

# **Explanatory Document for the Network Code on Harmonised Transmission Tariff Structures for Gas**

ENTSOG's Document on the Policy Choices for  
Network Code on Harmonised Transmission Tariff Structures for Gas  
for Re-Submission to ACER

This document constitutes the Explanatory Document for Network Code on Harmonised Transmission Tariff Structures for Gas (hereinafter 'the Explanatory Document') which accompanies the Network Code on Harmonised Transmission Tariff Structures for Gas for Re-Submission to ACER (TAR0500-15, hereinafter 'the TAR NC').

For the avoidance of doubt, the Explanatory Document shall not be construed as part of the TAR NC and is publicly disclosed to the market for information purposes only and without any commitment whatsoever from ENTSOG as to the final content of the TAR NC. In case of inconsistency between the TAR NC and the Explanatory Document, the TAR NC shall prevail in all circumstances.

ENTSOG hereby disclaim all responsibility for any changes to the TAR NC as presented. Such changes may result from, amongst others, the results of comitology procedure. The final content of the TAR NC shall be subject to the outcome of the procedure according to Article 5a(1) to (4) and Article 7 of Council Decision 1999/468/EC <sup>(1)</sup>, as foreseen by Article 28(2) of Regulation (EC) No 715/2009 <sup>(2,3)</sup>. The content of the TAR NC and the Explanatory Document should not be considered to give rise to any specific right or obligation whatsoever to ENTSOG or any of its Members as to any stakeholders.

The majority of the documents indicated via hyperlinks in the text of the Explanatory Document are available on ENTSOG's website: <http://www.entsog.eu/publications/tariffs>.

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<sup>(1)</sup> Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the European Commission as amended by Council Decision 2006/512/EC of 17 July 2006 (OJ L 200, 22.7.2006, p. 11).

<sup>(2)</sup> 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 (OJ L 211, 14.8.2009, p. 36).

<sup>(3)</sup> Currently Regulation (EC) No 715/2009 provides for the application of the regulatory procedure with scrutiny. In case of the change of the applicable procedure due to the Lisbon Treaty, the new procedure will apply accordingly.

## CONTENTS

<b>INTRODUCTION .....</b>	<b>5</b>	<b>2. OTHER CHANGES AND INFORMATION ....</b>	<b>37</b>
<b>WHAT HAPPENED? .....</b>	<b>5</b>	Additional Information: Entry-exit split as an output of the reference price methodology (Article 9) .....	38
<b>WHAT IS THIS DOCUMENT? .....</b>	<b>6</b>		
<b>GENERAL OBSERVATIONS .....</b>	<b>7</b>		
<b>WHAT'S NEXT? .....</b>	<b>9</b>		
 		<b>CHAPTER III. CONSULTATION REQUIREMENTS. 39</b>	
<b>CONSIDERATION OF ACER'S REASONED OPINION, OTHER FEEDBACK FROM ACER AND THE EC AND EXPLANATION OF OTHER CHANGES .....</b>	<b>11</b>	<b>1. REASONED OPINION AND TRILATERAL DISCUSSIONS .....</b>	<b>39</b>
<b>CHAPTER I. GENERAL PROVISIONS.....</b>	<b>11</b>	a. Issues related to the periodic consultation (Articles 14 and 15) .....	39
<b>1. REASONED OPINION AND TRILATERAL DISCUSSIONS .....</b>	<b>11</b>	b. Issues related to the cost allocation test (Article 16) .....	40
a. Specific nature of interconnectors: revenue recovery (Article 2.3) .....	11	<b>2. OTHER CHANGES AND INFORMATION ....</b>	<b>40</b>
b. Definitions (Article 3) .....	12		
c. Definition of transmission and non-transmission (dedicated) services (Articles 3.6, 3.17 and 4.1) .....	13	<b>CHAPTER IV. PUBLICATION REQUIREMENTS ....</b>	<b>43</b>
d. Complementary Revenue Recovery Charge (CRRC) at IPs (Article 4.2.b) .....	18	<b>1. REASONED OPINION AND TRILATERAL DISCUSSIONS .....</b>	<b>43</b>
e. Alternative tariffs for specific standard capacity products (Article 4.2, 3 <sup>rd</sup> subpara) ..	19	a. Confidentiality of commercially sensitive information (Article 17.2).....	43
f. Application of reference price methodology in a multi-TSO entry-exit system (Article 5).....	22	b. Publication of relevant parameters (Article 19.1.c) .....	44
<b>2. OTHER CHANGES AND INFORMATION .....</b>	<b>28</b>	<b>2. OTHER CHANGES AND INFORMATION ....</b>	<b>46</b>
Additional Information: Interrelation between the TAR NC definitions .....	29	Additional Information: Explanation of the standardised format for publishing tariff information.....	47
 		<b>CHAPTER V. RESERVE PRICES .....</b>	<b>48</b>
<b>CHAPTER II. REFERENCE PRICE METHODOLOGIES .....</b>	<b>30</b>	<b>1. REASONED OPINION AND TRILATERAL DISCUSSIONS .....</b>	<b>48</b>
<b>1. REASONED OPINION AND TRILATERAL DISCUSSIONS .....</b>	<b>30</b>	a. Binding tariffs and harmonisation of the tariff setting year (Articles 21.1 and 22.2) ....	48
a. Approach towards reference price methodologies (Chapter II).....	30	b. NRA decision to apply multipliers (Article 22.3) .....	50
b. Benchmarking issues (Article 10) .....	34	c. Process for NRA approval of multipliers (Article 22.3) .....	51
c. Storage (Article 11).....	36	d. Multiplier ranges (Article 23.1-3) .....	52
		e. Methodology for seasonal factors based on flows (Article 25) .....	54

