sum of the technical capacities at each of the interconnection points contributing to the virtual interconnection points;
 - (b) they facilitate the economic and efficient use of the system including but not limited to rules set out in Article 16 of Regulation (EC) No 715/2009.

Adjacent transmission system operators shall start the necessary analysis and shall establish functional virtual interconnection points no later than 1 November 2018.

Article 20

Alignment of main terms and conditions for bundled capacity products

1. Before 6 January 2018 ENTSOG shall, after consulting stakeholders, create a catalogue of the main terms and conditions in the transport contract(s) of the transmission system operators for bundled capacity products. ENTSOG shall analyse existing transport contracts, identifying and categorising differences in relation to the main terms and conditions and the reasons for such differences and publish its findings in a report.

2. On the basis of the report referred to in paragraph 1, ENTSOG, after consulting stakeholders, shall within 6 months after the publication of the report develop and publish a template for the main terms and conditions covering contractual provisions which are not affected by fundamental differences in principles of national law or jurisprudence, for the offer of bundled capacity products.
3. The Agency, having due regard to the opinions of the national regulatory authorities, shall provide an opinion on the template for the main terms and conditions within a further 3 months. Taking into account the opinion provided by the Agency, ENTSOG shall publish on its website the final template for the main terms and conditions no later than 3 months after receiving the Agency's opinion.
4. After the publication of the final template for the main terms and conditions, transmission system operators, subject to the approval of national regulatory authority, may apply the terms and conditions set out in the template in the case of newly contracted bundled capacity products.

Article 21

Bundling in case of existing transport contracts

1. The network users who are parties to unbundled transport contracts at respective interconnection points, shall aim to reach an agreement on the bundling of the capacity via contractual arrangements ('bundling arrangement'), in compliance with the provisions set out in Article 19. These network users and transmission system operators shall report to the relevant national regulatory authorities of all bundling arrangements reached by all parties to existing transport contracts.
2. The transmission system operators who are parties to the existing transport contracts may participate in the discussions regarding the bundling arrangement at any time, upon invitation of the network users who are parties to the existing transport contracts.
3. As from 1 January 2018, transmission system operators shall offer network users holding mismatched unbundled capacity at one side of an interconnection point a free-of-charge capacity conversion service. Such a capacity conversion service shall apply to annual, quarterly or monthly capacity products for bundled firm capacity at that interconnection point which the network user had to acquire because insufficient unbundled capacity on the other side of the interconnection point was offered by an adjacent transmission system operator. This service shall be offered on a non-discriminatory basis and shall prevent additional charges from being applied to network users for capacity they already hold. In particular, payments for the part of the contracted bundled capacity which network users already hold as mismatched unbundled capacity shall be limited to a possible auction premium. This service shall be based on the conversion model under development by ENTSOG and to be finalised at the latest by 1 October 2017 after consulting stakeholders and the Agency. The implementation may be facilitated by the capacity booking platform(s) referred to in Article 37. The use of this service shall be reported annually to the respective national regulatory authorities.
4. Where a bundling arrangement is agreed upon between respective network users, the transmission system operators involved at the interconnection point shall be informed by the parties of such intended bundling arrangement without undue delay and the transfer of the concerned capacity shall be implemented. In any case, the bundling arrangement shall be implemented subject to the applicable terms and conditions of existing related transport contracts. Once the bundling arrangement is implemented, the relevant capacity shall be treated as bundled capacity.
5. In any case, the duration of the bundling arrangements regarding the capacity bundled under the amendment of the existing contracts shall not exceed the duration of the original transport contracts.
6. All capacity shall be bundled at the earliest opportunity. Existing transport contracts for unbundled capacity cannot be renewed, prolonged or rolled over after their expiration date. Such capacity shall become available capacity as of the expiration date of the transport contracts.

CHAPTER V

INCREMENTAL CAPACITY PROCESS

Article 22

Economic test

1. The economic test set out in this Article shall be carried out by the transmission system operator(s) or by the national regulatory authority, as decided by the national regulatory authority, for each offer level of an incremental capacity project after binding commitments of network users for contracting capacity have been obtained by the involved transmission system operators and shall consist of the following parameters:

- (a) the present value of binding commitments of network users for contracting capacity, which is calculated as the discounted sum of the following parameters:
 - (i) the sum of the respective estimated reference prices and a potential auction premium and a potential mandatory minimum premium multiplied by the amount of contracted incremental capacity;
 - (ii) the sum of a potential auction premium and a potential mandatory minimum premium multiplied by the amount of available capacity that was contracted in combination with the incremental capacity;
- (b) the present value of the estimated increase in the allowed or target revenue of the transmission system operator associated with the incremental capacity included in the respective offer level, as approved by the relevant national regulatory authority in accordance with Article 28(2);
- (c) the f-factor.

2. The outcome of the economic test application shall be:

- (a) positive, where the value of the parameter set out in paragraph 1(a) is at least equal to the share of the parameter set out in paragraph 1(b) as defined by the f-factor;
- (b) negative, where the value of the parameter set out in paragraph 1(a) is lower than the share of the parameter set out in paragraph 1(b) as defined by the f-factor.

3. An incremental capacity project shall be initiated if the economic test has a positive outcome on both sides of an interconnection point for at least one offer level that includes incremental capacity. In case more than one offer level results in a positive outcome of the economic test, the offer level with the largest amount of capacity that resulted in a positive outcome shall be used for proceeding with the incremental capacity project towards commissioning. In case no offer level results in a positive outcome, the specific incremental capacity process shall be terminated.

Article 23

The f-factor

1. When applying the economic test referred to in Article 22, the national regulatory authority shall set the level of the f-factor for a given offer level, taking into account the following:

- (a) the amount of technical capacity set aside in accordance with Article 8(8) and (9);
- (b) positive externalities of the incremental capacity project on the market or the transmission network, or both;
- (c) the duration of binding commitments of network users for contracting capacity compared to the economic life of the asset;
- (d) the extent to which the demand for the capacity established in the incremental capacity project can be expected to continue after the end of the time horizon used in the economic test.

2. If the economic test has a positive outcome then the investment costs associated with the incremental capacity shall be reflected in an increase in the allowed or target revenue in accordance with the applicable national rules.

*Article 24***Combination into single economic test**

1. In order to facilitate the offer of bundled capacity products, individual economic test parameters of the involved transmission system operators for a given offer level shall be combined into a single economic test.
2. The single economic test shall consist of the following parameters:
 - (a) the present value of binding commitments of network users for contracting bundled capacity, which is the sum of the values according to Article 22(1)(a) of the involved transmission system operators;
 - (b) the sum of the individual present values of the estimated increase in the allowed or target revenue of the involved transmission system operators that is attributable to the incremental capacity of a respective offer level;
 - (c) the f-factor that defines the share of the parameter set out in point (b) that needs to be covered by the parameter set out in point (a) and allows all the involved transmission system operators individually to cover their upfront defined respective shares.
3. The outcome of the single economic test application shall be positive where all underlying economic tests result in positive outcomes as set out in Article 22(2)(a) taking into account a possible redistribution of revenues according to paragraphs 4 and 5. Otherwise, the outcome of the single economic test application shall be negative.
4. In case a redistribution of revenues could potentially lead to a decrease in the level of binding commitments of network users for contracting capacity required for a positive single economic test outcome, transmission system operators may submit to the relevant national regulatory authorities for coordinated approvals the mechanisms for a redistribution of revenues from incremental capacity.
5. A redistribution of revenues may be carried out as follows:
 - (a) during the process of integrating the individual economic test parameters into a single economic test;
 - (b) in case the single economic test has a negative outcome while at the same time the level of binding commitment of network users for contracting capacity exceeds the minimum required to cover the individual present value of the increase in the allowed or target revenue for at least one of the involved transmission system operators.

*Article 25***Publication requirements relating to the economic test**

1. For a given incremental capacity project, the transmission system operator(s) shall submit to the relevant national regulatory authority(-ies) for approval the following information for each offer level:
 - (a) the reference prices estimated for the time horizon of the initial offer of incremental capacity that are used for the calculation of the parameter set out in Article 22(1)(a) and 24(2)(a), respectively in case separate or a single economic test is applied;
 - (b) the parameters set out in Article 22(1)(b) to (c) and 24(2)(b) to (c), respectively in case separate or a single economic test is applied;
 - (c) if applicable, the range of the level for the mandatory minimum premium referred to in Article 33(4) of Regulation (EU) 2017/460 for each offer level and interconnection point applied in the first auction and possibly in subsequent auctions in which the incremental capacity is offered as defined in Article 33(3) of Regulation (EU) 2017/460.
2. Following the approval by the relevant national regulatory authority(-ies), the information set out in paragraph 1 shall be published by the involved transmission system operator(s) as set out in Article 28(3).

*Article 26***Market demand assessment**

1. Immediately after the start of the annual yearly capacity auction at least in each odd-numbered year, transmission system operators shall cooperate in the processes of assessing market demand for incremental capacity and of conducting technical studies for incremental capacity projects for their joint interconnection points. The first demand assessment shall be conducted in 2017 as from the entry into force of this Regulation.

2. No later than 8 weeks after the start of the annual yearly capacity auction at least in each odd-numbered year, the concerned transmission system operators on each side of an entry-exit system border shall produce common market demand assessment reports, each covering all interconnection points of at least one entry-exit system border. The market assessment report shall evaluate the prospective demand for incremental capacity of all network users pursuant to paragraph 8 and shall state whether an incremental capacity project is initiated.
3. The market demand assessment report shall be published in one or more official languages of the Member State and to the extent possible in English on the websites of the concerned transmission system operators no later than 16 weeks after the start of the annual yearly capacity auction at least in each odd-numbered year.
4. ENTSOG shall coordinate and assist the completion of the demand assessment reports including by providing a standard template and publishing the reports on ENTSOG's website.
5. If demand for incremental capacity is expressed by network users no later than 8 weeks after the start of the annual yearly auction in even-numbered years, the concerned transmission system operators may agree to conduct a market demand assessment also in an even-numbered year, provided that:
 - (a) the process set out in Articles 26-30 can be concluded before the start of the next demand assessment cycle referred to in paragraph 1; and
 - (b) the auction calendar is respected.
6. Transmission system operators shall consider non-binding demand indications submitted no later than 8 weeks after the start of the annual yearly auction in the ongoing market demand assessment.
7. Transmission system operators may consider non-binding demand indications submitted after the deadline set out in paragraph 6 in the ongoing market demand assessment, or introduce them into the next market demand assessment.
8. The non-binding demand indications referred to in paragraphs 6 and 7 shall contain at least the following information:
 - (a) the two or more adjacent entry-exit systems between which demand for incremental capacity — on one or both sides of an interconnection point — is expressed and the requested direction;
 - (b) the gas year(s) for which a demand for incremental capacity is expressed;
 - (c) the amount of capacity demanded between the respective entry-exit systems;
 - (d) information on non-binding demand indications which were or will be submitted to other transmission system operators, in case such indications are linked to each other, such as demand for capacities at several related interconnection points;
9. Network users shall indicate whether their demand is subject to any conditions in relation to points (a) to (d) of paragraph 8.
10. Transmission system operators shall respond to non-binding demand indications within 16 weeks after the start of the annual yearly auctions, or within 8 weeks of receipt of demand indications in accordance with paragraph 7. The response shall provide at least the following:
 - (a) whether the demand indicated can be considered by the transmission system operator in the ongoing process; or
 - (b) whether, in the case of demand indications in accordance with paragraph 7, they are sufficient to consider the initiation of an incremental capacity process according to paragraph 5; or
 - (c) in which market demand assessment report, according to paragraph 3, the indicated demand will be assessed, provided that the demand indicated cannot be considered under points (a) or (b), which is to be justified.
11. A transmission system operator may charge fees for activities resulting from the submission of non-binding demand indications. Such fees shall reflect the administrative costs for submitting demand indications, and shall be subject to approval by the relevant national regulatory authority and published on the transmission system operator's website. Such fees shall be reimbursed to the respective network user if the economic test for at least one offer level that includes incremental capacity at the respective interconnection point is positive.

12. The market demand assessment report shall take into account all of the following criteria:
- (a) whether the Union-wide 10-year network development plan identifies a physical capacity gap whereby a specific region is undersupplied in a reasonable peak scenario and where offering incremental capacity at the interconnection point in question could close the gap; or a national network development plan identifies a concrete and sustained physical transport requirement;
 - (b) whether no yearly standard capacity product linking two adjacent entry-exit systems is available in the annual yearly capacity auction for the year in which incremental capacity could be offered for the first time and in the 3 subsequent years, because all the capacity has been contracted;
 - (c) whether network users submitted non-binding demand indications requesting incremental capacity for a sustained number of years and all other economically efficient means for maximising the availability of existing capacity are exhausted.
13. The market demand assessment report shall include at least the following:
- (a) a conclusion on whether to initiate an incremental capacity project;
 - (b) the aggregated non-binding demand indications received no later than 8 weeks after the start of the annual yearly capacity auction in the year of the publication of the respective demand assessment report;
 - (c) the aggregated non-binding demand indications submitted after the deadline referred to in paragraph 6 during the previous incremental capacity process in case these demand indications were not considered for the previous demand assessment;
 - (d) the aggregated non-binding demand indications submitted in accordance with paragraph 7 where the transmission system operators has decide to consider them in the ongoing market demand assessment;
 - (e) an assessment of the expected amount, direction and duration of demand for incremental capacity at the interconnection points with each adjacent entry-exit system or interconnectors;
 - (f) a conclusion on whether technical studies for incremental capacity projects will be conducted, specifying for which interconnection points and for which expected demand level;
 - (g) provisional timelines for the incremental capacity project, technical studies and the consultation referred to in Article 27(3);
 - (h) a conclusion on what fees, if any, will be introduced, according to paragraph 10;
 - (i) the types and, where available the aggregated size of conditional demand indications according to point paragraph 9;
 - (j) how transmission system operators intend to apply Article 11(3) with regards to limitation of the number of years being offered in the annual yearly capacity auctions during the incremental process.
14. Transmission system operators and the relevant national regulatory authorities shall publish respective points of contact for incremental capacity projects initiated at the publication of the market demand assessment report and update this information on a regular basis throughout the project.

Article 27

Design phase

1. The day after the publication of the market demand assessment report, the design phase shall start, if the demand assessment report identifies demand for incremental capacity projects.
2. Transmission system operators active at the respective interconnection point shall conduct technical studies for incremental capacity projects in order to design the incremental capacity project and coordinated offer levels based on technical feasibility and the market demand assessment reports.

3. No later than 12 weeks after the start of the design phase, the concerned transmission system operators shall conduct a joint public consultation on the draft project proposal in one or more official languages of the Member State and to the extent possible in English for a minimum of 1 month and no longer than 2 months. These operators shall take all reasonable steps to ensure cross-border coordination.

The consultation shall cover at least the following elements:

- (a) a description of the incremental capacity project, including a cost estimate;
- (b) the offer levels for bundled capacity products at the interconnection point;
- (c) where relevant, based on conditional demand indications received, the transmission system operators' proposed alternative allocation mechanism including its justification;
- (d) provisional timelines of the incremental capacity project;
- (e) general rules and conditions that a network users must accept to participate and access capacity in the binding capacity allocation phase of the incremental capacity process, including any collateral to be provided by network users and how possible delays in the provision of capacity or the event of a disruption to the project are dealt with contractually;
- (f) where a fixed price approach is followed for the incremental capacity project, the elements IND and RP described in Article 24(b) of Regulation (EU) 2017/460;
- (g) the level of user commitments, expressed as an estimate of the f-factor as applied in accordance with Article 23, which, after having consulted with the transmission system operators, is proposed and subsequently approved by the concerned national regulatory authorities;
- (h) any additional demand indications received in accordance with Article 26(7);
- (i) whether the incremental capacity is likely to result in a sustained, significant decrease in the utilisation of other non-depreciated gas infrastructure in the same and adjacent entry-exit systems or along the same gas transport route.

