

Preliminary scoping document for public consultation

on potential “FG rules for trading related to technical and operational provisions of network access services and system balancing (FG RfT)”

14 April 2014

1. Background

The European Commission consulted on the annual priority list for 2014 and beyond from 2 April to 13 May 2013¹. The (potential) Framework Guidelines on “Rules for trading related to technical and operational provisions for network access services and system balancing” (FG RfT) were included in the tentative annual priority list 2014 regarding gas networks. 7 out of 22 responses to the consultation explicitly included a statement on the proposed FG RfT, some of them supporting and some objecting to this item constituting a Commission priority.

In its decision, the European Commission concluded that ACER should start with the scoping work on the FG RfT, “to identify whether binding EU rules for the further harmonization of the design of capacity products and contracts as regards, firmness, restrictions to allocation or secondary market are needed, taking into account the implementation of the guideline on congestion management procedures and the Network Codes on Capacity Allocation Mechanism and Balancing”.

Furthermore, referring to the KEMA study on Entry Exit systems², the 24th Madrid Forum “invite[d] the European Commission, Member States, ACER and ENTSOG to assess the most appropriate approach to overcome the identified barriers and further enhance market integration by bringing certain national practices in line with the best practices (including on Hub operations), and to report back to the next Madrid Forum.”

Consequently, according to the 3-year work plan³, the scoping of the FG RfT is scheduled for Q4/2013 until Q1/2014, while the EC notes that “the scoping phase should confirm the need or not for FG/NC”. Due to several other on-going parallel activities the timing has been postponed by one quarter to Q2/2014.

ACER notes that the EC did not request the elaboration of Framework Guidelines, but openly asks to assess the need for them.

ACER openly invited experts to apply for participation in an ACER ad-hoc expert group that should support the identification of problems and issues of relevance in the area of RfT and contribute to the analysis of possible options. The list of selected candidates has been published on the ACER website⁴. The first expert group meeting took place 29 January 2014. Minutes of this meeting are published on the ACER

¹ http://ec.europa.eu/energy/gas_electricity/consultations/20130513_network_codes_en.htm

² http://ec.europa.eu/energy/gas_electricity/studies/gas_en.htm

³ http://ec.europa.eu/energy/gas_electricity/codes/doc/20130703_3years_gas_june.pdf

⁴ http://www.acer.europa.eu/Gas/Framework%20guidelines_and_network%20codes/Pages/Rules-for-Trading.aspx

website⁵. At this meeting, the experts concluded that the issues identified do not merit other Framework Guidelines. However, it has been noted that some of the issues discussed may merit to be followed up via other routes, e.g. Guidelines of Good Practice (GGP) or an amendment of existing rules.

2. Aim of the public consultation on the scoping exercise

The aim of this public consultation on the scoping exercise is twofold. First, the scoping should identify whether the areas and issues identified are the correct ones (problem identification). Second, market feedback is sought to enable ACER to decide whether Framework Guidelines on this topic are needed.

Please note that the EC's consultation on the annual priority list 2015 is open until 9 May 2014. Respondents to the ACER consultation are recommended to take part in the EC's consultation as well.

3. Relevant framework

There are several European as well as national parameters (legal as well as technical) which are relevant for the potential scoping of Framework Guidelines on Rules for Trading.

At European level the Third Energy Package stipulates - as one of the core elements in terms of market structure - the introduction of entry-exit systems. Although the Gas Regulation does not contain a definition of an "entry-exit system" it requires that "network charges shall not be calculated on the basis of contract paths⁶". Recital 19 provides some further guidance by setting out that "it is vital that gas can be traded independent of its location in the system"; and the "only way to do this is to give network users the freedom to book entry and exit capacity independently, thereby creating gas transport through zones instead of along contractual paths. The preference for entry-exit systems to facilitate the development of competition was already expressed by most stakeholders at the 6th Madrid Forum" in 2002.