f. Calculation of reimbursement should capacity be interrupted (Article 26) .....	55
g. A and B factor (Article 26) .....	55
h. Pricing of non-physical backhaul capacity as interruptible capacity (Article 26.4).....	56
<b>2. OTHER CHANGES AND INFORMATION .....</b>	<b>59</b>
Additional Information: Update of transmission tariffs within the tariff period (Article 22.2).....	60

## **CHAPTER VI. TRANSMISSION SERVICES REVENUE RECONCILIATION .....**

<b>1. REASONED OPINION AND TRILATERAL DISCUSSIONS .....</b>	<b>61</b>
a. Issues related to the transmission services revenue recovery (Articles 27.4, 29.2 and 30.3) .....	61
<b>2. OTHER CHANGES AND INFORMATION .....</b>	<b>61</b>
Additional Information: Reconciliation of the regulatory account via CRRC.....	62

## **CHAPTER VII. PRICING OF BUNDLED CAPACITY AND CAPACITY AT VIRTUAL INTERCONNECTION POINTS .....**

<b>1. REASONED OPINION AND TRILATERAL DISCUSSIONS .....</b>	<b>63</b>
a. Split of revenue from bundled capacity (Article 33.3).....	63
<b>2. OTHER CHANGES AND INFORMATION .....</b>	<b>64</b>
Additional Information: Combination mechanisms to set the reserve prices for VIPs (Article 32).....	64

## **CHAPTER VIII. CLEARING PRICE AND PAYABLE PRICE .....**

<b>1. REASONED OPINION AND TRILATERAL DISCUSSIONS .....</b>	<b>65</b>
a. Fixed price tariffs (Articles 34.2 and 35).....	65
<b>2. OTHER CHANGES AND INFORMATION ....</b>	<b>67</b>

## **CHAPTER IX. INCREMENTAL CAPACITY.....**

<b>1. REASONED OPINION AND TRILATERAL DISCUSSIONS .....</b>	<b>68</b>
a. Recovery mechanisms for 1-f share of investment costs.....	68
b. Fixed payable price for incremental capacity .....	69
c. Use of mandatory minimum premium to mitigate cross-subsidisation risk .....	69

## **CHAPTER X. FINAL AND TRANSITIONAL PROVISIONS.....**

<b>1. REASONED OPINION AND TRILATERAL DISCUSSIONS .....</b>	<b>71</b>
a. Protection of existing contracts (Article 44) .....	71
b. TAR NC application date (Article 44, 2 <sup>nd</sup> subpara) .....	75
c. Implementation monitoring .....	77
<b>2. OTHER CHANGES AND INFORMATION ....</b>	<b>78</b>

## **ANNEXES .....**

<b>ANNEX 1. SEASONAL FACTORS METHODOLOGY .....</b>	<b>80</b>
<b>ANNEX 2. LIST OF ABBREVIATIONS .....</b>	<b>83</b>
<b>ANNEX 3. LIST OF FIGURES AND TABLES .....</b>	<b>85</b>
<b>ANNEX 4. VERSIONS OF THE TAR NC AND ADDITIONAL MATERIAL .....</b>	<b>86</b>
<b>ANNEX 5. CORRELATION TABLE .....</b>	<b>87</b>

## INTRODUCTION

### WHAT HAPPENED?

#### ➤ Who and why is doing this

The TAR NC was developed by ENTSOG, an organisation currently comprising 44 TSO [Members](#) from 23 European countries <sup>(1)</sup>, in accordance with the task per Article 8(1) of Regulation (EC) No 715/2009 and following the process foreseen by its Article 6.

The preparation of this network code by ENTSOG was initiated by an [invitation letter](#) from the European Commission (hereinafter 'the EC') to draft a Network Code on Tariff Structures in Gas Transmission Networks which was received by ENTSOG on 19 December 2013. The development of this network code is based on the [Framework Guidelines](#) (hereinafter 'TAR FG') on rules regarding harmonised transmission tariff structures for gas published on 29 November 2013 by the Agency for the Cooperation of Energy Regulators (hereinafter 'ACER').

The TAR NC for reasoned opinion ([TAR0450-14](#)) was submitted to ACER on 26 December 2014. The Accompanying Document ([TAR0451-14](#)) clarified the chosen policy approaches further to the previously developed documents that provided the background for the draft versions of the TAR NC as described below. As foreseen by the TAR FG, ENTSOG has also conducted the Impact Assessment on Harmonisation of the Tariff Setting Year ([TAR0410-14](#)).