4. In the process of designing coordinated offer levels, the transmission system operators shall closely cooperate with the involved national regulatory authorities and coordinate across borders in order to enable offers of incremental capacity as bundled products. The project proposal and design of coordinated offer levels shall take into account the results of the consultation provided for in paragraph 3.

Article 28

Approval and publication

1. Following the consultation and finalisation of the design phase for an incremental capacity project in accordance with Article 27, the involved transmission system operators shall submit the project proposal for an incremental capacity project to the relevant national regulatory authorities for coordinated approvals. The project proposal shall also be published by the involved transmission system operators in one or more official languages of the Member State and to the extent possible in English and shall include at least the following information:

- (a) all offer levels, reflecting the range of expected demand for incremental capacity at the relevant interconnection points as a result of the processes provided for in paragraph 3 of Article 27 and Article 26;
- (b) the general rules and conditions that a network user must accept to participate and access capacity in the binding capacity allocation phase of the incremental capacity process, including any collaterals to be provided by network users and how possible delays in the provision of capacity or the event of a disruption to the project are dealt with contractually;
- (c) timelines of the incremental capacity project, including any changes since the consultation described in paragraph 3 of Article 27, and measures to prevent delays and minimise the impact of delays;
- (d) the parameters defined in Article 22(1);

- (e) whether an exceptionally extended time horizon for contracting capacity for an additional period of up to 5 years beyond the allocation of up to 15 years after the start of the operational use may be required, in accordance with Article 30;
- (f) where applicable, the proposed alternative allocation mechanism including its justification pursuant to Article 30(2) as well as the conditions approved by the transmission system operator for the binding phase pursuant to Article 30(3);
- (g) where a fixed price approach is followed for the incremental capacity project, the elements described in Article 24(b) of Regulation (EU) 2017/460.

2. Within 6 months of receipt of the complete project proposal by the last of the relevant regulatory authorities, those national regulatory authorities shall publish coordinated decisions on the project proposal defined in paragraph 1 in one or more official languages of the Member State and to the extent possible in English. The decisions shall include justifications. National regulatory authorities shall inform each other of the receipt of the project proposal and its completeness in order to determine the start of the 6 months period.

When preparing the national regulatory authority's decision, each national regulatory authority shall consider the views of the other national regulatory authorities involved. In any case national regulatory authorities shall take into account any detrimental effects on competition or the effective functioning of the internal gas market associated with the incremental capacity projects concerned.

If a relevant national regulatory authority objects to the submitted project proposal, it shall inform the other involved national regulatory authorities as soon as possible. In such a situation, all the national regulatory authorities involved shall take all reasonable steps to work together and reach a common agreement.

Where the relevant national regulatory authorities cannot reach an agreement on the proposed alternative allocation mechanism within the 6 months period referred to in the first subparagraph, the Agency shall decide on the alternative allocation mechanism to be implemented, following the process set out in Article 8(1) of Regulation (EC) No 713/2009.

3. Upon the publication of the decisions of the relevant national regulatory authorities pursuant to paragraph 2 and no later than 2 months before the offer of incremental capacity in the annual yearly capacity auction, the transmission system operators shall publish jointly a notice in one or more official languages of the Member State and to the extent possible in English including the following minimum information

- (a) the information defined in paragraph 1 as approved by the national regulatory authorities;
- (b) a template of the contract(s) related to the capacity offered.

Article 29

Auctioning of incremental capacity

1. Subject to the completion of the steps provided for in Article 27, the involved transmission system operators shall offer the incremental capacity together with the respective available capacity in the annual yearly capacity auction as standard bundled products in ascending clock auctions according to Article 17 as a default and in accordance with Article 8(8) and (9) and Article 19.

2. The auctions for the respective offer levels shall be conducted in parallel and independently from each other in accordance with Article 17 and subject to Article 8(2). Only coordinated offer levels shall be auctioned.

3. In order to minimise potential auction premia and to achieve a positive economic test outcome for the highest possible offer level, a new auction may be initiated once and only if:

- (a) there were at least two offer levels set by the transmission system operators before the start of the auctions described in paragraph 2; and

- (b) at least one offer level was unsuccessful and resulted in a negative economic test; and
- (c) the next smaller offer level of the lowest unsuccessful offer level resulted in a positive economic test, and cleared with an auction premium for at least one yearly standard capacity product.

If these conditions are met, the new auction may be initiated for the lowest unsuccessful offer level referred in point (b).

4. If the new auction does not result in a positive economic test outcome, the allocation results of the original auction referred to in point (c) shall prevail in accordance with Articles 17(20) and (21).

Article 30

Principles for alternative allocation mechanisms

1. An alternative allocation mechanism covers a maximum of 15 years after the start of operational use. If the economic test could not be passed based on the 15 years' bookings, national regulatory authorities may exceptionally extend the time horizon by up to 5 additional years.

2. An alternative capacity allocation mechanism can be used, subject to national regulatory authorities' approval, where it is reasonable to conclude from the market demand assessment pursuant to Article 26 or the consultation defined in Article 27(3) that the ascending clock auction is not suitable and that the incremental capacity project fulfils both of the following conditions:

- (a) it involves more than two entry-exit systems and bids are requested along several interconnection points during the allocation procedure;
- (b) bids with a duration of more than 1 year are requested.

3. In an alternative allocation mechanism network users may submit binding conditional bids for contracting capacity subject to one or more of the following conditions specified by the transmission system operators in the approved project proposal pursuant to Article 28(1):

- (a) commitments linking or excluding commitments at other interconnection points;
- (b) commitments across a number of different yearly standard capacity products at an interconnection point;
- (c) commitments conditional on the allocation of a specific or minimum amount of capacity.

4. The alternative allocation mechanism is subject to approvals by the concerned national regulatory authorities according to Article 28(2). The mechanism shall be transparent and non-discriminatory but may allow for the prioritisation of booking duration or bids for higher amounts of capacity for a yearly standard capacity product.

5. If either booking duration or bids for higher amounts of capacity are prioritised, national regulatory authorities shall decide on setting aside an amount of at least 10 % and up to 20 % of the technical capacity at each interconnection point when applying Article 8(8). Capacity set aside in this manner shall be offered in accordance with Article 8(7).

Article 31

Transitional arrangements

In the case of incremental capacity projects initiated before the entry into force of this Regulation, Articles 26 to 30 shall apply unless such projects have been granted the applicable approvals for capacity allocation by the respective national regulatory authorities before 1 August 2017.

CHAPTER VI

INTERRUPTIBLE CAPACITY*Article 32***Allocation of interruptible services**

1. As from 1 January 2018, transmission system operators may only offer standard capacity products for interruptible capacity of a duration longer than one day if the corresponding monthly, quarterly or yearly standard capacity product for firm capacity was sold at an auction premium, was sold out, or was not offered.
2. Transmission system operators shall offer a daily capacity product for interruptible capacity in both directions at interconnection points where the respective standard capacity product for firm capacity was sold out day-ahead or was not offered. At unidirectional interconnection points where firm capacity is offered only in one direction, transmission system operators shall offer at least a daily product for interruptible capacity in the other direction.
3. If interruptible capacity is offered, this shall not be detrimental to the amount of firm capacity on offer. Transmission system operators shall not set aside capacity that can be offered as firm capacity in order to offer it as interruptible capacity.
4. To the extent interruptible capacity products other than daily products are offered, the same standard capacity products for firm capacity shall also apply for interruptible capacity, in terms of duration of the products.
5. To the extent interruptible capacity is offered, it shall be allocated via an auction process with the exception of within-day interruptible capacity.
6. Within-day interruptible capacity shall be allocated by means of an over-nomination procedure.
7. Within-day interruptible capacity shall only be allocated when firm capacity, whether technical capacity or additional capacity, is sold out.
8. Where auctions are held for any interruptible products longer than within-day transmission system operators shall, if known, publish the amounts of interruptible capacity on offer before the start of the auction process.
9. If offered, interruptible capacity shall be allocated by means of a separate auction after firm capacity of equal duration has been allocated, but before the auction of firm capacity with a shorter duration starts, with the exception of within-day interruptible capacity.
10. If offered, interruptible capacity auctions shall be conducted in accordance with the same design principles and timescales as applied for firm capacity. The exact auction dates to be used for the interruptible capacity auctions shall be detailed within the auction calendar with the exception of within-day interruptible capacity. For the annual yearly, all annual quarterly and all rolling monthly capacity auctions, the transmission system operators shall notify network users about the amount of interruptible capacity to be offered one week before the auction starts. Where an auction of firm capacity has not closed on the scheduled start day for the interruptible auctions, the interruptible auctions shall open no later than the next business day after the closing of the respective auctions of firm capacity. In such cases, any change in the offered amounts shall be notified at least 12 hours before the start of the respective interruptible capacity auction.

*Article 33***Minimum interruption lead times**

1. Interruptible capacities shall have minimum interruption lead times, which shall be decided jointly by adjacent transmission system operators.
2. The default minimum interruption lead time for a given gas hour shall be 45 minutes after the start of the re-nomination cycle for that gas hour. Where two transmission system operators wish to shorten the lead time for interruptions, any related agreement entered into between the transmission system operators shall be subject to competent national regulatory authority approval.

*Article 34***Coordination of interruption process**

The transmission system operator that initiates the interruption shall notify the relevant adjacent transmission system operator. Adjacent transmission system operators shall notify their respective affected network users as soon as possible, but with due regard to the reliability of the information.

*Article 35***Defined sequence of interruptions**

1. The order in which interruptions shall be performed, if the total of nominations exceeds the quantity of gas that can flow at a certain interconnection point, shall be determined based on the contractual time stamp of the respective transport contracts on an interruptible basis. In case of an interruption, transport contract coming into force earlier shall prevail over transport contract coming into force later.
2. If, after applying the procedure provided for in paragraph 1, two or more nominations are ranked at the same position within the interruption order and the transmission system operator does not interrupt all of them, a pro rata reduction of these specific nominations shall apply.
3. To accommodate the differences between the various interruptible capacity services within the Union, the adjacent transmission system operators shall implement and coordinate the joint procedures provided for in this Article on an interconnection point by interconnection point basis.

*Article 36***Reasons for interruptions**

Transmission system operators shall include reasons for interruptions either directly in their interruptible transport contracts or in the general terms and conditions that govern these contracts. Reasons for interruptions can include but are not limited to gas quality, pressure, temperature, flow patterns, use of firm contracts, maintenance, up- or downstream constraints, public service obligations and capacity management deriving from congestion management procedures.

CHAPTER VII

CAPACITY BOOKING PLATFORMS*Article 37***Capacity booking platforms**

1. Transmission system operators shall apply this Regulation by offering capacity by means of one or a limited number of joint web-based booking platforms. Transmission system operators can operate such platforms themselves or via an agreed party that, where necessary, acts on behalf of them towards the network users.
2. Joint booking platforms shall apply the following rules:
 - (a) the rules and procedures for the offer and allocation of all capacity in accordance with Chapter III shall apply;
 - (b) the establishment of a process to offer firm bundled capacity in accordance with Chapter IV shall have priority;
 - (c) functionalities for network users to offer and obtain secondary capacity shall be provided;
 - (d) in order to use the services of the booking platforms network users shall accede to and be compliant with all applicable legal and contractual requirements that enable them to book and use capacity on the relevant transmission system operators' network under a transport contract;
 - (e) capacity at any single interconnection point or virtual interconnection point shall be offered at not more than one booking platform but a transmission system operator may offer capacity at different interconnection or virtual interconnection points through different booking platforms.

3. Within 6 months from entry into force of this Regulation all transmission system operators shall reach a contractual agreement to use a single booking platform to offer capacity on the two sides of their respective interconnection points or virtual interconnection points. If no agreement is reached by the transmission system operators within that period, the matter shall be referred immediately by the transmission system operators to the respective national regulatory authorities. The national regulatory authorities shall then, within a period of a further 6 months from the date of referral, jointly select the single booking platform for a period not longer than 3 years. If the national regulatory authorities are not able to jointly select a single booking platform within 6 months from the date of referral, Article 8(1) of the Regulation (EC) No 713/2009 shall apply. The Agency shall decide on the booking platform to be used, for a period not longer than 3 years, at the specific interconnection point or virtual interconnection point.
4. In case the selection of the booking platform at an interconnection point or virtual interconnection point was made either by the national regulatory authorities or by the Agency, the transmission system operators shall reach a contractual agreement on the use of a booking platform at the latest by the end of the period referred to in the last sentence of paragraph 3, for which the selection was made by the national regulatory authorities or the Agency. If no contractual agreement is reached, the procedure set out in paragraph 3 shall be resumed.
5. The establishment of one or a limited number of joint booking platforms shall facilitate and simplify capacity booking at interconnection points across the Union for the benefit of network users. Where appropriate, ENTSOG and the Agency shall facilitate this process.
6. For increases in technical capacity, the allocation results shall be published on the booking platform which is used for auctioning existing capacity, and for new capacity created where none currently exists, on a joint booking platform agreed by the relevant transmission system operators.

CHAPTER VIII

FINAL PROVISIONS

Article 38

Implementation monitoring

1. In order to assist the Agency in its monitoring duties pursuant to Article 9(1) of Regulation (EC) No 715/2009, ENTSOG shall monitor and analyse how transmission system operators have implemented this Regulation in accordance with Article 8(8) and (9) of Regulation (EC) No 715/2009. In particular, ENTSOG shall ensure the completeness and correctness of all relevant information from transmission system operators. ENTSOG shall submit to the Agency that information by 31 March 2019.
2. Transmission system operators shall submit to ENTSOG all information required by ENTSOG to comply with its obligations pursuant to paragraph 1 by 31 December 2018.
3. The confidentiality of commercially sensitive information shall be preserved by ENTSOG and the Agency.
4. Before 6 April 2019, the Agency shall, in the framework of its monitoring tasks, report on the conditionalities stipulated in contracts for standard capacity products for firm capacity, having regard to their effect on efficient network use and the integration of the Union gas markets. The Agency shall be supported in its assessment by the relevant national regulatory authorities and transmission system operators.

Article 39

Repeal

Regulation (EU) No 984/2013 is repealed.

References made to the repealed Regulation shall be construed as references to this Regulation.

*Article 40***Entry into force**

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply as from entry into force.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 16 March 2017.

For the Commission
The President
Jean-Claude JUNCKER

COMMISSION REGULATION (EU) 2017/460
of 16 March 2017
establishing a network code on harmonised transmission tariff structures for gas
(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005 ⁽¹⁾, and in particular Article 6(11) thereof,

Whereas:

- (1) In line with Regulation (EC) No 715/2009, it is necessary to establish a network code on harmonised transmission tariff structures for gas, and set out the Union-wide rules which have the objectives of contributing to market integration, enhancing security of supply and promoting the interconnection between gas networks.
- (2) A crucial step in reaching these objectives is to increase the transparency of transmission tariff structures and procedures towards setting them. Therefore, it is necessary to set out the requirements for publishing the information related to the determination of the revenues of transmission system operators and to the derivation of different transmission and non-transmission tariffs. These requirements should enable network users to understand better the tariffs set for both transmission services and non-transmission services, as well as how such tariffs have changed, are set and may change. Additionally, network users should be able to understand the costs underlying transmission tariffs and to forecast transmission tariffs to a reasonable extent. The transparency requirements set out in this Regulation further harmonise the rule laid down in point 3.1.2(a) of Annex I to Regulation (EC) No 715/2009.
- (3) After the introduction of the concept of the entry-exit system by Regulation (EC) No 715/2009, transmission costs are no longer directly associated to one specific route as entry and exit capacity can be contracted separately, and network users can have gas transported from any entry to any exit point. Under this framework, the transmission system operator decides the most efficient way of flowing gas through the system. Hence, in order to achieve and ensure a reasonable level of cost reflectivity and predictability in such a system, transmission tariffs need to be based on a reference price methodology using specific cost drivers. The guiding principles in order to apply a consistent and transparent reference price methodology should be set out. The obligation to consult on the proposed reference price methodology should be laid down. Where the proposed reference price methodology is other than the capacity weighted distance reference price methodology, the latter should serve as a counterfactual for comparison with the proposed reference price methodology.
- (4) In order to avoid double charging for transmission to and from storage facilities, this Regulation should set a minimum discount acknowledging the general contribution to system flexibility and security of supply of such infrastructure. Storage facilities with direct access to the transmission systems of two or more transmission system operators in directly connected entry-exit systems, or simultaneously to a transmission system and a distribution system allow for transporting gas between directly connected systems. Applying a discount at entry points from or exit points to storage facilities in cases where storage facilities are used to transport gas between directly connected systems would benefit these network users compared to other network users booking capacity products without a discount at interconnection points or using storage facilities to transport gas within the same system. This Regulation should introduce mechanisms to avoid such discrimination.
- (5) In order to promote security of supply, the granting of discounts should be considered for entry points from LNG facilities, and at entry points from and exit points to infrastructure developed with the purpose of ending the isolation of Member States in respect of their gas transmission systems.