The Third Package provisions are flanked by the possibility to develop technical rules, i.e. Network Codes based on Framework Guidelines which shall contribute to non-discrimination, effective competition and the efficient functioning of the market. Several Network Codes and guidelines have been adopted or are under preparation. The rules on Capacity Allocation Mechanisms (CAM), Congestion Management Procedures (CMP), as well as for Balancing and Interoperability already harmonise several issues which are aiming to fulfill the goals of the Third Package and should lead to effective market functioning. The NC CAM sets out rules for the standardisation of capacity products in terms of units, duration and bundling. It also foresees the establishment of capacity booking platforms which should allow network users to offer and obtain primary and secondary capacity. CMP, Balancing and Interoperability and Data Exchange rules contain, *inter alia*, provisions on nomination/re-nominations and matching. The Framework Guidelines on Rules

⁵http://www.acer.europa.eu/The_agency/Organisation/Expert_Groups/EG_on_Rules_for_Trading/Pages/Meetings.aspx

⁶ Article 13 (1) of the Regulation (EC) No. 715/2009

regarding Harmonized Transmission Tariff Structures for Gas provide a basis for a network code which ENTSOG is expected to develop by 31 December 2014.

4. Potential topics

The potential Framework Guidelines on Rules for Trading refers to capacity and not to commodity trading. This follows from Regulation (EC) No 715/2009, Recital 29 (“The trading of primary capacity rights is an important part of developing a competitive market and creating liquidity. This Regulation should therefore lay down basic rules relating to such trading”), Article 1(2) setting out the objective for the “facilitation of capacity trading”, as well as Annex I stating that “Harmonised transport contracts and common network codes shall [...] facilitate trading and re-utilisation of capacity”. Furthermore, system balancing issues are assumed to be sufficiently covered by the NC Balancing.

The KEMA study on entry-exit regimes in gas identified characteristics of a “full” or ideal implementation of the system and identified barriers to access and trade. Some of the barriers may potentially fall within the scope of FG RfT. KEMA illustrated what constitutes a “fully implemented entry-exit system” as well as the identified deviations from this system shown below⁷.

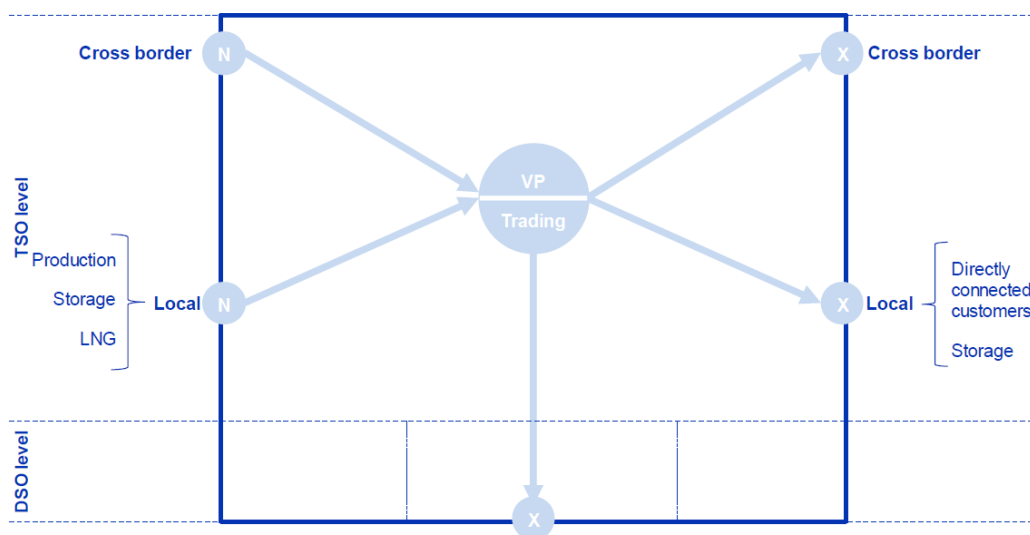
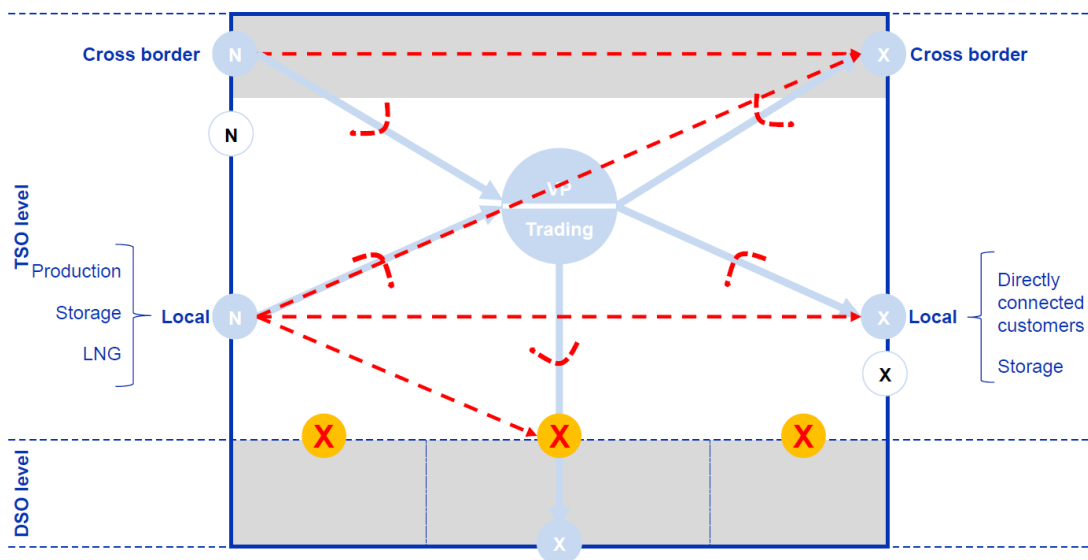