Following the Opinion of ACER No 02/2015 of 26 March 2015 (hereinafter 'the Reasoned Opinion') <sup>(2)</sup> on the submitted TAR NC and pursuant to Article 6(8) of Regulation (EC) No 715/2009, ENTSOG has chosen to re-submit to ACER the TAR NC (TAR0500-15). This TAR NC for re-submission takes account of the issues raised in ACER Reasoned Opinion as well as the feedback received from ACER and the EC during and after the 3-month period foreseen for the Reasoned Opinion preparation by Article 6(7) of Regulation (EC) No 715/2009. For those issues that were raised both in the Reasoned Opinion and during the trilateral discussions between ACER, ENTSOG and the EC, the outcome of these trilateral discussions prevails.

#### ➤ Background documents and stakeholder involvement

Within the TAR NC development process prior to its submission to ACER, ENTSOG elaborated a number of its draft versions and associated background documents, including:

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<sup>(1)</sup> As well as 3 Associated Partners from another 3 European countries and 4 Observers from EU affiliate countries.

<sup>(2)</sup> Published on [ACER's website](#) on 30 March 2015.

1. the Launch Documentation ([TAR136-13](#)) published on 22 January 2014 to set the scene for the TAR NC development and the Final Project Plan ([TAR202-14](#)) published on 30 January 2014 after 1-month public consultation;
2. the initial draft TAR NC ([TAR200-14](#)) and the Supporting Document ([TAR300-14](#)) published on 30 May 2014 for 2-month public consultation;
3. the refined draft TAR NC ([TAR0350-14](#)) and the Analysis of Decisions Document ([TAR0351-14](#)) published on 7 November 2014 for 2-week public consultation in a form of Stakeholder Support Process (SSP) <sup>(1)</sup>;
4. the comparison documents between the initial draft TAR NC and the refined draft TAR NC ([TAR0426-14](#)) and between the refined draft TAR NC and the TAR NC for Reasoned Opinion ([TAR0466-14](#)).

In line with its internal process and in compliance with Regulation (EC) No 715/2009, ENTSOG has engaged extensively with market participants, by both organising and participating in events in order to publicise the process and encourage stakeholder involvement. The details of various stakeholder meetings can be found [here](#).

### WHAT IS THIS DOCUMENT?

#### ➤ Why this document is needed

This document explains ENTSOG's consideration of the feedback received from ACER and the EC within and after the 3-month period of ACER's preparation of the Reasoned Opinion, in particular:

- The rationale for the amendments made 'in light of' the Reasoned Opinion as foreseen by Article 6(8) of Regulation (EC) No 715/2009 as well as the rationale for no changes made in response to it;
- The rationale for the amendments made in response to the detailed feedback received from the EC and ACER with regards to the TAR NC for Reasoned Opinion;
- Where relevant, the explanation is given for other amendments implemented in the TAR NC for re-submission as compared to the TAR NC for Reasoned Opinion.

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<sup>(1)</sup> See Article 26(4) of ENTSOG's [Rules of Procedure](#).

### ➤ How this document is structured

The Explanatory Document includes the following parts:

- Introduction sets the background for preparing the TAR NC for re-submission and this Explanatory Document and also includes ENTSOG's general observations in response to the Reasoned Opinion.
- The main part of the Explanatory Document contains the following sections: (1) ENTSOG's consideration of ACER's Reasoned Opinion and other feedback received from ACER and the EC; and (2) ENTSOG's explanation of other changes made as compared to the TAR NC for Reasoned Opinion. This main part is structured per Chapter of the TAR NC for re-submission and each Chapter, where relevant, is split into the respective sections specified above. The issues within each Chapter appear in the chronological order of the Articles of the TAR NC for re-submission.
- The set of Annexes includes, inter alia, the list of figures, tables and abbreviations as well as the correlation table between the TAR NC for Reasoned Opinion and the TAR NC for re-submission.

### GENERAL OBSERVATIONS

Before 'Chapter by Chapter' analysis of the changes made to the TAR NC for re-submission as compared to the TAR NC for Reasoned Opinion, ENTSOG deems it necessary to react on some points raised by ACER in the introductory part of the Reasoned Opinion regarding Chapters I-VIII and X of the TAR NC.

- Consideration of ACER's Preliminary Opinion: ACER states that the TAR NC submitted for ACER's Reasoned Opinion 'took partial account of the Agency's informal preliminary opinion, namely scope, objective and secondary adjustments to the cost allocation methodologies'. ACER's Preliminary Opinion of 31 July 2014 (hereinafter 'the Preliminary Opinion') <sup>(1)</sup> is based on the initial draft TAR NC of 30 May 2014 and was considered by ENTSOG during the preparation of the refined draft TAR NC of 7 November 2014 <sup>(2)</sup>. ENTSOG would like to highlight that the changes quoted in the Reasoned Opinion were not the only ones made in response to ACER's concerns expressed in the Preliminary Opinion <sup>(3)</sup>. In particular, ENTSOG

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<sup>(1)</sup> Document not published.

<sup>(2)</sup> See Annex 4 enlisting different versions of the TAR NC.