⁽¹⁾ OJ L 211, 14.8.2009, p. 36.

- (6) Transmission system operators in certain entry-exit systems transport significantly more gas into other systems than for consumption into their own entry-exit system. Consequently, reference price methodologies should include safeguards required to shelter such captive customers from risks related to large transit flows.
- (7) In order to promote stability of transmission tariffs for network users, to foster financial stability and to avoid detrimental effects on the revenue and cash flow positions of transmission system operators, principles for revenue reconciliation should be set out.
- (8) In addition, rules should be set out on tariff principles for incremental capacity realised in a market-based manner according to the process set out in Articles 26 to 30 of Commission Regulation (EU) 2017/459 ⁽¹⁾. In case realisation of incremental capacity leads to a level of cross-subsidisation that cannot be justified, as captive costumers would be exposed to a large share of the volume risk, this Regulation should introduce mechanisms to alleviate such risks.
- (9) This Regulation should be applicable to the non-exempted part of major new infrastructures which have received an exemption pursuant to Article 36 of Directive 2009/73/EC of the European Parliament and of the Council ⁽²⁾ from Article 41(6), (8) and (10) of that Directive. In cases where the specific nature of interconnectors has been acknowledged at European level by an exemption in accordance with Article 36 of Directive 2009/73/EC or by other means, national regulatory authorities should have the power to grant a derogation from requirements of this Regulation which would jeopardise the efficient operation of such interconnectors.
- (10) This Regulation should be without prejudice to application of Union and national competition rules, in particular the prohibitions of restrictive agreements (Article 101 of the Treaty on the Functioning of the European Union) and of abuse of a dominant position (Article 102 of the Treaty on the Functioning of the European Union). The harmonised transmission tariff structures put in place should be designed in such a way as to avoid foreclosure of downstream supply markets.
- (11) National regulatory authorities and transmission system operators should have regard to best practices and endeavours to harmonise processes for the implementation of this Regulation. Acting in accordance with Article 7 of Regulation (EC) No 713/2009 of the European Parliament and of the Council ⁽³⁾, the Agency for the Cooperation of Energy Regulators and the national regulatory authorities should ensure that rules on harmonised transmission tariff structures for gas are implemented across the Union in the most effective way.
- (12) The measures provided for in this Regulation are in accordance with the opinion of the Committee established in accordance with Article 51 of Directive 2009/73/EC,

HAS ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter

This Regulation establishes a network code setting out the rules on harmonised transmission tariff structures for gas, including rules on the application of a reference price methodology, the associated consultation and publication requirements as well as the calculation of reserve prices for standard capacity products.

⁽¹⁾ Commission Regulation (EU) 2017/459 of 16 March 2017 establishing a Network Code on Capacity Allocation Mechanisms in Gas Transmission Systems and repealing Regulation (EU) No 984/2013 (see page 1 of this Official Journal).

⁽²⁾ Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (OJ L 211, 14.8.2009, p. 94).

⁽³⁾ Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators (OJ L 211, 14.8.2009, p. 1).

*Article 2***Scope**

1. This Regulation shall apply to all entry points and all exit points of gas transmission networks with the exception of Chapters III, V, VI, Article 28, Article 31(2) and (3) and Chapter IX which shall apply only to interconnection points. Chapters III, V, VI, Article 28 and Chapter IX shall apply to entry points from third countries or exit points to third countries, or both, where the national regulatory authority takes a decision to apply Regulation (EU) 2017/459 at those points.
2. This Regulation shall not apply in Member States which have been granted a derogation under Article 49 of Directive 2009/73/EC, for the duration of that derogation.

*Article 3***Definitions**

For the purposes of this Regulation, the definitions in Article 2 of Regulation (EC) No 715/2009, Article 3 of Regulation (EU) 2017/459, Article 3 of Commission Regulation (EU) No 312/2014 ⁽¹⁾, Article 2 of Commission Regulation (EU) 2015/703 ⁽²⁾ as well as Article 2 of Directive 2009/73/EC shall apply. In addition, the following definitions shall apply:

- (1) 'reference price' means the price for a capacity product for firm capacity with a duration of one year, which is applicable at entry and exit points and which is used to set capacity-based transmission tariffs;
- (2) 'reference price methodology' means the methodology applied to the part of the transmission services revenue to be recovered from capacity-based transmission tariffs with the aim of deriving reference prices;
- (3) 'non-price cap regime' means a regulatory regime, such as the revenue cap, rate of return and cost plus regime, under which the allowed revenue for the transmission system operator is set in accordance with Article 41(6)(a) of Directive 2009/73/EC;
- (4) 'non-transmission services revenue' means the part of the allowed or target revenue which is recovered by non-transmission tariffs;
- (5) 'regulatory period' means the time period for which the general rules for the allowed or target revenue are set in accordance with Article 41(6)(a) of Directive 2009/73/EC;
- (6) 'transmission services revenue' means the part of the allowed or target revenue which is recovered by transmission tariffs;
- (7) 'transmission tariffs' means the charges payable by network users for transmission services provided to them;
- (8) 'intra-system network use' means transporting gas within an entry-exit system to customers connected to that same entry-exit system;
- (9) 'cross-system network use' means transporting gas within an entry-exit system to customers connected to another entry-exit system;
- (10) 'homogeneous group of points' means a group of one of the following types of points: entry interconnection points, exit interconnection points, domestic entry points, domestic exit points, entry points from storage facilities, exit points to storage facilities, entry points from liquefied natural gas facilities (hereinafter, referred to as 'LNG facilities'), exit points to LNG facilities and entry points from production facilities;

⁽¹⁾ Commission Regulation (EU) No 312/2014 of 26 March 2014 establishing a Network Code on Gas Balancing of Transmission Networks (OJ L 91, 27.3.2014, p. 15).

⁽²⁾ Commission Regulation (EU) 2015/703 of 30 April 2015 establishing a network code on interoperability and data exchange rules (OJ L 113, 1.5.2015, p. 13).

- (11) 'allowed revenue' means the sum of transmission services revenue and non-transmission services revenue for the provision of services by the transmission system operator for a specific time period within a given regulatory period which such transmission system operator is entitled to obtain under a non-price cap regime and which is set in accordance with Article 41(6)(a) of Directive 2009/73/EC;
- (12) 'transmission services' means the regulated services that are provided by the transmission system operator within the entry-exit system for the purpose of transmission;
- (13) 'non-transmission tariffs' means the charges payable by network users for non-transmission services provided to them;
- (14) 'target revenue' means the sum of expected transmission services revenue calculated in accordance with the principles set out in Article 13(1) of Regulation (EC) No 715/2009 and expected non-transmission services revenue for the provision of services by the transmission system operator for a specific time period within a given regulatory period under a price cap regime;
- (15) 'non-transmission services' means the regulated services other than transmission services and other than services regulated by Regulation (EU) No 312/2014 that are provided by the transmission system operator;
- (16) 'multiplier' means the factor applied to the respective proportion of the reference price in order to calculate the reserve price for a non-yearly standard capacity product;
- (17) 'price cap regime' means a regulatory regime under which a maximum transmission tariff based on the target revenue is set in accordance with Article 41(6)(a) of Directive 2009/73/EC;
- (18) 'cost driver' means a key determinant of the transmission system operator's activity which is correlated to the costs of that transmission system operator, such as distance or technical capacity;
- (19) 'cluster of entry or exit points' means a homogeneous group of points or group of entry points or of exit points located within the vicinity of each other and which are considered as, respectively, one entry point or one exit point for the application of the reference price methodology;
- (20) 'flow scenario' means a combination of an entry point and an exit point which reflects the use of the transmission system according to likely supply and demand patterns and for which there is at least one pipeline route allowing to flow gas into the transmission network at that entry point and out of the transmission network at that exit point, irrespective of whether the capacity is contracted at that entry point and that exit point;
- (21) 'seasonal factor' means the factor reflecting the variation of demand within the year which may be applied in combination with the relevant multiplier;
- (22) 'fixed payable price' means a price calculated in accordance with Article 24(b) where the reserve price is not subject to any adjustments;
- (23) 'tariff period' means the time period during which a particular level of reference price is applicable, which minimum duration is one year and maximum duration is the duration of the regulatory period;
- (24) 'regulatory account' means the account aggregating at least under- and over-recovery of the transmission services revenue under a non-price cap regime;
- (25) 'auction premium' means the difference between the clearing price and the reserve price in an auction;
- (26) 'floating payable price' means a price calculated in accordance with Article 24(a) where the reserve price is subject to adjustments such as revenue reconciliation, adjustment of the allowed revenue or adjustment of the forecasted contracted capacity.

Article 4

Transmission and non-transmission services and tariffs

1. A given service shall be considered a transmission services where both of the following criteria are met:
 - (a) the costs of such service are caused by the cost drivers of both technical or forecasted contracted capacity and distance;
 - (b) the costs of such service are related to the investment in and operation of the infrastructure which is part of the regulated asset base for the provision of transmission services.

Where any of the criteria set out in points (a) and (b) are not complied with, a given service may be attributed to either transmission or non-transmission services subject to the findings of the periodic consultation by the transmission system operator(s) or the national regulatory authority and decision by the national regulatory authority, as set out in Articles 26 and 27.

2. Transmission tariffs may be set in a manner as to take into account the conditions for firm capacity products.
3. The transmission services revenue shall be recovered by capacity-based transmission tariffs.

As an exception, subject to the approval of the national regulatory authority, a part of the transmission services revenue may be recovered only by the following commodity-based transmission tariffs which are set separately from each other:

- (a) a flow-based charge, which shall comply with all of the following criteria:
 - (i) levied for the purpose of covering the costs mainly driven by the quantity of the gas flow;
 - (ii) calculated on the basis of forecasted or historical flows, or both, and set in such a way that it is the same at all entry points and the same at all exit points;
 - (iii) expressed in monetary terms or in kind.
 - (b) a complementary revenue recovery charge, which shall comply with all of the following criteria:
 - (i) levied for the purpose of managing revenue under- and over-recovery;
 - (ii) calculated on the basis of forecasted or historical capacity allocations and flows, or both;
 - (iii) applied at points other than interconnection points;
 - (iv) applied after the national regulatory authority has made an assessment of its cost-reflectivity and its impact on cross-subsidisation between interconnection points and points other than interconnection points.
4. The non-transmission services revenue shall be recovered by non-transmission tariffs applicable for a given non-transmission service. Such tariffs shall be as follows:
 - (a) cost-reflective, non-discriminatory, objective and transparent;
 - (b) charged to the beneficiaries of a given non-transmission service with the aim of minimising cross-subsidisation between network users within or outside a Member State, or both.

Where according to the national regulatory authority a given non-transmission service benefits all network users, the costs for such service shall be recovered from all network users.

Article 5

Cost allocation assessments

1. The national regulatory authority or the transmission system operator, as decided by the national regulatory authority, shall perform the following assessments and shall publish them as part of the final consultation referred to in Article 26:
 - (a) a cost allocation assessment relating to the transmission services revenue to be recovered by capacity-based transmission tariffs and based exclusively on the cost drivers of
 - (i) technical capacity; or
 - (ii) forecasted contracted capacity; or
 - (iii) technical capacity and distance; or
 - (iv) forecasted contracted capacity and distance;
 - (b) a cost allocation assessment relating to the transmission services revenue to be recovered by commodity-based transmission tariffs, if any, and based exclusively on the cost drivers of:
 - (i) the amount of gas flows; or
 - (ii) the amount of gas flows and distance.

2. The cost allocation assessments shall indicate the degree of cross-subsidisation between intra-system and cross-system network use based on the proposed reference price methodology.
3. The cost allocation assessment referred to in paragraph 1(a) shall be carried out as follows:

- (a) the transmission services capacity revenue to be obtained from intra-system network use at both all entry points and all exit points shall be divided by the value of the relevant capacity cost driver(s) for intra-system network use in order to calculate the intra-system capacity ratio, which is defined as a monetary unit per measurement unit, such as in euro per MWh/day, in accordance with the following formula:

$$\text{Ratio}_{cap}^{intra} = \frac{\text{Revenue}_{cap}^{intra}}{\text{Driver}_{cap}^{intra}}$$

Where:

$\text{Revenue}_{cap}^{intra}$ is the revenue, defined in a monetary unit such as the euro, which is obtained from capacity tariffs and charged for intra-system network use;

$\text{Driver}_{cap}^{intra}$ is the value of capacity-related cost driver(s) for intra-system network use, such as the sum of the average daily forecasted capacities contracted at each intra-system entry point and intra-system exit point, or cluster of points, and is defined in a measurement unit such as MWh/day.

- (b) the transmission services capacity revenue to be obtained from cross-system network use at both all entry points and all exit points shall be divided by the value of the relevant capacity cost driver(s) for cross-system network use in order to calculate the cross-system capacity ratio, which is defined as a monetary unit per measurement unit, such as in euro per MWh/day, in accordance with the following formula:

$$\text{Ratio}_{cap}^{cross} = \frac{\text{Revenue}_{cap}^{cross}}{\text{Driver}_{cap}^{cross}}$$

Where:

$\text{Revenue}_{cap}^{cross}$ is the revenue, defined in a monetary unit such as the euro, which is obtained from capacity tariffs and charged for cross-system network use;

$\text{Driver}_{cap}^{cross}$ is the value of capacity-related cost driver(s) for cross-system network use, such as the sum of the average daily forecasted capacities contracted at each cross-system entry and exit point, or cluster of points, and is defined in a measurement unit such as MWh/day.

- (c) the capacity cost allocation comparison index between the ratios referred to in points (a) and (b), which is defined in percentage, shall be calculated in accordance with the following formula:

$$\text{Comp}_{cap} = \frac{2 \times \left| \text{Ratio}_{cap}^{intra} - \text{Ratio}_{cap}^{cross} \right|}{\text{Ratio}_{cap}^{intra} + \text{Ratio}_{cap}^{cross}} \times 100 \%$$

4. The cost allocation assessment referred to in paragraph 1(b) shall be carried out as follows:

- (a) the transmission services commodity revenue to be obtained from intra-system network use at both all entry points and all exit points shall be divided by the value of the relevant commodity cost driver(s) for intra-system network use in order to calculate the intra-system commodity ratio, which is defined as a monetary unit per measurement unit, such as in euro per MWh, in accordance with the following formula:

$$\text{Ratio}_{comm}^{intra} = \frac{\text{Revenue}_{comm}^{intra}}{\text{Driver}_{comm}^{intra}}$$

Where:

$\text{Revenue}_{comm}^{intra}$ is the revenue, defined in a monetary unit such as the euro, which is obtained from commodity tariffs and charged for intra-system network use;

$\text{Driver}_{comm}^{intra}$ is the value of commodity-related cost driver(s) for intra-system network use, such as the sum of the average daily forecasted flows at each intra-system entry and exit point, or cluster of points, and is defined in a measurement unit such as MWh.