Figure 1: Schematic Representation of a ‘Full’ Entry-Exit System

⁷ DNV KEMA, Entry-Exit Regimes in Gas, a project for the European Commission – DG ENER under the Framework Service Contract for Technical Assistance TREN/R1/350-2008 Lot 3. Contract ENER/B2/267-2012/ETU/SI2.628337, p.20 ff



Legend

- Applicable for example in some systems where capacity is contracted at exit points and not explicitly at entry points.
- Applicable for example in some systems where capacity is contracted at entry points and not explicitly at exit points.
- Locational restrictions: capacities may be offered with a mandatory point-to-point relation.
- Limited allocability: access to other points (including the VP) outside of a predefined pair of points may be limited to access on an interruptible basis.
- Contractual interface - Explicit capacity booking by the network user at interface between TSO and DSO (this indicator is not used in the case of automatic allocation of transmission exit capacity at city gate by the TSO to a supplier based on for example his downstream market share).
- Areas excluded from balancing zones / separate balancing zones.

Figure 2: Schematic Representation of Possible Particularities of Entry-Exit Systems Implemented

Next to the conceptual differences of entry-exit systems, the KEMA study includes information on network topology and identifies that there are different sizes as well as different capacity products and rules for secondary markets in Europe. It also identified different rules and requirements for access to the networks, e.g. some Member States require licenses.

Public Consultation Questionnaire

for the preliminary scoping on potential Framework Guidelines on

“Rules for Trading related to technical and operational provisions of network access services and system balancing (FG RfT)”

How to respond to this public consultation

Stakeholders are kindly invited to provide answers to the survey questions below via e-mail to consultation2014G03@acer.europa.eu **until 12 May 2014**.

It is recommended to consider the minutes of the 1st meeting of the Expert Group on Rules for Trading, published at:

http://www.acer.europa.eu/The_agency/Organisation/Expert_Groups/EG_on_Rules_for_Trading/Pages/Meetings.aspx.

Please note that the European Commission is currently also consulting on the Annual Priority List for 2015⁸. Respondents are advised to take part in that consultation (deadline 9 May 2014) as well.

Unless marked “confidential”, all responses will be published on ACER’s website. Respondents wishing to keep their responses confidential should clearly mark the document or parts of it that they wish to remain as such, and justify their request for confidentiality.

Contact details

Company name:

Type of organisation (e.g. TSO, gas trader, gas supplier, power plant, etc.):

Contact person:

Phone, e-mail address:

Identified topics

Based on the KEMA study⁹, stakeholder comments on the annual priority list of the Commission and feedback received on the ACER Madrid Forum presentation on the potential FG RfT, ACER has identified the following topics that could fall within the scope of a potential FG RfT:

- Capacity products and terms and conditions of capacity contracts (limitations to free allocability and standardisation)
- Secondary capacity markets
- Virtual trading point (VTP) design/access, and hub issues
- Transparency rules

⁸ http://ec.europa.eu/energy/gas_electricity/consultations/20140509_network_code_en.htm

⁹ DNV KEMA, Entry-Exit Regimes in Gas, a project for the European Commission – DG ENER under the Framework Service Contract for Technical Assistance TREN/R1/350-2008 Lot 3. Contract ENER/B2/267-2012/ETU/SI2.628337, p.20 ff

- Licensing requirements for market participants other than TSOs

Q1: Are the topics identified above the most relevant ones when it comes to Rules for Trading at EU level? Please specify which issue - if any - would merit further elaboration and rank the three most important Rules for Trading aspects.