<sup>(3)</sup> See the [Analysis of Decisions Document](#): p. 10 (reformulation of the TAR NC scope), p. 29 (homogeneous groups of points for the application of rescaling), p. 30 (conditions for the application of benchmarking). Issues are enlisted in the order of their appearance in the Preliminary Opinion.

also took on board ACER's concerns regarding publication requirements and reserve prices for interruptible capacity <sup>(1)</sup>. Where ACER's concerns were not fully taken on board, the rationale for ENTSOG's position was provided for each respective issue <sup>(2)</sup>.

- Consideration of ACER's Letter: ACER states that the TAR NC for Reasoned Opinion did not take account of 'the suggestions made by the Agency in its letter of 26 November 2014'. ACER's letter of 26 November 2014 (hereinafter 'the Letter') <sup>(3)</sup> is based on the refined draft TAR NC of 7 November 2014 and was considered by ENTSOG during the preparation of the TAR NC submitted for Reasoned Opinion of 26 December 2014. ENTSOG would like to note that out of 6 concerns raised by ACER in the Letter, 3 concerns were considered during the preparation of the refined draft TAR NC and the rationale for ENTSOG's position was again provided in the Accompanying Document <sup>(4)</sup>. The other 3 concerns were the new ones, and ENTSOG took on board 1 of them <sup>(5)</sup> and provided rationale for its position regarding the other 2 <sup>(6)</sup>.
- Consideration of stakeholder feedback: ACER states that 'stakeholders expressed their concern about ENTSOG's internal decision-making process, which was perceived to have put too much focus on TSOs' interests (the protection of TSOs' revenues) over the needs of market participants'. ENTSOG would like to underline that with the aim of fulfilling an obligation to conduct an extensive consultation process when preparing NCs – as set out in Article 10(1) of Regulation (EC) No 715/2009 – almost 1/3 of the whole time allowed for ENTSOG to develop a NC (namely, no longer than 12 months) was dedicated to continuous

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<sup>(1)</sup> See the [Analysis of Decisions Document](#): p. 39 (publication of the allowed/target revenue), p. 59 (factors A and B). Issues are enlisted in the order of their appearance in the Preliminary Opinion.

<sup>(2)</sup> See the [Analysis of Decisions Document](#): p. 14 (definition of transmission services), p. 75 (implementation monitoring), p. 38 (confidentiality of commercially sensitive information), p. 17 (indication of the changes made to the re-drafting of the primary cost allocation methodologies), p. 26 (asset allocation methodology), p. 22 (application of the cost allocation methodology in a multi-TSO entry-exit system), p. 21 (rescaling), p. 30 (tariff increases at other points as a consequence of benchmarking), p. 51 (multiplier cap), p. 49 (approach to congestion), p. 58 (ex-post discount), p. 60 (non-physical backhaul), p. 64 (fixed payable price approach). Issues are enlisted in the order of their appearance in the Preliminary Opinion.

<sup>(3)</sup> Document not published.

<sup>(4)</sup> See the [Accompanying Document](#): p. 33 (confidentiality of commercially sensitive information), p. 41 and 42 (ex-post discount), p. 32 (non-physical backhaul). Issues are enlisted in the order of their appearance in the Letter.

<sup>(5)</sup> Not mentioned in the Accompanying Document but is demonstrated in Article 48(2)(b) of the [Comparison of Refined Draft and TAR NC](#) (deadline for implementation of the mitigating measures).

<sup>(6)</sup> See p. 32 of the [Analysis of Decisions Document](#) (postage stamp as a counterfactual) and p. 52 of the [Accompanying Document](#) (protection of existing contracts). Issues are enlisted in the order of their appearance in the Letter.



consultation with the market in the form of public consultations on the project plan and respective draft versions of the TAR NC as well as numerous bilateral, multi-lateral and public meetings with stakeholders <sup>(1)</sup>. ENTSOG attributes significant importance to the extensive stakeholder involvement during the NC development process and hence, the stakeholder feedback received during consultations/meetings was considered and analysed in several additional documents accompanying the respective versions of the TAR NC <sup>(2)</sup>.

- Compliance with Regulation (EC) No 715/2009: ACER states that the Reasoned Opinion provides ‘an indication of the assessed lack of compliance with the Framework Guidelines and Regulation (EC) No 715/2009’. ENTSOG would like to remind that the NC establishment process set out in Article 6 of Regulation (EC) No 715/2009 foresees that ACER ‘may recommend’ a NC for the adoption of the EC ‘once the Agency is satisfied that the network code is in line with the relevant framework guideline’. ENTSOG believes that the TAR NC was drafted on the assumption that it is to supplement and form an integral part of Regulation (EC) No 715/2009 by, inter alia, further detailing the rules set out in its Article 13 on tariffs for access to networks. To that end, the respective recital establishing the link between the TAR NC and Regulation (EC) No 715/2009 is maintained throughout different versions of the TAR NC developed by ENTSOG <sup>(3)</sup>.

### WHAT’S NEXT?

As explained above, the amended TAR NC and the Explanatory Document have been prepared for re-submission to ACER pursuant to Article 6(8) of Regulation (EC) No 715/2009. Further, Article 6(9) of Regulation (EC) No 715/2009 foresees that ACER ‘shall submit’ the TAR NC to the EC and ‘may recommend that it be adopted’ once ACER is ‘satisfied’ that the TAR NC ‘is in line with’ the TAR FG.