- (b) the transmission services commodity revenue to be obtained from cross-system network use at both all entry points and all exit points shall be divided by the value of the relevant commodity cost driver(s) for cross-system network use in order to calculate the cross-system commodity ratio, which is defined as a monetary unit per measurement unit, such as in euro per MWh, in accordance with the following formula:

$$\text{Ratio}_{\text{comm}}^{\text{cross}} = \frac{\text{Revenue}_{\text{comm}}^{\text{cross}}}{\text{Driver}_{\text{comm}}^{\text{cross}}}$$

Where:

$\text{Revenue}_{\text{comm}}^{\text{cross}}$ is the revenue, defined in a monetary unit such as the euro, which is obtained from commodity tariffs and charged on cross-system network use;

$\text{Driver}_{\text{comm}}^{\text{cross}}$ is the value of commodity-related cost driver(s) for cross-system network use, such as the sum of the average daily forecasted flows at each cross-system entry and exit point, or cluster of points, and is defined in a measurement unit such as MWh.

- (c) the commodity cost allocation comparison index between the ratios referred to in points (a) and (b), which is defined in percentage, shall be calculated in accordance with the following formula:

$$\text{Comp}_{\text{comm}} = \frac{2 \times |\text{Ratio}_{\text{comm}}^{\text{intra}} - \text{Ratio}_{\text{comm}}^{\text{cross}}|}{\text{Ratio}_{\text{comm}}^{\text{intra}} + \text{Ratio}_{\text{comm}}^{\text{cross}}} \times 100 \%$$

5. The transmission services revenue to be obtained from intra-system network use at entry points referred to in paragraphs 3(a) and 4(a) shall be calculated as follows:

- (a) the amount of allocated capacity or, respectively, flows attributed to the provision of transmission services for cross-system network use at all entry points shall be deemed equal to the amount of capacity or, respectively, flows attributed to the provision of transmission services for cross-system network use at all exit points;
- (b) the capacity and, respectively, flows, determined as set out in point (a) of this paragraph shall be used to calculate the transmission services revenue to be obtained from cross-system network use at entry points;
- (c) the difference between the overall transmission services revenue to be obtained at entry points and the resulting value referred to in point (b) of this paragraph shall be equal to the transmission services revenue to be obtained from intra-system network use at entry points.

6. Where distance is used as a cost driver in combination with technical or forecasted contracted capacity or flows, the capacity weighted average distance or, respectively, commodity weighted average distance shall be used. Where the results of the capacity, or respectively commodity cost allocation comparison indexes referred to in paragraph 3(c) or, respectively paragraph 4(c), exceed 10 percent, the national regulatory authority shall provide the justification for such results in the decision referred to in Article 27(4).

CHAPTER II

REFERENCE PRICE METHODOLOGIES

Article 6

Reference price methodology application

1. The reference price methodology shall be set or approved by the national regulatory authority as set out in Article 27. The reference price methodology to be applied shall be subject to the findings of the periodic consultations carried out in accordance with Article 26 by the transmission system operator(s) or the national regulatory authority, as decided by the national regulatory authority.

2. The application of the reference price methodology shall provide a reference price.
3. The same reference price methodology shall be applied to all entry and exit points in a given entry-exit system subject to the exceptions set out in Articles 10 and 11.
4. Adjustments to the application of the reference price methodology to all entry and exit points may only be made in accordance with Article 9 or as a result of one or more of the following:
 - (a) benchmarking by the national regulatory authority, whereby reference prices at a given entry or exit point are adjusted so that the resulting values meet the competitive level of reference prices;
 - (b) equalisation by the transmission system operator(s) or the national regulatory authority, as decided by the national regulatory authority, whereby the same reference price is applied to some or all points within a homogeneous group of points;
 - (c) rescaling by the transmission system operator(s) or the national regulatory authority, as decided by the national regulatory authority, whereby the reference prices at all entry or all exit points, or both, are adjusted either by multiplying their values by a constant or by adding to or subtracting from their values a constant.

Article 7

Choice of a reference price methodology

The reference price methodology shall comply with Article 13 of Regulation (EC) No 715/2009 and with the following requirements. It shall aim at:

- (a) enabling network users to reproduce the calculation of reference prices and their accurate forecast;
- (b) taking into account the actual costs incurred for the provision of transmission services considering the level of complexity of the transmission network;
- (c) ensuring non-discrimination and prevent undue cross-subsidisation including by taking into account the cost allocation assessments set out in Article 5;
- (d) ensuring that significant volume risk related particularly to transports across an entry-exit system is not assigned to final customers within that entry-exit system;
- (e) ensuring that the resulting reference prices do not distort cross-border trade.

Article 8

Capacity weighted distance reference price methodology

1. The parameters for the capacity weighted distance reference price methodology shall be as follows:
 - (a) the part of the transmission services revenue to be recovered from capacity-based transmission tariffs;
 - (b) the forecasted contracted capacity at each entry point or a cluster of entry points and at each exit point or a cluster of exit points;
 - (c) where entry points and exit points can be combined in a relevant flow scenario, the shortest distance of the pipeline routes between an entry point or a cluster of entry points and an exit point or a cluster of exit points;
 - (d) the combinations of entry points and exit points, where some entry points and some exit points can be combined in a relevant flow scenario;
 - (e) the entry-exit split referred to in Article 30(1)(b)(v)(2) shall be 50/50.

Where entry points and exit points cannot be combined in a flow scenario, this combination of entry and exit points shall not be taken into account.

2. The reference prices shall be derived in the following sequential steps:
- (a) the weighted average distance for each entry point or each cluster of entry points and for each exit point or each cluster of exit points shall be calculated, taking into account, where relevant, the combinations referred to in paragraph 1(d), in accordance with the following respective formulas:

- (i) for an entry point or cluster of entry points, as the sum of the products of capacity at each exit point or cluster of exit points and the distance from this entry point or cluster of entry points to each exit point or cluster of exit points, divided by the sum of capacities at each exit point or cluster of exit points:

$$AD_{En} = \frac{\sum_{all\ Ex} CAP_{Ex} \times D_{En,Ex}}{\sum_{all\ Ex} CAP_{Ex}}$$

Where:

AD_{En} is the weighted average distance for an entry point or a cluster of entry points;

CAP_{Ex} is the forecasted contracted capacity at an exit point or a cluster of exit points;

$D_{En,Ex}$ is the distance between a given entry point or a cluster of entry points and a given exit point or a cluster of exit points referred to in paragraph 1(c).

- (ii) for an exit point or cluster of exit points, as the sum of the products of capacity at each entry point or cluster of entry points and the distance to this exit point or cluster of exit points from each entry point or cluster of entry points, divided by the sum of capacities at each entry point or cluster of entry points:

$$AD_{Ex} = \frac{\sum_{all\ En} CAP_{En} \times D_{En,Ex}}{\sum_{all\ En} CAP_{En}}$$

Where:

AD_{Ex} is the weighted average distance for an exit point or a cluster of exit points;

CAP_{En} is the forecasted contracted capacity at an entry point or a cluster of entry points;

$D_{En,Ex}$ is the distance between a given entry point or a cluster of entry points and a given exit point or a cluster of exit points referred to in paragraph 1(c).

- (b) the weight of cost for each entry point or each cluster of entry points and for each exit point or each cluster of exit points shall be calculated in accordance with the following respective formulas:

$$W_{c,En} = \frac{CAP_{En} \times AD_{En}}{\sum_{all\ En} CAP_{En} \times AD_{En}}$$

$$W_{c,Ex} = \frac{CAP_{Ex} \times AD_{Ex}}{\sum_{all\ Ex} CAP_{Ex} \times AD_{Ex}}$$

Where:

$W_{c,En}$ is the weight of cost for a given entry point or a cluster of entry points;

$W_{c,Ex}$ is the weight of cost for a given exit point or a cluster of exit points;

AD_{En} is the weighted average distance for an entry point or a cluster of entry points;

AD_{Ex} is the weighted average distance for an exit point or a cluster of exit points;

CAP_{En} is the forecasted contracted capacity at an entry point or a cluster of entry points;

CAP_{Ex} is the forecasted contracted capacity at an exit point or a cluster of exit points.

- (c) the part of the transmission services revenue to be recovered from capacity-based transmission tariffs at all entry points and the part of the transmission services revenue to be recovered from capacity-based transmission tariffs at all exit points shall be identified by applying the entry-exit split;

- (d) the part of the transmission services revenue to be recovered from capacity-based transmission tariffs at each entry point or each cluster of entry points and for each exit point or each cluster of exit points shall be calculated in accordance with the following respective formulas:

$$R_{En} = W_{c,En} \times R_{\Sigma En}$$

$$R_{Ex} = W_{c,Ex} \times R_{\Sigma Ex}$$

Where:

$W_{c,En}$ is the weight of cost for a given entry point or a cluster of entry points;

$W_{c,Ex}$ is the weight of cost for a given exit point or a cluster of exit points;

R_{En} is the part of the transmission services revenue to be recovered from capacity-based transmission tariffs at an entry point or a cluster of entry points;

R_{Ex} is the part of the transmission services revenue to be recovered from capacity-based transmission tariffs at an exit point or a cluster of exit points;

$R_{\Sigma En}$ is the part of the transmission services revenue to be recovered from capacity-based transmission tariffs at all entry points;

$R_{\Sigma Ex}$ is the part of the transmission services revenue to be recovered from capacity-based transmission tariffs at all exit points.

- (e) the resulting values referred to in point (d) shall be divided by the forecasted contracted capacity at each entry point or each cluster of entry points and at each exit point or each cluster of exit points in accordance with the following respective formulas:

$$T_{En} = \frac{R_{En}}{CAP_{En}}$$

$$T_{Ex} = \frac{R_{Ex}}{CAP_{Ex}}$$

Where:

T_{En} is the reference price at an entry point or each entry point within a cluster of entry points;

T_{Ex} is the reference price at an exit point or each exit point within a cluster of exit points;

CAP_{En} is the forecasted contracted capacity at an entry point or a cluster of entry points;

CAP_{Ex} is the forecasted contracted capacity at an exit point or a cluster of exit points.

Article 9

Adjustments of tariffs at entry points from and exit points to storage facilities and at entry points from LNG facilities and infrastructure ending isolation

1. A discount of at least 50 % shall be applied to capacity-based transmission tariffs at entry points from and exit points to storage facilities, unless and to the extent a storage facility which is connected to more than one transmission or distribution network is used to compete with an interconnection point.
2. At entry points from LNG facilities, and at entry points from and exit points to infrastructure developed with the purpose of ending the isolation of Member States in respect of their gas transmission systems, a discount may be applied to the respective capacity-based transmission tariffs for the purposes of increasing security of supply.

Article 10

Rules for entry-exit systems within a Member State where more than one transmission system operator is active

1. In accordance with Article 6(3), the same reference price methodology shall be applied jointly by all transmission system operators within an entry-exit system within a Member State.

2. As an exception to paragraph 1 and subject to paragraph 3, the national regulatory authority may decide:
 - (a) that the same reference price methodology is applied separately by each transmission system operator within an entry-exit system;
 - (b) as an exception to Article 6(3), when planning entry-exit system mergers, on intermediate steps allowing for different reference price methodologies to be applied separately by each transmission system operator within the entry-exit systems concerned. Such a decision shall set out the time period for the application of the intermediate steps. The national regulatory authority or the transmission system operators, as decided by the national regulatory authority, shall carry out an impact assessment and a cost benefit analysis prior to implementing such intermediate steps.

As a result of applying different reference price methodologies separately, the transmission services revenue of the transmission system operators involved shall be adjusted accordingly.

3. In order to allow for the proper application of the same reference price methodology jointly, an effective inter-transmission system operator compensation mechanism shall be established.

The decision referred to in paragraph 2(a) or, respectively, paragraph 2(b) may be taken where the following conditions are complied with:

- (a) an effective inter-transmission system operator compensation mechanism is established with the aim to:
 - (i) prevent detrimental effects on the transmission services revenue of the transmission system operators involved;
 - (ii) avoid cross-subsidisation between intra-system and cross-system network use;
- (b) such separate application ensures that the costs correspond to those of an efficient transmission system operator.

4. The maximum time period set out in the decision referred to in paragraph 2(a) or, respectively, paragraph 2(b) shall be no later than five years as from the date referred to in Article 38(2). Sufficiently in advance of the date set out in that decision, the national regulatory authority may decide to postpone this date.

5. At the same time as the final consultation in accordance with Article 26, the national regulatory authority shall conduct a consultation on the principles of an effective inter-transmission system operator compensation mechanism referred to in paragraph 3 and its consequences on the tariff levels. The inter-transmission system operator compensation mechanism shall be applied in accordance with Article 41(6)(a) of Directive 2009/73/EC and published together with the consultation responses received.

6. The reserve price referred to in Article 22(1) shall be calculated as set out therein. Where paragraph 2 is applied, the following two calculations shall be carried out:

- (a) the calculation set out in Article 22(1) shall be carried out by each transmission system operator involved;
- (b) the weighted average of the resulting values referred to in point (a) shall be calculated in accordance with the formula set out in Article 22(1)(b), *mutatis mutandis*.

7. The final consultation referred to in Article 26 shall be conducted by all transmission system operators jointly or by the national regulatory authority. Where paragraph 2 is applied, such consultation shall be conducted by each transmission system operator separately or by the national regulatory authority, as decided by the national regulatory authority.

8. The information referred to in Articles 29 and 30 shall be published on an aggregated level for all transmission system operators involved. Where paragraph 2 is applied, the following two actions shall be carried out:

- (a) such information shall be published individually for each transmission system operator involved;
- (b) the information on the entry-exit split referred to in Article 30(1)(b)(v)(2) for the entry-exit system shall be published by the national regulatory authority.

*Article 11***Rules for entry-exit systems covering more than one Member State where more than one transmission system operator is active**

The same reference price methodology may be applied jointly or separately or different reference price methodologies may be applied separately where more than one transmission system operator is active in an entry-exit system covering more than one Member State.

CHAPTER III

RESERVE PRICES*Article 12***General provisions**

1. For yearly standard capacity products for firm capacity, the reference prices shall be used as reserve prices. For non-yearly standard capacity products for firm capacity, the reserve prices shall be calculated as set out in this Chapter. For both yearly and non-yearly standard capacity products for interruptible capacity, the reserve prices shall be calculated as set out in this Chapter. The level of multipliers and of seasonal factors, set out in accordance with Article 13, and the level of discounts for the standard capacity products for interruptible capacity, set out in accordance with Article 16, may be different at interconnection points.
2. Where the tariff period and gas year do not coincide, separate reserve prices may be applied respectively:
 - (a) for the time period from 1 October to the end of the prevailing tariff period; and
 - (b) for the time period from the beginning of the tariff period following the prevailing tariff period to 30 September.
3. The respective reserve prices published according to Article 29 shall be binding for the subsequent gas year or beyond the subsequent gas year in case of fixed payable price, beginning after the annual yearly capacity auction, unless:
 - (a) the discounts for monthly and daily standard capacity products for interruptible capacity are recalculated within the tariff period if the probability of interruption referred to in Article 16 changes by more than twenty percent;
 - (b) the reference price is recalculated within the tariff period due to exceptional circumstances under which the non-adjustment of tariff levels would jeopardise the operation of the transmission system operator.

*Article 13***Level of multipliers and seasonal factors**

1. The level of multipliers shall fall within the following ranges:
 - (a) for quarterly standard capacity products and for monthly standard capacity products, the level of the respective multiplier shall be no less than 1 and no more than 1,5;
 - (b) for daily standard capacity products and for within-day standard capacity products, the level of the respective multiplier shall be no less than 1 and no more than 3. In duly justified cases, the level of the respective multipliers may be less than 1, but higher than 0, or higher than 3.
2. Where seasonal factors are applied, the arithmetic mean over the gas year of the product of the multiplier applicable for the respective standard capacity product and the relevant seasonal factors shall be within the same range as for the level of the respective multipliers set out in paragraph 1.