Capacity products and terms and conditions of capacity contracts

Q2: Do you agree that the key features of capacity products (besides its location, its direction and its duration) are as follows:

- Firmness: unconditional firm / conditional firm (e.g. depending on temperatures) / interruptible
- Allocability: free allocability / restricted allocability to designated points / restricted to designated points but combined with interruptible free allocability to all points including VTP
- Tariff relations between different capacity products

Please rank the most important aspects of capacity products for your business. If there are other aspects you find more important, please name them and explain why.

Q3: Do you think that certain user categories (e.g. power plants, household suppliers, traders, gas producers, storage users etc.) have specific requirements/needs regarding capacity products? If so, which?

Q4: Do you have experience with different levels of product firmness and allocation restrictions (i.e. different capacity designs¹⁰)? Please provide examples.

Q5: Are different types of product features (in terms of firmness and freedom of allocation) barriers for cross-border trading? If yes, please provide an example of such a barrier. If yes, do you think that a set of “standard capacity products” in terms of quality (e.g. firmness rules, allocability) enshrined in a network code would provide a solution? Do you believe that the benefit of implementing such a solution outweighs the costs? Could you provide examples of such solutions?

Q6: In your view, is the way capacity is allocated (primary market) or traded (secondary market) expected to create any problem or barrier to gas wholesale trading after the full implementation of the NC CAM? (Please differentiate in your answer between IPs covered by NC CAM¹¹ and those outside its scope, e.g. LNG, storage)? If not, what outstanding barriers remain after NC CAM implementation? Please provide specific cases and examples, if possible.

Q7: Do non-harmonised contract definitions or terms between neighbouring entry-exit zones limit cross border trade? If yes, please provide examples. Do you think that equal contractual definitions of product characteristics (in terms of firmness or

¹⁰ Lowering the firmness or limiting the allocability of the firm products can be an alternative to offering less firm capacity in terms of quantity, but it may be a step away from the ideal entry-exit system. To achieve the ideal entry-exit system either less firm (more interruptible or less freely allocable) capacity can be offered (quantity) at the same costs or the necessary investments have to be delivered by TSOs resulting in higher costs. Standardising product features leads to higher product mismatches in terms of volume offered at both sides of an IP at the same cost (i.e. without investment).

¹¹http://www.entsog.eu/public/uploads/files/publications/CAM%20Network%20Code/2013/CAP368_131119_CAM%20NC%20IP%20list_for%20upload.pdf

freedom of allocation) can be achieved by compatible contract terms alone (product description along certain parameters) or can this only be achieved by a single standard contract established at EU level?

Q7a: Considering the variety of private law regimes across EU, do you believe a single standard contract established at EU level is feasible? If yes, do you believe that the benefit of such standard contract established at EU level outweighs the costs of its implementation?

Q8: Have you experienced inefficiencies and risks which make it necessary to harmonise certain clauses in capacity contracts and/or contractual terms and conditions of different TSOs at EU level (given the variety of private law regimes applied across Europe)? If so, what are the inefficiencies and risks experienced that require harmonisation and why?

Q9: Assuming everything else being equal (e.g. tariffs), do you prefer:

- a) firm products with limited allocability/locational restrictions (ex-ante information on conditions of use) or
- b) interruptible products (with ex-post information on actual occurrence of interruptions¹²)?

Q10: Given the Balancing NC implementation, which should foresee within-day obligations as an exception, do within-day standard capacity products ("rest-of-day capacity products"¹³) create any barrier to trade?

Q11: Are there any differences in the legal framework/capacity contracts that undermine the concept of a bundled capacity product (treatment after allocation)? If yes, please describe the differences as well as the risk for market participants resulting from those. Please provide specific examples.

Q12: Are there any other obstacles that hamper the use of capacity contracts across borders in the EU?

Q13: Do you think that a) binding EU rules, b) non-binding guidance or c) no rules at all (awaiting the implementation of existing NCs) address the above issues best? If needed, you can differentiate between different topics.