For the previous network codes developed by ENTSOG, ENTSOG also chose to re-submit the respective network code to ACER after having received the related Reasoned Opinion. Below is the indication of the dates when each network code was re-submitted to ACER and when the recommendation for its adoption was provided:

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<sup>(1)</sup> See p. 9 of the [material](#) for the TAR NC Refinement Workshop of 24 September 2014. See also ‘Background documents and stakeholder involvement’ above.

<sup>(2)</sup> See Annex 5 enlisting additional documents associated with different versions of the TAR NC.

<sup>(3)</sup> This approach follows the examples established by recital (7) of the CAM NC and recital (9) of the BAL NC. These network codes are due to be applicable as from November/October 2015 respectively (see Article 28 of the CAM NC and Article 53 of the BAL NC).

1. Commission Regulation (EU) 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 (the CAM NC): 17 September 2012 for [re-submission](#) and 9 November 2012 for [recommendation](#);
2. Commission Regulation (EU) No 312/2014 of 26 March 2014 establishing a Network Code on Gas Balancing of Transmission Networks (the BAL NC): 21 February 2013 for [re-submission](#) and 25 March 2013 for [recommendation](#);
3. Commission Regulation (EU) No 2015/703 establishing a Network Code on Interoperability and Data Exchange Rules (the INT NC): 18 December 2013 for [re-submission](#) and 15 January 2014 for [recommendation](#).

As further foreseen by Article 6(11) of Regulation (EC) No 715/2009, the EC 'may adopt' the TAR NC 'upon recommendation' from ACER in accordance with the regulatory procedure with scrutiny per Article 5a(1) to (4) and Article 7 of Council Decision 1999/468/EC <sup>(1)</sup>.

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<sup>(1)</sup> Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the European Commission as amended by Council Decision 2006/512/EC of 17 July 2006 (OJ L 200, 22.7.2006, p. 11).

## CONSIDERATION OF ACER'S REASONED OPINION, OTHER FEEDBACK FROM ACER AND THE EC AND EXPLANATION OF OTHER CHANGES

### CHAPTER I. GENERAL PROVISIONS

#### 1. REASONED OPINION AND TRILATERAL DISCUSSIONS

##### a. Specific nature of interconnectors: revenue recovery (Article 2.3)

With respect to interconnectors, ACER pointed out two concerns: (1) in the Reasoned Opinion, ACER noted that the text 'in particular with regard to having an effective revenue recovery mechanism' should be deleted from Article 2 on the TAR NC scope; and (2) during the bilateral discussions, ACER queried the necessity to mention of the specific nature of interconnectors in Article 2 as well as in the recital.

ENTSOG is of the opinion that the indicated portion on effective revenue recovery mechanism is to be kept in Article 2. It is important to recognise that any risk to the financability of the interconnectors can potentially lead to less cross-border capacity and reduced market integration. The inclusion of the clause is intended to allow the NRAs the ability to consider a range of options to deal with this risk and to find the most appropriate solution for the relevant interconnectors recognising they are not meshed network and have no captive demand. Interconnectors often play an important role in security of supply and market integration. Many of the benefits they provide to adjacent markets are based on the very fact that a physical link has been established, e.g. the IUK asset facilitates the narrowing of price differentials between NBP and ZEE markets. Without captive demand and with volatile flow patterns that reflect utilisation in times of supply tension, there is a danger that the strict application of some of the rules within the TAR NC would not work. Therefore, it would be prudent to allow the relevant NRAs to consider solutions to enable interconnectors to earn appropriate revenue.

In response to ACER's second concern, ENTSOG decided to delete the mention of specific nature of interconnectors from the recitals but to keep it in the Article on scope since this clause is important to provide NRAs with the ability to consider appropriate solutions for interconnectors recognising their specific characteristics making them different from meshed TSOs. Some of the rules of the TAR NC will not necessarily work effectively for interconnectors. E.g. if floating capacity prices were to be the only mechanism to recover revenues, tariffs are unlikely to be stable and unlikely to be an effective revenue recovery mechanism, given that interconnectors have relatively greater volatility in flows. If there is an under-recovery situation, simply increasing prices at a limited number of entry/exit points may exacerbate an under-recovery situation through a spiral of rising capacity charges and lead to lower bookings and decreased

revenue. This would risk the financability of the interconnectors, potentially leading to less cross-border capacity and reduced market integration. As the recitals are not legally binding and only set the background for the TAR NC rules foreseen in its Articles, the clause remains necessary in Article 2.

Drafting changes were implemented to delete the reference to specific nature of interconnectors from the recitals.

### **b. Definitions (Article 3)**

When drafting the definitions, ENTSGO relied on the following set of criteria based on the experience from the previous NCs: (1) to require a definition, the term must be used within the NC text a significant number of times; (2) the definition must be descriptive and must not contain any rule; (3) the definition must not be circular, i.e. the paraphrasing of the term does not constitute a definition; (4) no definitions of the terms that are clear as such are necessary; (5) the readability of the overall NC text should be preserved and respected, i.e. it is possible to have the definition later in the NC text but not in the Article on definitions.