3. By 1 April 2023, the maximum level of multipliers for daily standard capacity products and for within-day standard capacity products shall be no more than 1,5, if by 1 April 2021 the Agency issues a recommendation in accordance with Regulation (EC) No 713/2009 that the maximum level of multipliers should be reduced to this level. This recommendation shall take into account the following aspects related to the use of multipliers and seasonal factors before and as from 31 May 2019:

- (a) changes in booking behaviour;
- (b) impact on the transmission services revenue and its recovery;
- (c) differences between the level of transmission tariffs applicable for two consecutive tariff periods;
- (d) cross-subsidisation between network users having contracted yearly and non-yearly standard capacity products;
- (e) impact on cross-border flows.

Article 14

Calculation of reserve prices for non-yearly standard capacity products for firm capacity in absence of seasonal factors

The reserve prices for non-yearly standard capacity products for firm capacity shall be calculated as follows:

- (a) for quarterly standard capacity products, for monthly standard capacity products and for daily standard capacity products, in accordance with the following formula:

$$P_{st} = (M \times T / 365) \times D$$

Where:

P_{st} is the reserve price for the respective standard capacity product;

M is the level of the multiplier corresponding to the respective standard capacity product;

T is the reference price;

D is the duration of the respective standard capacity product expressed in gas days.

For leap years, the formula shall be adjusted so that the figure 365 is substituted with the figure 366.

- (b) for within-day standard capacity products, in accordance with the following formula:

$$P_{st} = (M \times T / 8760) \times H$$

Where:

P_{st} is the reserve price for the within-day standard capacity product;

M is the level of the corresponding multiplier;

T is the reference price;

H is the duration of the within-day standard capacity product expressed in hours.

For leap years, the formula shall be adjusted so that the figure 8760 is substituted with the figure 8784.

Article 15

Calculation of reserve prices for non-yearly standard capacity products for firm capacity with seasonal factors

1. Where seasonal factors are applied, the reserve prices for non-yearly standard capacity products for firm capacity shall be calculated in accordance with the relevant formulas set out in Article 14 which shall be then multiplied by the respective seasonal factor calculated as set out in paragraphs 2 to 6.

2. The methodology set out in paragraph 3 shall be based on the forecasted flows, unless the quantity of the gas flow at least for one month is equal to 0. In such case, the methodology shall be based on the forecasted contracted capacity.

3. For monthly standard capacity products for firm capacity, the seasonal factors shall be calculated in the following sequential steps:
- (a) for each month within a given gas year the usage of the transmission system shall be calculated on the basis of forecasted flows or forecasted contracted capacity using:
 - (i) the data for the individual interconnection point, where the seasonal factors are calculated for each interconnection point;
 - (ii) the average data on the forecasted flows or the forecasted contracted capacity, where the seasonal factors are calculated for some or all of the interconnection points.
 - (b) the resulting values referred to in point (a) shall be summed up;
 - (c) the usage rate shall be calculated by dividing each of the resulting values referred to in point (a) by the resulting value referred to in point (b);
 - (d) each of the resulting values referred to in point (c) shall be multiplied by 12. Where the resulting values are equal to 0, these values shall be adjusted to whichever of the following is the lower: 0,1 or the lowest of the resulting values other than 0;
 - (e) the initial level of the respective seasonal factors shall be calculated by raising each of the resulting values referred to in point (d) to the same power which is no less than 0 and no more than 2;
 - (f) the arithmetic mean of the products of the resulting values referred to in point (e) and the multiplier for monthly standard capacity products shall be calculated;
 - (g) the resulting value referred to in point (f) shall be compared with the range referred to in Article 13(1), as follows:
 - (i) if this value falls within this range then the level of seasonal factors shall be equal to with the respective resulting values referred to in point (e);
 - (ii) if this value falls outside of this range then point (h) shall apply.
 - (h) the level of seasonal factors shall be calculated as the product of the respective resulting values referred to in point (e) and the correction factor calculated as follows:
 - (i) where the resulting value referred to in point (f) is more than 1,5, the correction factor shall be calculated as 1,5 divided by this value;
 - (ii) where the resulting value referred to in point (f) is less than 1, the correction factor shall be calculated as 1 divided by this value.
4. For daily standard capacity products for firm capacity and within-day standard capacity products for firm capacity, the seasonal factors shall be calculated by carrying out the steps set out in paragraph 3(f) to (h), *mutatis mutandis*.
5. For quarterly standard capacity products for firm capacity, the seasonal factors shall be calculated in sequential steps as follows:
- (a) the initial level of the respective seasonal factors shall be calculated as either of the following:
 - (i) equal to the arithmetic mean of the respective seasonal factors applicable for the three relevant months;
 - (ii) no less than the lowest and no more than the highest level of the respective seasonal factors applicable for the three relevant months.

- (b) the steps set out in paragraph 3(f) to (h) shall be carried out, using the resulting values referred to in point (a), *mutatis mutandis*.
6. For all non-yearly standard capacity products for firm capacity, the values resulting from the calculation referred to in paragraphs 3 to 5 may be rounded up or down.

Article 16

Calculation of reserve prices for standard capacity products for interruptible capacity

1. The reserve prices for standard capacity products for interruptible capacity shall be calculated by multiplying the reserve prices for the respective standard capacity products for firm capacity calculated as set out in Articles 14 or 15, as relevant, by the difference between 100 % and the level of an *ex-ante* discount calculated as set out in paragraphs 2 and 3.

2. An *ex-ante* discount shall be calculated in accordance with the following formula:

$$Di_{\text{ex-ante}} = \text{Pro} \times A \times 100 \%$$

Where:

$Di_{\text{ex-ante}}$ is the level of an *ex-ante* discount;

Pro factor is the probability of interruption which is set or approved in accordance with Article 41(6)(a) of Directive 2009/73/EC pursuant to Article 28, and which refers to the type of standard capacity product for interruptible capacity;

A is the adjustment factor which is set or approved in accordance with Article 41(6)(a) of Directive 2009/73/EC pursuant to Article 28, applied to reflect the estimated economic value of the type of standard capacity product for interruptible capacity, calculated for each, some or all interconnection points, which shall be no less than 1.

3. The Pro factor referred to in paragraph 2 shall be calculated for each, some or all interconnection points per type of standard capacity product for interruptible capacity offered in accordance with the following formula on the basis of forecasted information related to the components of this formula:

$$\text{Pro} = \frac{N \times D_{\text{int}}}{D} \times \frac{\text{CAP}_{\text{av. int}}}{\text{CAP}}$$

Where:

N is the expectation of the number of interruptions over D;

D_{int} is the average duration of the expected interruptions expressed in hours;

D is the total duration of the respective type of standard capacity product for interruptible capacity expressed in hours;

$\text{CAP}_{\text{av. int}}$ is the expected average amount of interrupted capacity for each interruption where such amount is related to the respective type of standard capacity product for interruptible capacity;

CAP is the total amount of interruptible capacity for the respective type of standard capacity product for interruptible capacity.

4. As an alternative to applying *ex-ante* discounts in accordance with paragraph 1, the national regulatory authority may decide to apply an *ex-post* discount, whereby network users are compensated after the actual interruptions incurred. Such *ex-post* discount may only be used at interconnection points where there was no interruption of capacity due to physical congestion in the preceding gas year.

The *ex-post* compensation paid for each day on which an interruption occurred shall be equal to three times the reserve price for daily standard capacity products for firm capacity.

CHAPTER IV

RECONCILIATION OF REVENUE*Article 17***General provisions**

1. Where and to the extent that the transmission system operator functions under a non-price cap regime, the following principles shall apply:
 - (a) the under- or over-recovery of the transmission services revenue shall be minimised having due regard to necessary investments;
 - (b) the level of transmission tariffs shall ensure that the transmission services revenue is recovered by the transmission system operator in a timely manner;
 - (c) significant differences between the levels of transmission tariffs applicable for two consecutive tariff periods shall be avoided to the extent possible.
2. Where and to the extent that the transmission system operator functions under a price cap regime or applies a fixed payable price approach set out in Article 24(b), no revenue reconciliation shall occur and all risks related to under- or over-recovery shall be covered exclusively by the risk premium. In such case Articles 18, 19(1) to (4) and 20 shall not apply.
3. Subject to the requirements of periodic consultations pursuant to Article 26 and subject to approval in accordance with Article 41(6)(a) of Directive 2009/73/EC, non-transmission services revenue may be reconciled as set out in this Chapter, mutatis mutandis.

*Article 18***Under- and over-recovery**

1. The under- or over-recovery of the transmission services revenue shall be equal to:

$$R_A - R$$

Where:

R_A is the actually obtained revenue related to the provision of transmission services;

R is the transmission services revenue.

The values of R_A and R shall be attributed to the same tariff period and, where an effective inter-transmission system operator compensation mechanism referred to in Article 10(3) is established, shall take such mechanism into account.

2. Where the difference calculated in accordance with paragraph 1 is positive, it shall indicate an over-recovery of the transmission services revenue. Where such difference is negative, it shall indicate an under-recovery of the transmission services revenue.

*Article 19***Regulatory account**

1. The regulatory account shall indicate the information referred to in Article 18(1) for a given tariff period and may include other information, such as the difference between the anticipated and the actual cost components.
2. The transmission system operator's under- or over-recovered transmission services revenue shall be attributed to the regulatory account, unless other rules have been enacted in accordance with Article 41(6)(a) of Directive 2009/73/EC.
3. Where incentive mechanisms for capacity sales are implemented, subject to a decision in accordance with Article 41(6)(a) of Directive 2009/73/EC, only a part of the transmission system operator's under- or over-recovery shall be attributed to the regulatory account. In such case, the residual part thereof shall be kept or paid, as relevant, by the transmission system operator.

4. Each transmission system operator shall use one regulatory account.
5. Subject to a decision in accordance with Article 41(6)(a) of Directive 2009/73/EC, the earned auction premium, if any, may be attributed to a specific account separate from the regulatory account referred to in paragraph 4. The national regulatory authority may decide to use this auction premium for reducing physical congestion or, where the transmission system operator functions only under a non-price cap regime, to decrease the transmission tariffs for the next tariff period(s) as set out in Article 20.

Article 20

Reconciliation of regulatory account

1. The full or partial reconciliation of the regulatory account shall be carried out in accordance with the applied reference price methodology and, in addition, by using the charge referred to in Article 4(3)(b), if applied.
2. The reconciliation of the regulatory account shall be carried out pursuant to the rules enacted in accordance with Article 41(6)(a) of Directive 2009/73/EC over a given reconciliation period, meaning the time period over which the regulatory account referred to in Article 19 shall be reconciled.
3. The regulatory account shall be reconciled with the aim of reimbursing to the transmission system operator the under-recovery and of returning to the network users the over-recovery.

CHAPTER V

PRICING OF BUNDLED CAPACITY AND CAPACITY AT VIRTUAL INTERCONNECTION POINTS

Article 21

Pricing of bundled capacity

1. The reserve price for a bundled capacity product shall be equal to the sum of the reserve prices for the capacities contributing to such product. The reserve prices for corresponding entry and exit capacities shall be made available when the bundled capacity product is offered and allocated by means of a joint booking platform referred to in Article 37 of Regulation (EU) 2017/459.
2. The revenue originating from the bundled capacity product sales corresponding to the reserve price for such product shall be attributed to the respective transmission system operators as follows:
 - (a) after each transaction for a bundled capacity product;
 - (b) in proportion to the reserve prices for the capacities contributing to such product.
3. The auction premium originating from the bundled capacity product sales shall be attributed in accordance with the agreement between the respective transmission system operators which is subject to the approval by the national regulatory authority or authorities to be granted no later than three months before the start of the annual yearly capacity auctions. In absence of such approval by all national regulatory authorities involved, the auction premium shall be attributed to the respective transmission system operators equally.
4. Where the interconnection point concerned connects adjacent entry-exit systems of two Member States, the respective national regulatory authorities shall submit the agreement referred to in paragraph 3 to the Agency for information.

Article 22

Pricing of capacity at a virtual interconnection point

1. The reserve price for an unbundled standard capacity product offered at a virtual interconnection point shall be calculated in accordance with either of the following approaches:
 - (a) calculated on the basis of the reference price, where the applied reference price methodology allows for taking into account the established virtual interconnection point;

- (b) equal to the weighted average of the reserve prices, where such average is calculated on the basis of the reference prices for each interconnection point contributing to such virtual interconnection point, where the applied reference price methodology does not allow for taking into account the established virtual interconnection point, in accordance with the following formula:

$$P_{st, VIP} = \frac{\sum_i^n (P_{st, i} \times CAP_i)}{\sum_i^n CAP_i}$$

Where:

$P_{st, VIP}$ is the reserve price for a given unbundled standard capacity product at the virtual interconnection point;

i is an interconnection point contributing to the virtual interconnection point;

n is the number of interconnection points contributing to the virtual interconnection point;

$P_{st, i}$ is the reserve price for a given unbundled standard capacity product at interconnection point i ;

CAP_i is technical capacity or forecasted contracted capacity, as relevant, at interconnection point i .

2. The reserve price for a bundled standard capacity product offered at a virtual interconnection point shall be calculated as set out in Article 21(1).

CHAPTER VI

CLEARING PRICE AND PAYABLE PRICE

Article 23

Calculation of clearing price at interconnection points

The clearing price for a given standard capacity product at an interconnection point shall be calculated in accordance with the following formula:

$$P_{cl} = P_{R, au} + AP$$

Where:

P_{cl} is the clearing price;

$P_{R, au}$ is the applicable reserve price for a standard capacity product which is published at the time when this product is auctioned;

AP is the auction premium, if any.

Article 24

Calculation of payable price at interconnection points

The payable price for a given standard capacity product at an interconnection point shall be calculated in accordance with either of the following formulas:

- (a) where the floating payable price approach is applied:

$$P_{flo} = P_{R, flo} + AP$$

Where:

P_{flo} is the floating payable price;

$P_{R, flo}$ is the reserve price for a standard capacity product applicable at the time when this product may be used;

AP is the auction premium, if any.

(b) where the fixed payable price approach is applied:

$$P_{\text{fix}} = (P_{\text{r,y}} \times \text{IND}) + \text{RP} + \text{AP}$$

Where:

P_{fix} is the fixed payable price;

$P_{\text{r,y}}$ is the applicable reserve price for a yearly standard capacity product which is published at the time when this product is auctioned;

IND is the ratio between the chosen index at the time of use and the same index at the time the product was auctioned;

RP is the risk premium reflecting the benefits of certainty regarding the level of transmission tariff, where such premium shall be no less than 0;

AP is the auction premium, if any.

Article 25

Conditions for offering payable price approaches

1. Where and to the extent that the transmission system operator functions under a non-price cap regime, the conditions for offering payable price approaches shall be as follows:

(a) for cases where only existing capacity is offered:

- (i) the floating payable price approach shall be offered;
- (ii) the fixed payable price approach shall not be allowed.

(b) for incremental capacity and existing capacity offered in the same auction or same alternative allocation mechanism:

- (i) the floating payable price approach may be offered;
- (ii) the fixed payable price approach may be offered where one of the following conditions is met:
 - (1) an alternative allocation mechanism set out in Article 30 of Regulation (EU) 2017/459 is used;
 - (2) a project is included in the Union list of projects of common interest as set out in Article 3 of Regulation (EU) No 347/2013 of the European Parliament and of the Council ⁽¹⁾.

2. Where and to the extent that the transmission system operator functions under a price cap regime, the floating payable price approach or the fixed payable price approach, or both, may be offered.