Secondary capacity markets

Q14: Do you think that rules are needed in order to stimulate secondary trading in Europe (taking into account the facilitation of trading already in place nationally or at EU-level, including joint booking platforms as demanded by NC CAM)?

¹² The actual occurrence of interruptions of interruptible capacity depends on the flows in the network. These flows are triggered by nominations/renominations of shippers, which can change until two hours before the flow. The TSOs, therefore, cannot precisely anticipate (ex-ante) the interruptions in the network. Hence, any calculated probability of interruption can only be a proxy to the actual occurrence of interruptions.

¹³ Article 9(6) of NC CAM

Q15: Do you see a need for a fully anonymised secondary capacity market (including third-party clearing) or is a bilateral capacity transfer (with consistent information to the TSO) sufficient?

Q16: Do you see the need to harmonise the handling of secondary capacity transfers to the primary market with reference to e.g. contract durations, handling, deadlines etc.?

Q17: Are there any rules hampering secondary trading of bundled capacity products? If yes, which ones and where? (Please provide specific cases, examples.)

Q18: What would be, in your view, the most efficient way of secondary trading of capacity: a) mandatory trading on a limited number of liquid secondary platforms as for primary capacity or b) keep the current regime as is (e.g. many options, venues, etc.)?

Q19: Would you support additional transparency rules for secondary trading and what should, in your view, those rules focus on (e.g. reporting on transactions, potentially incl. price)?

Q20: Do you think that a) binding EU rules, b) non-binding guidance or c) no rules at all (awaiting the implementation of existing NCs) address the above issues best? If needed, you can differentiate between different topics.

Virtual trading point design/access and hub issues

Q21: Are there any design elements of hubs which provide a barrier to cross-border trade (e.g. independence of the hub operator from traders)? If yes, which ones? Please provide specific cases, examples.

Q22: Are the fees (if any), the methods to calculate these fees, the general terms and conditions and/or contracts for service providers/intermediaries for transferring gas via trade notifications according to article 5 of the Balancing NC discriminatory and do they constitute a barrier to trade? If so, please state which of the elements above are problematic and which entry-exit systems are affected. Are there any other issues that create barriers to trade?

Q23: Do non-standardised formats represent a barrier for cross-border trading? If yes, do you see a need to establish a standardised data exchange format for trading of wholesale gas products to be used as interface between all potential balancing and trading venues - including key inputs¹⁴ (e.g. trading parties, time, location of trade, trading volumes and price, etc.)-?

Q24: How could the establishment of organised market places at hubs trading platform (via VTPs) be facilitated and should the Agency foresee rules to facilitate it?

Q25: Do you think that a) binding EU rules, b) non-binding guidance or c) no rules at all (awaiting the implementation of existing NCs) address the above issues best? If needed, you can differentiate between different topics.

¹⁴ Balancing NC Article 13 provides most of these inputs

Transparency rules

Q26: Do you think that contractual conditions of capacity services (incl. usage conditions) are transparent and clear enough and easy to access (taking into consideration the establishment of joint booking platforms such as PRISMA)? If not, please name the TSOs/platforms where this is not the case and evaluate it along any of these three parameters (i.e. non-transparent, unclear or difficult to access).

Q27: Do you consider that the contractual conditions of capacity products with limited allocability (e.g. interruptible hub access, but firm cross-border flow) are transparent and clear enough? If non-transparent and clear enough, what should be improved? (Please provide specific cases, examples.)

Q28: Do you have access to sufficient information on the condition(s) for interruption of a capacity service and/or its probability? If not, please specify where this is not the case.

Q29: Do you have sufficient information on the occurrence of the condition(s) for interruption and/or its probability? If not, please specify, where this is not the case.

Q30: Do you think that a) binding EU rules, b) non-binding guidance or c) no rules at all (awaiting the implementation of existing NCs) address the above issues best? If needed, you can differentiate between different topics.

Licensing requirements for market participants other than TSOs

Q31: Do you see a problem with regard to different licensing requirements in the EU? If yes, please name the Member State, explain the main issues and propose solutions (such as minimum requirements for licenses at EU level, etc.)

Q32: Do you think that a) binding EU rules, b) non-binding guidance or c) no rules at all (awaiting the implementation of existing NCs) address the above issues best?