Having considered ACER's concerns raised in the Reasoned Opinion regarding the reduced number of definitions as compared to the TAR FG and subject to the trilateral discussions between ACER, ENTSGO and the EC, ENTSGO concluded the following <sup>(1)</sup>:

#### **Definitions that were added or moved**

- 'cost driver' definition used in the TAR FG is added to Article 3 and re-drafted for clarity and simplicity;
- 'price cap regime' and 'non-price cap regime' <sup>(2)</sup> definitions are moved from Chapter VI to Article 3 keeping the same drafting;

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<sup>(1)</sup> See 'Other changes...' below in this Chapter for indication of the further changes made in Article 3 of the TAR NC for re-submission in addition to the changes made per ACER's Reasoned Opinion and trilateral discussions. The explanation for the amendment made to the definition of the 'tariff period' is provided in 'Other changes...' in Chapter V of this Document – but not this Chapter – since it is not a consequences of the amendments made to the other definitions.

<sup>(2)</sup> The Reasoned Opinion did not raise as a concern the absence of 'non-price cap regime' (the TAR FG term is 'revenue cap regime'). For consistency with the definition of 'price cap regime', this definition was also moved from Chapter VI to Article 3 of the TAR NC for re-submission.

- ‘reference price’ is moved from Article 3 to Article 6 to ensure that the explanation of how to apply the reference price methodology (the TAR FG term is ‘cost allocation methodology’) is set out together with the explanation of its outcome – the reference prices;
- ‘reference price methodology’ is moved from Article 6 to Article 3 to ensure a parallel approach is taken with the definitions of transmission and non-transmission services <sup>(1)</sup>. It was also re-drafted for clarity.

#### **Definitions that were not added**

- ‘bundled reserve price’, ‘non-physical backhaul’, ‘payable price’ and ‘revenue reconciliation’ are sufficiently described in the respective TAR NC Articles <sup>(2)</sup>;
- ‘costs’ is not defined since the term itself is clear and the TAR NC does not bring any specificity as to its understanding;
- ‘entry point’ and ‘exit point’ are not introduced per previous feedback received from the EC during the comitology procedure on the BAL NC. The BAL NC re-submitted to ACER included these definitions which were subsequently deleted as redundant at the EC’s initiative <sup>(3)</sup>;
- ‘fixed cost’ and ‘regulated price’ are not added since they are not used even once in the TAR NC text;
- ‘tariff structure’ is not added since it is used in the TAR NC only once within the Articles and the rest of its occurrences are in the recitals and linked to the name of the TAR NC.

Some of the definitions were added and clarified to accommodate ACER’s concerns raised in the Reasoned Opinion as well as subject to the trilateral discussions.

#### **c. Definition of transmission and non-transmission (dedicated) services (Articles 3.6, 3.17 and 4.1)**

As outlined in the Reasoned Opinion, ACER considers that the TAR NC does not contain: (1) a criterion with sufficiently distinctive character; (2) a limited list of dedicated <sup>(1)</sup> services;

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<sup>(1)</sup> See ‘Other changes...’ below in this Chapter for the explanation of the parallel approach between the respective definitions.

<sup>(2)</sup> Article 31(1) for ‘bundled reserve price’, Article 26(4) for ‘non-physical backhaul flows’, Article 34 for ‘payable price’, Article 30(2) for ‘revenue reconciliation’.

<sup>(3)</sup> See p. 5 of the [BAL NC re-submitted to ACER](#): ‘entry point’ was defined as ‘a point where gas enters a balancing zone’; ‘exit point’ was defined as ‘a point where gas exits a balancing zone’.

(3) a cap on revenues to be recovered from dedicated services relative to overall revenues; and  
(4) rules for the reconciliation of the associated revenue. Hence, ACER considers that the definition for dedicated services is too open and therefore creates the scope for a potentially unrestricted proportion of allowed/target revenues to be recovered outside of the reference price methodology which may undermine tariff harmonisation across the EU. The issue of the definitions of transmission and non-transmission (dedicated) services was also subject to the trilateral discussions between ACER, ENTSG and the EC.

### **How to distinguish between transmission and non-transmission (dedicated) services**

In order to address mainly ACER's concerns regarding the definition of dedicated services in the TAR NC for Reasoned Opinion, the following changes were made:

- The labelling of 'dedicated services' was changed to 'non-transmission services' with the aim of: (1) better reflecting the fact that by their very nature, they are services that are not recovered by transmission tariffs and do not relate to the transmission services revenue; and (2) ensuring better distinction between two components of the allowed/target revenue – transmission and non-transmission services revenue related to the provision of transmission and non-transmission services respectively.
- To draw the border between transmission and non-transmission services, it is necessary to consider the criteria set out in Article 4(1). One can ascertain that if **both** criteria outlined below are met then the service **must** be classified as a transmission service but if either (or none) are met then there is an **option** to attribute that service to **either** a transmission service **or** a non-transmission service. The criteria outlined in Article 4(1) are:
  - (a) the costs of such services are caused by the cost drivers of **both** capacity **and** distance;
  - (b) the costs of such services are related to the regulated asset base for the provision of transmission services.

The intention for this approach is to ensure that by default all services should be classified as transmission.