CHAPTER VII

CONSULTATION REQUIREMENTS

Article 26

Periodic consultation

1. One or more consultations shall be carried out by the national regulatory authority or the transmission system operator(s), as decided by the national regulatory authority. To the extent possible and in order to render more effective the consultation process, the consultation document should be published in the English language. The final consultation prior to the decision referred to in Article 27(4) shall comply with the requirements set out in this Article and Article 27, and shall include the following information:

(a) the description of the proposed reference price methodology as well as the following items:

- (i) the indicative information set out in Article 30(1)(a), including:
 - (1) the justification of the parameters used that are related to the technical characteristics of the system;
 - (2) the corresponding information on the respective values of such parameters and the assumptions applied.

⁽¹⁾ Regulation (EU) No 347/2013 of the European Parliament and of the Council of 17 April 2013 on guidelines for trans-European energy infrastructure and repealing Decision No 1364/2006/EC and amending Regulations (EC) No 713/2009, (EC) No 714/2009 and (EC) No 715/2009 (OJ L 115, 25.4.2013, p. 39).

- (ii) the value of the proposed adjustments for capacity-based transmission tariffs pursuant to Article 9;
 - (iii) the indicative reference prices subject to consultation;
 - (iv) the results, the components and the details of these components for the cost allocation assessments set out in Article 5;
 - (v) the assessment of the proposed reference price methodology in accordance with Article 7;
 - (vi) where the proposed reference price methodology is other than the capacity weighted distance reference price methodology detailed in Article 8, its comparison against the latter accompanied by the information set out in point (iii);
- (b) the indicative information set out in Article 30(1)(b)(i), (iv), (v);
- (c) the following information on transmission and non-transmission tariffs:
- (i) where commodity-based transmission tariffs referred to in Article 4(3) are proposed:
 - (1) the manner in which they are set;
 - (2) the share of the allowed or target revenue forecasted to be recovered from such tariffs;
 - (3) the indicative commodity-based transmission tariffs;
 - (ii) where non-transmission services provided to network users are proposed:
 - (1) the non-transmission service tariff methodology therefor;
 - (2) the share of the allowed or target revenue forecasted to be recovered from such tariffs;
 - (3) the manner in which the associated non-transmission services revenue is reconciled as referred to in Article 17(3);
 - (4) the indicative non-transmission tariffs for non-transmission services provided to network users;
- (d) the indicative information set out in Article 30(2);
- (e) where the fixed payable price approach referred to in Article 24(b) is considered to be offered under a price cap regime for existing capacity:
- (i) the proposed index;
 - (ii) the proposed calculation and how the revenue derived from the risk premium is used;
 - (iii) at which interconnection point(s) and for which tariff period(s) such approach is proposed;
 - (iv) the process of offering capacity at an interconnection point where both fixed and floating payable price approaches referred to in Article 24 are proposed.
2. The final consultation prior to the decision referred to in Article 27(4) shall be open for at least two months. Consultation documents for any of the consultations referred to in paragraph 1 may require that replies submitted in response to the consultation shall include a non-confidential version suitable for publication.
3. Within one month following the end of the consultation, the transmission system operator(s) or the national regulatory authority, depending on the entity that publishes the consultation document referred to in paragraph 1, shall publish the consultation responses received and their summary. To the extent possible and in order to render more effective the consultation process, the summary should be provided in the English language.
4. The subsequent periodic consultations shall be conducted in accordance with Article 27(5).
5. After consulting the European Network of Transmission System Operators for Gas (hereinafter 'ENTSOG'), the Agency shall develop a template for the consultation document referred to in paragraph 1. The template shall be made available to national regulatory authorities and transmission system operators before 5 July 2017.

*Article 27***Periodic national regulatory authority decision-making**

1. Upon launching the final consultation pursuant to Article 26 prior to the decision referred to in Article 27(4), the national regulatory authority or the transmission system operator(s), as decided by the national regulatory authority, shall forward the consultation documents to the Agency.
2. The Agency shall analyse the following aspects of the consultation document:
 - (a) whether all the information referred to in Article 26(1) has been published;
 - (b) whether the elements consulted on in accordance with Article 26 comply with the following requirements:
 - (1) whether the proposed reference price methodology complies with the requirements set out in Article 7;
 - (2) whether the criteria for setting commodity-based transmission tariffs as set out in Article 4(3) are met;
 - (3) whether the criteria for setting non-transmission tariffs as set out in Article 4(4) are met.
3. Within two months following the end of the consultation referred to in paragraph 1, the Agency shall publish and send to the national regulatory authority or transmission system operator, depending on which entity published the consultation document, and the Commission the conclusion of its analysis in accordance with paragraph 2 in English.

The Agency shall preserve the confidentiality of any commercially sensitive information.

4. Within five months following the end of the final consultation, the national regulatory authority, acting in accordance with Article 41(6)(a) of Directive 2009/73/EC, shall take and publish a motivated decision on all items set out in Article 26(1). Upon publication, the national regulatory authority shall send to the Agency and the Commission its decision.
5. The procedure consisting of the final consultation on the reference price methodology in accordance with Article 26, the decision by the national regulatory authority in accordance with paragraph 4, the calculation of tariffs on the basis of this decision, and the publication of the tariffs in accordance with Chapter VIII may be initiated as from the entry into force of this Regulation and shall be concluded no later than 31 May 2019. The requirements set out in Chapters II, III and IV shall be taken into account in this procedure. The tariffs applicable for the prevailing tariff period at 31 May 2019 will be applicable until the end thereof. This procedure shall be repeated at least every five years starting from 31 May 2019.

*Article 28***Consultation on discounts, multipliers and seasonal factors**

1. At the same time as the final consultation carried out in accordance with Article 26(1), the national regulatory authority shall conduct a consultation with the national regulatory authorities of all directly connected Member States and the relevant stakeholders on the following:
 - (a) the level of multipliers;
 - (b) if applicable, the level of seasonal factors and the calculations set out in Article 15;
 - (c) the levels of discounts set out in Articles 9(2) and 16.

After the end of the consultation a motivated decision shall be taken in accordance with Article 41(6)(a) of Directive 2009/73/EC on the aspects referred to in points (a) to (c) of this paragraph. Each national regulatory authority shall consider the positions of national regulatory authorities of directly connected Member States.

2. The subsequent consultations shall be conducted every tariff period as from the date of the decision referred to in paragraph 1. After each consultation and as set out in Article 32(a), the national regulatory authority shall take and publish a motivated decision on the aspects referred to in paragraph 1(a), (b) and (c).

3. When adopting the decision referred to in paragraphs 1 and 2, the national regulatory authority shall take into account the consultation responses received and the following aspects:

- (a) for multipliers:
 - (i) the balance between facilitating short-term gas trade and providing long-term signals for efficient investment in the transmission system;
 - (ii) the impact on the transmission services revenue and its recovery;
 - (iii) the need to avoid cross-subsidisation between network users and to enhance cost-reflectivity of reserve prices;
 - (iv) situations of physical and contractual congestion;
 - (v) the impact on cross-border flows;
- (b) for seasonal factors:
 - (i) the impact on facilitating the economic and efficient utilisation of the infrastructure;
 - (ii) the need to improve the cost-reflectivity of reserve prices.

CHAPTER VIII

PUBLICATION REQUIREMENTS

Article 29

Information to be published before the annual yearly capacity auction

For interconnection points and, where the national regulatory authority takes a decision to apply Regulation (EU) 2017/459, points other than interconnection points, the following information shall be published before the annual yearly capacity auction in accordance with the requirements set out in Articles 31 and 32 by the national regulatory authority or the transmission system operator(s), as decided by the national regulatory authority:

- (a) for standard capacity products for firm capacity:
 - (i) the reserve prices applicable until at least the end of the gas year beginning after the annual yearly capacity auction;
 - (ii) the multipliers and seasonal factors applied to reserve prices for non-yearly standard capacity products;
 - (iii) the justification of the national regulatory authority for the level of multipliers;
 - (iv) where seasonal factors are applied, the justification for their application.
- (b) for standard capacity products for interruptible capacity:
 - (i) the reserve prices applicable until at least the end of the gas year beginning after the annual yearly capacity auction;
 - (ii) an assessment of the probability of interruption including:
 - (1) the list of all types of standard capacity products for interruptible capacity offered including the respective probability of interruption and the level of discount applied;
 - (2) the explanation of how the probability of interruption is calculated for each type of product referred to in point (1);
 - (3) the historical or forecasted data, or both, used for the estimation of the probability of interruption referred to in point (2).

Article 30

Information to be published before the tariff period

1. The following information shall be published before the tariff period in accordance with the requirements set out in Articles 31 and 32 by the national regulatory authority or the transmission system operator(s), as decided by the national regulatory authority:

- (a) information on parameters used in the applied reference price methodology that are related to the technical characteristics of the transmission system, such as:
 - (i) technical capacity at entry and exit points and associated assumptions;
 - (ii) forecasted contracted capacity at entry and exit points and associated assumptions;
 - (iii) the quantity and the direction of the gas flow for entry and exit points and associated assumptions, such as demand and supply scenarios for the gas flow under peak conditions;
 - (iv) the structural representation of the transmission network with an appropriate level of detail;
 - (v) additional technical information about the transmission network, such as the length and the diameter of pipelines and the power of compressor stations.
- (b) the following information:
 - (i) the allowed or target revenue, or both, of the transmission system operator;
 - (ii) the information related to changes in the revenue referred to in point (i) from one year to the next year;
 - (iii) the following parameters:
 - (1) types of assets included in the regulated asset base and their aggregated value;
 - (2) cost of capital and its calculation methodology;
 - (3) capital expenditures, including:
 - (a) methodologies to determine the initial value of the assets;
 - (b) methodologies to re-evaluate the assets;
 - (c) explanations of the evolution of the value of the assets;
 - (d) depreciation periods and amounts per asset type.
 - (4) operational expenditures;
 - (5) incentive mechanisms and efficiency targets;
 - (6) inflation indices.
 - (iv) the transmission services revenue;
 - (v) the following ratios for the revenue referred to in point (iv):
 - (1) capacity-commodity split, meaning the breakdown between the revenue from capacity-based transmission tariffs and the revenue from commodity-based transmission tariffs;
 - (2) entry-exit split, meaning the breakdown between the revenue from capacity-based transmission tariffs at all entry points and the revenue from capacity-based transmission tariffs at all exit points;
 - (3) intra-system/cross-system split, meaning the breakdown between the revenue from intra-system network use at both entry points and exit points and the revenue from cross-system network use at both entry points and exit points calculated as set out in Article 5.

- (vi) where and to the extent that the transmission system operator functions under a non-price cap regime, the following information related to the previous tariff period on regarding the reconciliation of the regulatory account:
 - (1) the actually obtained revenue, the under- or over-recovery of the allowed revenue and the part thereof attributed to the regulatory account and, if applicable, sub-accounts within such regulatory account;
 - (2) the reconciliation period and the incentive mechanisms implemented.
- (vii) the intended use of the auction premium.
- (c) the following information on transmission and non-transmission tariffs, accompanied by the relevant information related to their derivation:
 - (i) where applied, commodity-based transmission tariffs referred to in Article 4(3);
 - (ii) where applied, non-transmission tariffs for non-transmission services referred to in Article 4(4);
 - (iii) the reference prices and other prices applicable at points other than those referred to in Article 29.
- 2. In addition, the following information shall be published with regard to transmission tariffs:
 - (a) explanation of the following:
 - (i) the difference in the level of transmission tariffs for the same type of transmission service applicable for the prevailing tariff period and for the tariff period for which the information is published;
 - (ii) the estimated difference in the level of transmission tariffs for the same type of transmission service applicable for the tariff period for which the information is published and for each tariff period within the remainder of the regulatory period.
 - (b) at least a simplified tariff model, updated regularly, accompanied by the explanation of how to use it, enabling network users to calculate the transmission tariffs applicable for the prevailing tariff period and to estimate their possible evolution beyond such tariff period.
- 3. For the points excluded from the definition of relevant points referred to in point 3.2(1)(a) of Annex I to Regulation (EC) No 715/2009, the information on the amount of forecasted contracted capacity and the forecasted quantity of the gas flow shall be published as set out in point 3.2(2) of Annex I to Regulation (EC) No 715/2009.

Article 31

Form of publication

1. The information referred to in Articles 29 and 30 shall be published as set out in Article 32 via a link on the platform referred to in point 3.1.1(1)(h) of Annex I to Regulation (EC) No 715/2009 to the website of the respective entity.

Such information shall be accessible to the public, free of charge and of any limitations as to its use. It shall be published:

- (a) in a user-friendly manner;
- (b) in a clear, easily accessible way and on a non-discriminatory basis;
- (c) in a downloadable format;
- (d) in one or more of the official languages of the Member State and, unless one of the official languages of the Member State is English, to the extent possible, in English.

2. The following information shall be published for interconnection points on the platform referred to in point 3.1.1(1)(h) of Annex I to Regulation (EC) No 715/2009:

- (a) at the same time as set out in Article 29, the reserve prices for standard capacity products for firm capacity and for standard capacity products for interruptible capacity;
- (b) at the same time as set out in Article 30, a flow-based charge referred to in Article 4(3)(a), where applied.

3. The information referred to in paragraph 2 shall be published in the following manner:
- (a) as set out in paragraph 1(a) to (c);
 - (b) in English;
 - (c) in a standardised table which shall include at least the following information:
 - (i) the interconnection point;
 - (ii) the direction of the gas flow;
 - (iii) the names of the relevant transmission system operators;
 - (iv) the start and the end time of the product;
 - (v) whether the capacity is firm or interruptible;
 - (vi) the indication of the standard capacity product;
 - (vii) the applicable tariff per kWh/h and per kWh/d in the local currency and in the euro taking into account the following:
 - (1) where the applied capacity unit is kWh/h, the information on the applicable tariff per kWh/d shall be non-binding, and vice versa;
 - (2) where the local currency is other than the euro, the information on the applicable tariff in euro shall be non-binding.

In addition, at the same time as set out in Article 30, such standardised table shall include the simulation of all the costs for flowing 1 GWh/day/year for each interconnection point in the local currency and in the euro subject to point vii(2).

4. Where the information referred to in paragraph 2 is different from the respective information referred to in paragraph 1, the respective information referred to in paragraph 1 shall prevail.

Article 32

Publication notice period

The deadline for the publication of the information set out in Articles 29 and 30 shall be as follows:

- (a) for the information set out in Article 29, no later than thirty days before the annual yearly capacity auction;
- (b) for the information set out in Article 30, no later than thirty days before the respective tariff period;
- (c) for the respective transmission tariffs updated within the tariff period as set out in Article 12(3), immediately after the approval in accordance with Article 41(6)(a) of Directive 2009/73/EC.

Each update of the transmission tariffs shall be accompanied by information indicating the reasons for the changes in their level. Where Article 12(3)(b) is applied, it shall also be accompanied by the updated report referred to in Article 29(b) for the respective types of standard capacity products for interruptible capacity.

CHAPTER IX

INCREMENTAL CAPACITY

Article 33

Tariff principles for incremental capacity

1. The minimum price at which transmission system operators shall accept a request for incremental capacity is the reference price. For the calculation of the economic test, reference prices shall be derived by including into the reference price methodology the relevant assumptions related to the offer of incremental capacity.