Criteria	Consequence
If both conditions (a) and (b) are met	It is a transmission service
If (a) or (b) is not met	This may be classified as a

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<sup>(1)</sup> Previous TAR NC version as well as the TAR FG use the term 'dedicated' whereas the TAR NC for re-submission uses the term 'non-transmission' instead.

if half of condition (a) is not met and condition (b) is met	transmission service <i>or</i> a non-transmission service
if half of condition (a) is not met and condition (b) is not met	

**Table 1. Criteria to distinguish between transmission and non-transmission services**

- Since the approach described above was chosen to distinguish between transmission and non-transmission services, the previous distinctive feature – the recipient of such services – was removed from the definitions for simplicity ('all network users' from transmission services and 'specific network users, or infrastructure operators, or at specific entry or exit points' from non-transmission services). However, the associated consultation, NRA approval and publication requirements <sup>(1)</sup> are restricted only to non-transmission services provided to network users, per previously outlined concerns regarding the necessity to preserve the confidentiality of commercially sensitive information <sup>(2)</sup>. Also, as compared to the TAR NC for Reasoned Opinion, an amendment was introduced to ensure that it is not non-transmission services themselves that are subject to consultation and NRA approval requirements, but the respective methodology therefor.
- In addition to the outlined amendments, a set of criteria was introduced for non-transmission tariffs applicable for a given non-transmission service, namely: cost-reflectivity, non-discrimination, objectiveness, transparency, application to the beneficiary of the services and minimising cross-subsidisation <sup>(3)</sup>. If it is not possible to identify a beneficiary of some non-transmission service then the costs are to be allocated to all network users. Below are examples of a particular service and, if applicable, their relation to this rule.

Examples of service	Consequences for the TAR NC
<b>Quality conversion</b>	Not in scope of the TAR NC <sup>(4)</sup>
<b>Network adaption</b>	Charged to all network users <sup>(5)</sup>
<b>Biogas levy</b>	Charged to beneficiaries of the service

**Table 2. Interrelation between services and their beneficiaries**

- Three new definitions of 'non-transmission services revenue', 'non-transmission service tariff methodology' and 'transmission service revenue' were introduced to further support the clear separation of non-transmission services from transmission services <sup>(1)</sup>.

<sup>(1)</sup> See Article 14(1)(d), Article 15(1)(d) and Article 19(1)(a)(iv) respectively.

<sup>(2)</sup> See p. 16 of the [Analysis of Decisions Document](#).

<sup>(3)</sup> The last criterion was already captured in the TAR NC for Reasoned Opinion.

<sup>(4)</sup> See p. 11 of the [Accompanying Document](#).

<sup>(5)</sup> See p. 12 of the [Accompanying Document](#).

### **Exhaustive list / cap / revenue reconciliation for non-transmission (dedicated) services**

With regard to the fact that the definition of non-transmission services does not contain an exhaustive list of services that can be classed as non-transmission, as ENTSG has previously explained and would like to reiterate now, such a list in the TAR NC would limit future changes to non-transmission services that may be recovered by TSOs and could be too narrow or too wide when taking into account the TSOs' characteristics.

For similar reasons, a percentage cap on the revenue allowed to be attributed to non-transmission services is not included either. Depending on system characteristics, one overall cap would not be suitable and depending on the chosen cap, may lead to cross-subsidisation, should a cap be too low or too high. ENTSG is of the opinion that the concern regarding a lack of a cap, and the associated concern that this may result in a potentially unrestricted proportion of allowed/target revenues being recovered outside of the reference price methodology, can be easily counteracted by the fact that the non-transmission service tariff methodology for a given non-transmission service needs to be approved by the relevant NRAs.

As for the rules regarding the revenue reconciliation, ENTSG would like to highlight that the TAR NC for Reasoned Opinion contained a requirement to consult on the 'manner in which the associated dedicated services revenue is reconciled'. This requirement is kept in the TAR NC for re-submission and hence, when a non-transmission service tariff methodology for a given non-transmission service is proposed in the consultation document, the manner in which the associated revenue reconciliation is carried out would also be consulted upon with the market.

### **Costs drivers of capacity and distance**

The main issue regarding the original definitions appears to be what exact services can be considered as non-transmission ones. Throughout bilateral discussions between ACER and ENTSG, and trilateral discussions between ACER, ENTSG and the EC, ACER continued to emphasise the fact that they believed that non-transmission services should not be linked to the cost drivers of capacity and distance and essentially that transmission services should be all the services linked to those cost drivers. In fact, most of the costs of transmission services are caused by the cost drivers of capacity and distance. However, some costs (e.g. overhead costs to maintain the activities of the TSO) are to a greater extent independent from capacity and distance, but are necessary to provide transmission services.

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<sup>(1)</sup> See 'Other changes...' below in this Chapter for explanation of the parallel approach between the respective definitions.