2. Where the fixed payable price approach set out in Article 24(b) is considered to be offered for incremental capacity, the reserve price referred to in Article 24(b) shall be based on projected investment and operating costs. Once the incremental capacity is commissioned, such reserve price shall be adjusted proportionally to the difference, irrespective whether positive or negative, between the projected investment costs and the actual investment costs.
3. In case the allocation of all incremental capacity at the reference price would not generate sufficient revenues for a positive economic test outcome, a mandatory minimum premium may be applied in the first auction or alternative allocation mechanism in which the incremental capacity is offered. The mandatory minimum premium may also be applied in subsequent auctions when the capacity is offered that initially remained unsold or when capacity is offered that was initially set aside according to Article 8(8) and (9) of Regulation (EU) 2017/459. The decision on whether and in which auctions to apply a mandatory minimum premium shall be taken in accordance with Article 41(6)(a) of Directive 2009/73/EC.
4. The level of the mandatory minimum premium shall enable a positive economic test outcome with the revenues generated by the offered capacity in the first auction or alternative allocation mechanism in which the incremental capacity is on offer. The range of the level for the mandatory minimum premium, depending on the expected allocated capacity, shall be submitted to the relevant national regulatory authorities for approval in accordance with Article 25(1)(c) of Regulation (EU) 2017/459.
5. A mandatory minimum premium approved by the national regulatory authority shall be added to the reference price for the bundled capacity products at the respective interconnection point and shall exclusively be attributed to the transmission system operators for which the mandatory minimum premium was approved by the respective national regulatory authority. This default principle for the attribution of a mandatory minimum premium is without prejudice to the split of a possible additional auction premium according to Article 21(3) or an alternative agreement between the involved national regulatory authorities.

CHAPTER X

FINAL AND TRANSITIONAL PROVISIONS

Article 34

Methodologies and parameters used to determine the allowed or target revenue of transmission system operators

1. Before 6 April 2019, the Agency shall publish a report on the methodologies and parameters used to determine the allowed or target revenue of transmission system operators. The report shall be based on at least the parameters referred to in Article 30(1)(b)(iii).
2. National regulatory authorities shall submit to the Agency, in accordance with the process defined by the Agency, all necessary information related to the methodologies and parameters used to determine the allowed or target revenue of transmission system operators.

Article 35

Existing contracts

1. This Regulation shall not affect the levels of transmission tariffs resulting from contracts or capacity bookings concluded before 6 April 2017 where such contracts or capacity bookings foresee no change in the levels of the capacity- and/or commodity-based transmission tariffs except for indexation, if any.
2. The contract provisions related to transmission tariffs and capacity bookings referred to in paragraph 1 shall not be renewed, prolonged or rolled over after their expiration date.
3. Before 6 May 2017, a transmission system operator shall send the contracts or the information on capacity bookings, if any, referred to in paragraph 1 to the national regulatory authority for information.

*Article 36***Implementation monitoring**

1. In order to assist the Agency in its monitoring duties pursuant to Article 9(1) of Regulation (EC) No 715/2009, ENTSOG shall monitor and analyse in accordance with Article 8(8) and (9) of Regulation (EC) No 715/2009 how transmission system operators have implemented this Regulation. In particular, ENTSOG shall ensure the completeness and correctness of all relevant information to be provided by transmission system operators. ENTSOG shall submit to the Agency that information in accordance with the following deadlines:

- (a) 31 March 2018 as regards the requirements under Chapter VIII;
- (b) 31 March 2020 as regards all other provisions of this Regulation.

2. Transmission system operators shall submit to ENTSOG all information required by ENTSOG to comply with its obligations pursuant to paragraph 1, in accordance with the following deadlines:

- (a) 31 December 2017 as regards the requirements under Chapter VIII;
- (b) 31 December 2019 as regards all other provisions of this Regulation.

3. The implementation monitoring cycle as set out in paragraphs 1 and 2 shall be repeated in forthcoming years subject to corresponding requests from the Commission.

4. The confidentiality of commercially sensitive information shall be preserved by ENTSOG and the Agency.

5. Within three years as from the entry into force of this Regulation, the Agency shall publish a report on the application of reference price methodologies in Member States.

*Article 37***Power to grant derogations**

1. National regulatory authorities may, at the request of an entity which operates an interconnector that has benefited from an exemption from Article 41(6), (8) and (10) of Directive 2009/73/EC in accordance with Article 36 of that Directive or a similar exemption, jointly grant such entity a derogation from the application of one or more Articles of this Regulation in accordance with paragraphs 2 to 6 of this Article where the application of those Articles to such entity would have one or several of the following negative consequences. It would:

- (a) not facilitate efficient gas trade and competition;
- (b) not provide incentives for investment for new capacity or to maintain existing levels of capacity;
- (c) unreasonably distort cross-border trade;
- (d) distort competition with other infrastructure operators that offer services of a similar nature to those of the interconnector;
- (e) not be implementable when taking into account the specific nature of interconnectors.

2. The entity requesting a derogation under paragraph 1 shall include in its request a detailed reasoning, with all supporting documents, including, where appropriate, a cost-benefit analysis, demonstrating that one or more of the conditions in paragraph 1(a) to (e) are complied with.

3. The national regulatory authorities concerned shall jointly assess the request for a derogation and deal with it in close cooperation. Where the relevant national regulatory authorities grant a derogation, they shall specify its duration in their decisions.

4. The national regulatory authorities shall notify their decisions granting such derogations to the Agency and the Commission.
5. The national regulatory authorities may revoke a derogation if the circumstances or underlying reasons, or both, no longer apply or upon a reasoned recommendation of the Agency or the Commission to revoke a derogation due to a lack of justification.

Article 38

Entry into force

1. This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.
2. It shall apply as from entry into force.
3. However, Chapters VI and VIII shall apply as from 1 October 2017. Chapters II, III and IV shall apply as from 31 May 2019.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 16 March 2017.

For the Commission
The President
Jean-Claude JUNCKER

COMMISSION IMPLEMENTING REGULATION (EU) 2017/461
of 16 March 2017

laying down implementing technical standards with regard to common procedures, forms and templates for the consultation process between the relevant competent authorities for proposed acquisitions of qualifying holdings in credit institutions as referred to in Article 24 of Directive 2013/36/EU of the European Parliament and of the Council

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC ⁽¹⁾, and in particular Article 22(9) thereof,

Whereas:

- (1) It is appropriate to set out common procedures, forms and templates to ensure the accurate assessment by competent authorities of notifications of proposed direct or indirect acquisitions or increases of qualifying holdings in credit institutions where the proposed acquirer is a supervised entity in another Member State or sector, the parent undertaking of such supervised entity or the natural or legal person controlling such supervised entity. In those cases, the relevant competent authorities should consult and provide each other with the requested information and any other essential information.
- (2) Pursuant to Article 14(2) of Directive 2013/36/EU, the consultation process referred to in Article 24 of that Directive also applies to the assessment of shareholders and members of a credit institution for the purposes of the granting of authorisation to commence the activity of a credit institution. The common procedures, forms and templates should therefore also enable the consultation between relevant competent authorities where the assessment of shareholders or members with qualifying holdings is conducted as part of the assessment of applications for the authorisation of credit institutions.
- (3) To facilitate the cooperation between competent authorities and ensure efficiency in their exchange of information, competent authorities should designate dedicated contact points specifically for the purpose of the consultation process referred to in Article 24 of Directive 2013/36/EU and make such information publicly available on their websites.
- (4) Consultation procedures containing clear timing requirements should be set up to ensure the timely and efficient cooperation between competent authorities.
- (5) Those consultation procedures should also ensure that competent authorities cooperate and work towards the improvement of the consultation process by promoting, where appropriate, feedback on the quality and relevance of the information received.
- (6) This Regulation is based on the draft implementing technical standards submitted by the European Banking Authority ('EBA') to the Commission.
- (7) EBA has conducted open public consultations on the draft implementing technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council ⁽²⁾,

⁽¹⁾ OJ L 176, 27.6.2013, p. 338.

⁽²⁾ Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation lays down the common procedures, forms and templates for the consultation process referred to in Article 24 of Directive 2013/36/EU between the following:

- (a) the competent authority of an existing credit institution in which a qualifying holding is proposed to be acquired or increased or which is responsible for providing the authorisation to commence the activity of a credit institution (the 'requesting authority');
- (b) the relevant competent authority of the proposed acquirer, shareholder or member, where such proposed acquirer, shareholder or member falls under one of the categories referred to in points (a), (b) and (c) of Article 24(1) of Directive 2013/36/EU (the 'requested authority').

Article 2

Designated contact points

For the purpose of the consultation process set out in Article 24 of Directive 2013/36/EU, the relevant competent authorities shall designate, by way of a single address of a dedicated department or mailbox, contact points for transmitting consultation notices and other communication in accordance with this Regulation and shall make those contact points publicly available on their websites.

Article 3

Consultation notice

1. The requesting authority shall send a consultation notice to the requested authority as soon as possible after receipt of a notification referred to in Article 22(1) of Directive 2013/36/EU and, in any event, no later than 10 working days after the commencement of the assessment period referred to in the second subparagraph of Article 22(2) of that Directive.
2. Where the assessment provided for in Article 23(1) of Directive 2013/36/EU is conducted as part of the assessment of an application for the authorisation of a credit institution to commence its activities, the requesting authority shall send a consultation notice to the requested authority as soon as possible after receipt of such an application and, in any event, no later than 10 working days after the receipt of the complete information referred to in Article 15 of Directive 2013/36/EU.
3. The requesting authority shall send the consultation notices referred to in paragraphs 1 and 2 in writing by post, facsimile or secure electronic means and address them to the designated contact point of the requested authority.
4. The requesting authority shall send the consultation notices referred to in paragraphs 1 and 2 by completing the template set out in Annex I, specifying the main details of the proposed holding and of the information that the requesting authority asks from the requested authority in relation thereto.

Article 4

Acknowledgement of receipt of a consultation notice

The requested authority shall send the requesting authority an acknowledgement of receipt of the consultation notice referred to in Article 3 within 2 working days of receiving such notice.

Article 5

Response from a requested authority

1. A response to a consultation notice shall be made in writing, using the format set out in Annex II, by post, facsimile or secure electronic means. It shall be addressed to the designated contact point of the requesting authority referred to in Article 2, unless otherwise specified by the requesting authority.

2. The requested authority shall provide the requesting authority as soon as possible and no later than 20 working days after receipt of the consultation notice with:
 - (a) all relevant information requested in the consultation notice, including any views or reservations in relation to the acquisition by the proposed acquirer;
 - (b) all essential information, on its own initiative.
3. Where the requested authority is unable to meet the time limit set out in paragraph 2, it shall immediately inform the requesting authority of the justifiable reasons that necessitate any such delay and provide an estimated date of response. The requested authority shall provide regular feedback on the progress made either of its own initiative or upon the request of the requesting authority.
4. Where, due to justified cases of necessity, the requested authority is not able to provide all the required information in time for meeting the time limit set out in paragraph 2, it shall:
 - (a) provide the information which is already available within the time limit set out in paragraph 2, using the format set out in Annex II;
 - (b) provide any missing information as soon as it becomes available and in a manner, including verbally, which ensures that any necessary action may proceed expediently.
5. If the requested information is provided verbally pursuant to point (b) of paragraph 4, it shall subsequently be confirmed in writing in accordance with paragraph 1, unless the competent authorities involved agree otherwise.

Article 6

Procedures for consultation

1. The requesting authority and the requested authority shall communicate in relation to a consultation notice and the response using the most expedient means from among those set out in Article 3(3) and Article 5(1), taking due account of confidentiality considerations, correspondence times, the volume of material to be communicated and the ease of access to the information by the requesting authority.
2. The information provided by the requested authority shall, to the best of its knowledge, be complete, accurate and up to date.
3. Upon receipt of a consultation notice, the requested authority shall communicate with the requesting authority in a timely manner where it needs any clarification in relation to the information requested.

The requesting authority shall in turn respond promptly to any clarifications requested by the requested authority.

4. If the information requested is held by another authority of the same Member State as the requested authority but which does not constitute a competent authority for the purposes of Article 24 of Directive 2013/36/EU, the requested authority shall undertake best efforts to collect the information promptly and transmit it to the requesting authority in accordance with Article 5.

If the information requested is held by another authority of a different Member State or by another authority of the same Member State which constitutes a competent authority for the purposes of Article 24 of Directive 2013/36/EU, the requested authority shall promptly inform the requesting authority thereof.

5. The requested authority and the requesting authority shall cooperate to resolve any difficulties that may arise in responding to a request.
6. The requested authority and the requesting authority shall provide feedback to each other on the outcome of the assessment in relation to which the consultation process occurred and, where appropriate, on the usefulness of the information or other assistance received and on any problems encountered in providing such assistance or information.

7. Where new information or a need for further information comes to light during the assessment period, the requesting authority and the requested authority shall ensure that all essential and relevant information is exchanged. The templates set out in Annexes I and II shall, where appropriate, be used for this purpose.

8. During the consultation process, competent authorities shall use an official language of a Member State of the Union which is a language commonly used for international supervisory cooperation, and shall publish the choice of such language or languages on their websites. The competent authorities of Member States that have a common official language, or mutually agree to use another official language of a Member State of the Union, may use that language.

Article 7

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 16 March 2017.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX I

Consultation notice template
(Article 3 of Commission Implementing Regulation (EU) 2017/461)

Consultation notice

Date:

FROM:

Member State:

Requesting Authority:

Address:

(Contact details of the designated contact point)

Telephone:

Email:

Reference number:

TO:

Member State:

Requested Authority:

Address:

(Contact details of the designated contact point)

Telephone:

Email:

Dear Sir/Madam,

In accordance with Article 3 of Commission Implementing Regulation (EU) 2017/461 ⁽¹⁾, a consultation notice is made in relation to the matters set out in further detail below.

Please note that the assessment procedure will expire on *[insert date]* ⁽²⁾. We therefore would be grateful if you could provide the requested information and any other essential information, as well as any views or reservations you might have on the proposed holding, within 20 working days from receipt of this letter or, if that is not possible, an indication as to when you anticipate being in a position to provide the assistance which is sought.

This consultation notice, your response and their processing are subject to Directive 95/46/EC of the European Parliament and of the Council ⁽³⁾.

⁽¹⁾ Commission Implementing Regulation (EU) 2017/461 of 16 March 2017 laying down implementing technical standards with regard to common procedures, forms and templates for the consultation process between the relevant competent authorities for proposed acquisitions of qualifying holdings in credit institutions as referred to in Article 24 of Directive 2013/36/EU of the European Parliament and of the Council (OJ L 72, 17.3.2017, p. 57).

⁽²⁾ In accordance with the second subparagraph of Article 22(2) of Directive 2013/36/EU or, as the case may be, Article 15 of the Directive.

⁽³⁾ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).

Information on the proposed holding

Identity of the proposed acquirer(s), shareholder(s) or member(s):

.....
.....
.....

[For natural persons, please include the personal details, including the person's name, date and place of birth, personal identification number (where available) and address. For legal persons, please include the registered name, the registered address of its head office, the postal address (if different) and the national identification number (where available)]

Name of relevant regulated entity(/ies) in the requested authority's Member State and relationship with the proposed acquirer, shareholder or member:

.....
.....
.....

[Where the proposed acquirer, shareholder or member is a regulated entity as referred to in Article 24(1)(a) of Directive 2013/36/EU, the name of the proposed acquirer, shareholder or member is sufficient. Where the proposed acquirer, shareholder or member falls under one of the categories defined under Article 24(1)(b) or (c) of Directive 2013/36/EU, it is also necessary to explain the relationship of the proposed acquirer, shareholder or member with the relevant regulated entity established in the requested authority's Member State]

Identity of the target undertaking or institution for which authorisation is sought:

.....
.....
.....

[Please insert the registered name, the registered address of its head office, the postal address (if different) and the national identification number (where available)]

Size of the current and intended direct or indirect holding of the proposed acquirer, shareholder or member in the target undertaking or institution for which authorisation is sought:

.....
.....
.....

[Please insert information on the shares of the target undertaking or institution for which authorisation is sought owned, or contemplated to be owned, by the proposed acquirer, shareholder or member (if relevant, before and after the proposed acquisition), including (i) the number and type of shares, whether ordinary shares, or other, of the undertaking owned, or intended to be acquired, by the proposed acquirer, shareholder or member (if relevant, before and after the proposed acquisition), along with the nominal value of such shares, (ii) the share of the overall capital of the undertaking that the shares owned, or intended to be acquired, by the proposed acquirer, shareholder or member represent (if relevant, before and after the proposed acquisition) and (iii) the share of the overall voting rights of the undertaking that the shares owned, or contemplated to be owned, by the proposed acquirer, shareholder or member represent (if relevant, before and after the proposed acquisition), if different from the share of capital of the undertaking. For indirect acquisitions, such information shall be provided mutatis mutandis.]

Details of any other authorities involved:

.....
.....
.....

[Whether the requesting authority has been or will be in contact with any other authority in the Member State of the requested authority in relation to the subject matter of the request or any other authority which the requesting authority is aware has an active interest in the subject matter of the request]

[Additional information provided by the requesting authority (if any):

.....
.....
.....
.....]

Type of assistance requested

Specific information requested:

.....
.....
.....
.....

[Please insert a detailed description of the specific information sought, including any relevant documents requested. Such information shall include:

- where available, the outcome of the most recent assessment of the suitability (in terms of being fit and proper) of the proposed acquirer, shareholder or member or of the relevant officers of the relevant regulated entity,*
- where available, the outcome of the most recent assessment of the financial soundness of the proposed acquirer, shareholder or member or of the relevant regulated entity, with related public or external audit reports,*
- where available, the outcome of the most recent assessment by the requested authority of the quality of the management structure of the proposed acquirer, shareholder or member or of the relevant regulated entity, and its administrative and accounting procedures, internal control systems, corporate governance, group structure, etc.,*
- whether there are any grounds to suspect, in connection with the proposed acquisition or participation, that money laundering or terrorist financing is being or has been committed or attempted,*

and any other specific information sought by the requesting authority.]

Yours faithfully,

[signature]

ANNEX II

Response from requested authority template
(Article 5 of Commission Implementing Regulation (EU) 2017/461)

Response from requested authority

Date:

General information

FROM:

Member State:

Requested Authority:

Address:

(Contact details of the designated contact point)

Telephone:

Email:

Requested authority reference number:

TO:

Member State:

Requesting Authority:

Address:

(Contact details of the designated contact point)

Telephone:

Email:

Requesting authority reference number:

Dear Sir/Madam,

In accordance with Article 5 of Commission Implementing Regulation (EU) 2017/461 ⁽¹⁾, your consultation notice dated [dd.mm.yyyy] with the reference number referred to above has been processed by us.

This response is subject to Directive 95/46/EC of the European Parliament and of the Council ⁽²⁾.

Where applicable, please explain any doubt you have in relation to the precise information requested or any other aspect of this assessment:

.....
.....
.....

⁽¹⁾ Commission Implementing Regulation (EU) 2017/461 of 16 March 2017 laying down implementing technical standards with regard to common procedures, forms and templates for the consultation process between the relevant competent authorities for proposed acquisitions of qualifying holdings in credit institutions as referred to in Article 24 of Directive 2013/36/EU of the European Parliament and of the Council (OJ L 72, 17.3.2017, p. 57).

⁽²⁾ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).

Please set out the requested information here or refer to the relevant annexes containing the information requested:

.....
.....
.....

If there is any other essential information or other information the requested authority would like to provide, please provide such information here or supply an explanation of how it will be provided, or make reference to the relevant annexes containing that information:

.....
.....
.....

[Please provide any essential information, such as group structure or the most recent assessments of the financial soundness of the proposed acquirer or of the relevant regulated entity.]

If there are any views or reservations in relation to the proposed acquisition, please provide them here:

.....
.....
.....

If any requested information was not available when preparing this response and awaiting such information would have resulted in the response not being submitted within the required timeframe, please identify such information here and specify when it is expected to be provided:

.....
.....
.....

Yours faithfully,

[signature]

COMMISSION IMPLEMENTING REGULATION (EU) 2017/462**of 16 March 2017****establishing the standard import values for determining the entry price of certain fruit and vegetables**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 ⁽¹⁾,

Having regard to Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors ⁽²⁾, and in particular Article 136(1) thereof,

Whereas:

- (1) Implementing Regulation (EU) No 543/2011 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in Annex XVI, Part A thereto.
- (2) The standard import value is calculated each working day, in accordance with Article 136(1) of Implementing Regulation (EU) No 543/2011, taking into account variable daily data. Therefore this Regulation should enter into force on the day of its publication in the *Official Journal of the European Union*,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 136 of Implementing Regulation (EU) No 543/2011 are fixed in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 16 March 2017.

*For the Commission,
On behalf of the President,
Jerzy PLEWA
Director-General*

Directorate-General for Agriculture and Rural Development

⁽¹⁾ OJ L 347, 20.12.2013, p. 671.

⁽²⁾ OJ L 157, 15.6.2011, p. 1.

ANNEX

Standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)		
CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	EG	184,2
	MA	98,3
	SN	196,7
	TN	182,1
	TR	96,3
	ZZ	151,5
0707 00 05	EG	241,9
	TR	178,3
	ZZ	210,1
0709 93 10	MA	46,4
	TR	135,9
	ZZ	91,2
0805 10 22, 0805 10 24, 0805 10 28	EG	43,7
	IL	69,3
	MA	54,3
	TN	55,3
	TR	70,7
	ZZ	58,7
	TR	66,0
0805 50 10	ZZ	66,0
	TR	66,0
0808 10 80	CL	122,2
	CN	154,7
	US	105,5
	ZA	116,3
	ZZ	124,7
0808 30 90	AR	126,5
	CL	134,8
	CN	74,5
	TR	148,9
	ZA	113,6
	ZZ	119,7

⁽¹⁾ Nomenclature of countries laid down by Commission Regulation (EU) No 1106/2012 of 27 November 2012 implementing Regulation (EC) No 471/2009 of the European Parliament and of the Council on Community statistics relating to external trade with non-member countries, as regards the update of the nomenclature of countries and territories (OJ L 328, 28.11.2012, p. 7). Code 'ZZ' stands for 'of other origin'.

COMMISSION IMPLEMENTING REGULATION (EU) 2017/463**of 16 March 2017****determining the quantities to be added to the quantity fixed for the subperiod from 1 July to 30 September 2017 under the tariff quotas opened by Regulation (EC) No 1384/2007 for poultrymeat originating in Israel**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 ⁽¹⁾, and in particular Article 188(2) and (3) thereof,

Whereas:

- (1) Commission Regulation (EC) No 1384/2007 ⁽²⁾ opened annual tariff quotas for imports of poultrymeat products originating in Israel.
- (2) The quantities covered by the applications for import licences lodged from 1 to 7 March 2017 for the subperiod from 1 April to 30 June 2017 are less than those available. The quantities for which applications have not been lodged should therefore be determined, and these should be added to the quantity fixed for the following quota subperiod.
- (3) In order to ensure the efficiency of the measure, this Regulation should enter into force on the day of its publication in the *Official Journal of the European Union*,

HAS ADOPTED THIS REGULATION:

Article 1

The quantities for which import licence applications have not been lodged pursuant to Regulation (EC) No 1384/2007, to be added to the subperiod from 1 July to 30 September 2017, are set out in the Annex to this Regulation.

*Article 2*This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 16 March 2017.

*For the Commission,
On behalf of the President,
Jerzy PLEWA
Director-General*

Directorate-General for Agriculture and Rural Development

⁽¹⁾ OJ L 347, 20.12.2013, p. 671.

⁽²⁾ Commission Regulation (EC) No 1384/2007 of 26 November 2007 laying down detailed rules for the application of Council Regulation (EC) No 2398/96 as regards opening and providing for the administration of certain quotas for imports into the Community of poultrymeat products originating in Israel (OJ L 309, 27.11.2007, p. 40).

ANNEX

Order No	Quantities not applied for, to be added to the quantities available for the subperiod from 1 July to 30 September 2017 (in kg)
09.4091	280 000
09.4092	2 000 000

DECISIONS

POLITICAL AND SECURITY COMMITTEE DECISION (CFSP) 2017/464

of 7 March 2017

on the appointment of the EU Operation Commander for the European Union military operation in Bosnia and Herzegovina and repealing Decision BiH/21/2014 (BiH/24/2017)

THE POLITICAL AND SECURITY COMMITTEE,

Having regard to the Treaty on European Union, and in particular the third paragraph of Article 38 thereof,

Having regard to Council Joint Action 2004/570/CFSP of 12 July 2004 on the European Union military operation in Bosnia and Herzegovina ⁽¹⁾, and in particular Article 6 thereof,

Whereas:

- (1) Pursuant to Article 6(1) of Joint Action 2004/570/CFSP, the Council authorised the Political and Security Committee (PSC) to take relevant decisions on the appointment of the EU Operation Commander.
- (2) On 18 March 2014, the PSC adopted Decision BiH/21/2014 ⁽²⁾ appointing Deputy Supreme Allied Commander for Europe (DSACEUR) General Sir Adrian BRADSHAW as EU Operation Commander for the European Union military operation in Bosnia and Herzegovina.
- (3) NATO has decided to appoint Lieutenant General Sir James EVERARD as DSACEUR to replace General Sir Adrian BRADSHAW. The assignment of Lieutenant General Sir James EVERARD begins on 28 March 2017. Lieutenant General Sir James EVERARD should also replace, as from that date, General Sir Adrian BRADSHAW in his capacity as EU Operation Commander for the European Union military operation in Bosnia and Herzegovina.
- (4) Decision BiH/21/2014 should therefore be repealed.
- (5) In accordance with Article 5 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark does not participate in the elaboration and the implementation of decisions and actions of the Union which have defence implications.
- (6) On 12 and 13 December 2002, the Copenhagen European Council adopted a declaration stating that the 'Berlin plus' arrangements and the implementation thereof will apply only to those Member States of the Union which are also either NATO members or parties to the 'Partnership for Peace', and which have consequently concluded bilateral security agreements with NATO,

HAS ADOPTED THIS DECISION:

Article 1

Lieutenant General Sir James EVERARD is hereby appointed EU Operation Commander for the European Union military operation in Bosnia and Herzegovina as from 28 March 2017.

Article 2

Decision BiH/21/2014 is hereby repealed.

⁽¹⁾ OJ L 252, 28.7.2004, p. 10.

⁽²⁾ Political and Security Committee Decision BiH/21/2014 of 18 March 2014 on the appointment of the EU Operation Commander for the European Union military operation in Bosnia and Herzegovina and repealing Decision BiH/17/2011(OJ L 95, 29.3.2014, p. 29).

Article 3

This Decision shall enter into force on 28 March 2017.

Done at Brussels, 7 March 2017.

For the Political and Security Committee
The Chairperson
W. STEVENS

ACTS ADOPTED BY BODIES CREATED BY INTERNATIONAL AGREEMENTS

DECISION No 45/2016 OF THE JOINT COMMITTEE ESTABLISHED UNDER THE AGREEMENT ON MUTUAL RECOGNITION BETWEEN THE EUROPEAN COMMUNITY AND THE UNITED STATES OF AMERICA

of 1 March 2017

related to the listing of Conformity Assessment Bodies under the Sectoral Annex for
Electromagnetic Compatibility [2017/465]

THE JOINT COMMITTEE,

Having regard to the Agreement on Mutual Recognition between the European Community and the United States of America, and in particular Articles 7 and 14;

Whereas the Joint Committee is to take a decision to list a Conformity Assessment Body or Bodies under a Sectoral Annex;

HAS DECIDED AS FOLLOWS:

1. The Conformity Assessment Body in Attachment A is added to the list of Conformity Assessment Bodies under column 'EC access to the US market' in Section V of the Sectoral Annex for Electromagnetic Compatibility.
2. The specific scope of listing, in terms of products and conformity assessment procedures, of the Conformity Assessment Body indicated in Attachment A has been agreed by the Parties and will be maintained by them.

This Decision, done in duplicate, shall be signed by representatives of the Joint Committee who are authorized to act on behalf of the Parties for purposes of amending the Agreement. This Decision shall be effective from the date of the later of these signatures.

On behalf of the United States of America

James C. SANFORD

Signed in Washington DC, on 13 February 2017

On behalf of the European Union

Ignacio IRUARRIZAGA

Signed in Brussels, on 1 March 2017

*Attachment A***EC Conformity Assessment Body added to the list of Conformity Assessment Bodies under column 'EC access to the US market' in Section V of the Sectoral Annex for Electromagnetic Compatibility**

PRIMA RICERCA & SVILUPPO S.r.l.
via Campagna, 92
I-22020 Faloppio (Como)
ITALY

**DECISION No 46/2016 OF THE JOINT COMMITTEE ESTABLISHED UNDER THE AGREEMENT
ON MUTUAL RECOGNITION BETWEEN THE EUROPEAN COMMUNITY AND THE UNITED
STATES OF AMERICA**

of 1 March 2017

**related to the listing of conformity assessment bodies under the sectoral annex for
telecommunication equipment [2017/466]**

THE JOINT COMMITTEE,

Having regard to the Agreement on Mutual Recognition between the European Community and the United States of America and in particular Article 7 and 14,

Whereas the Joint Committee is to take a decision to list a conformity assessment body or bodies under a sectoral annex,

HAS DECIDED AS FOLLOWS:

1. The conformity assessment body in Attachment A is added to the list of conformity assessment bodies under column 'EC access to the US market' in Section V of the sectoral annex for telecommunication equipment.
2. The specific scope of listing, in terms of products and conformity assessment procedures, of the conformity assessment body indicated in Attachment A has been agreed by the Parties and will be maintained by them.

This Decision, done in duplicate, shall be signed by representatives of the Joint Committee who are authorised to act on behalf of the Parties for purposes of amending the Agreement. This Decision shall be effective from the date of the later of these signatures.

On behalf of the United States of America

James C. SANFORD

Signed in Washington DC, on 13 February 2017

On behalf of the European Union

Ignacio IRUARRIZAGA

Signed in Brussels, on 1 March 2017

*Attachment A***EC conformity assessment body added to the list of conformity assessment bodies under column
'EC access to the US market' in Section V of the sectoral annex for telecommunication equipment**

AT4 wireless S.A.U.
Parque Tecnológico de Andalucía
C/Severo Ochoa 2 y 6
29590 Málaga
SPAIN

**DECISION No 47/2016 OF THE JOINT COMMITTEE ESTABLISHED UNDER THE AGREEMENT
ON MUTUAL RECOGNITION BETWEEN THE EUROPEAN COMMUNITY AND THE UNITED
STATES OF AMERICA**

of 1 March 2017

**related to the listing of conformity assessment bodies under the sectoral annex for electromagnetic
compatibility [2017/467]**

THE JOINT COMMITTEE,

Having regard to the Agreement on Mutual Recognition between the European Community and the United States of America and in particular Article 7 and 14,

Whereas the Joint Committee is to take a decision to list a conformity assessment body or bodies under a sectoral annex,

HAS DECIDED AS FOLLOWS:

1. The conformity assessment body in Attachment A is added to the list of conformity assessment bodies under column 'EC access to the US market' in Section V of the sectoral annex for electromagnetic compatibility.
2. The specific scope of listing, in terms of products and conformity assessment procedures, of the conformity assessment body indicated in Attachment A has been agreed by the Parties and will be maintained by them.

This Decision, done in duplicate, shall be signed by representatives of the Joint Committee who are authorised to act on behalf of the Parties for purposes of amending the Agreement. This Decision shall be effective from the date of the later of these signatures.

On behalf of the United States of America

James C. SANFORD

Signed in Washington DC, on 13 February 2017

On behalf of the European Union

Ignacio IRUARRIZAGA

Signed in Brussels, on 1 March 2017

*Attachment A***EC Conformity Assessment Body added to the list of Conformity Assessment Bodies under column 'EC access to the US market' in Section V of the Sectoral Annex for Electromagnetic Compatibility**

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Innovapark 20
87600 Kaufbeuren
GERMANY

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