Not all costs of transmission services are caused by capacity and distance – similarly, not all costs of non-transmission services are independent from capacity and distance. ENTSOG has outlined five such instances where services are linked to either or both capacity and distance and should be considered non-transmission services: regional networks (as are in existence in some Member States), biogas services, dedicated compression services, dedicated metering and pressure services and dedicated connections. ENTSOG is of the view that the revised drafting of the definitions takes this matter into account and therefore, is the main reason behind the flexibility of ascertaining non-transmission services as outlined above. Below is further explanation for each of them:

- Services provided on **regional networks** are dedicated to particular counterparties and the subsequent costs generated by the provision of such services are capacity and distance based. Should regional networks be included in the transmission services definition, one of the main principles of the TAR NC will not be fulfilled – that of cost-reflectivity. Costs related to regional grids are borne precisely by users of the related TSO network sections, on the basis of their booked capacity, usually corrected for distance. In addition to this, ENTSOG is of the opinion that the definition of ‘transmission’ and ‘distribution’ in the Third Energy Package are very clear. As ‘distribution’ means ‘the transport of natural gas through local or regional pipeline networks with a view to its delivery to customers, but not including supply’, the regional network can refer to the regional pipeline in this definition.
- With regard to **biogas**, it is necessary that the biogas levy is attributed to non-transmission services. According to the current German national rules the biogas fee has to be charged at all exit points except cross-border, market area connection points and entry/exit points from/to storage facilities. The same rate must be applied across the whole of Germany. The idea behind it is that all domestic customers should equally pay for the promotion of renewable energy. According to the approach in the TAR NC for re-submission, it is the intention that the costs for this specific biogas levy should be allocated to all final customers in Germany but not to all network users <sup>(1)</sup>. This could be an example of ‘beneficiary’ mentioned in Article 3(b) of the TAR NC for re-submission.
- **Dedicated compression** services, where e.g. a compressor station is built at a specific entry point to increase flows etc. is also linked to a cost driver of capacity yet is dedicated to that particular entry point and therefore, it does not make sense that it should be attributed to transmission services.

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<sup>(1)</sup> See Table 2 and the respective explanation above.

- Similarly for dedicated **pressure** and **metering** services, these are also connected to capacity and distance yet are dedicated to particular network users.
- **Connection** charges, and in particular one-off connection charges, whereby a new network user is connecting to the transmission system is linked to capacity yet should not be a transmission service as quite obviously this connection is a service dedicated to that particular new network user.

The definitions were revised for clarity purposes, the criteria for distinction between transmission and non-transmission services were introduced. Also, the criteria for non-transmission tariffs were introduced. In addition to this, the following new definitions were introduced: ‘non-transmission service tariff methodology’, ‘non-transmission services revenue’ and ‘transmission services revenue’. Articles 14, 15 and 19 on the associated consultation, NRA approval and publication requirements were also revised to ensure further clarity for non-transmission services falling under such requirements.

#### d. Complementary Revenue Recovery Charge (CRRC) at IPs (Article 4.2.b)

In the Reasoned Opinion, ACER raised as a concern the possibility of applying CRRC at IPs where fixed tariffs are offered.

Where fixed tariffs are used at IPs, the CRRC acts as the ‘floating element’ of the overall cost to a user to flow gas at a particular entry or exit point and reduces the cross-subsidisation. There are two aspects of such minimisation of cross-subsidisation:

- If CRRC could not be charged at IPs, those users with floating tariffs would pick up an increasing percentage of the overall costs of the system compared to the fixed tariffs. This issue is linked to the protection of existing fixed price contracts <sup>(1)</sup>. For non-price cap regime, where the offer of fixed payable price approach for existing capacity is not allowed, the issue of increased cross-subsidies is only applicable for the duration of the safeguarded fixed price contracts. The users with fixed tariffs will pick up less costs than the users with floating tariffs, resulting in increased cross-subsidies.
- In addition, as CRRC can be charged at non-IPs, there will be an increase in cross-subsidies between IPs and non-IPs should CRRC be not allowed to charge at both IPs with fixed prices and non-IPs.

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<sup>(1)</sup> See ‘Protection of existing contracts’ in Chapter X of this Document.

ENTSOG is of the opinion that it is incorrect to view a commodity-based CRRC as a barrier to cross-border flows. In this view, the CRRC is somehow an additional charge that is being incurred when flowing gas at an IP and thus acts as a barrier to flow compared to regimes that have no CRRC. It should be noted that a TSO in a non-price cap regime has fixed allowed revenue and therefore, any CRRC is not an 'extra cost' to a user but part of the overall cost of accessing the system. If there were no CRRC at an IP then the capacity-based transmission tariff would consequently be higher in order for the TSO to recover their allowed revenue. Thus, a CRRC at an IP is not a barrier as it is associated with a capacity-based transmission tariff that is lower than would be the case if no CRRC were allowed.

However, as the option to offer fixed tariffs for existing capacity in a non-price cap regime has been removed from the TAR NC for re-submission, there is a limited period (i.e. for the duration of the safeguarded contracts), where not applying the CRRC at IPs will result in increased cross-subsidies. Therefore, it has been decided to remove the CRRC at IPs that have a fixed tariff.

The possibility of applying a CRRC at IPs with fixed payable price approach has been removed with the acknowledgment that there may be increased cross-subsidies between: (1) fixed and floating network users; and (2) IPs and non-IP network users.

#### **e. Alternative tariffs for specific standard capacity products (Article 4.2, 3<sup>rd</sup> subpara)**

##### **General consideration**

Specific standard capacity products have been introduced in order to promote efficiency and to maximise the offer of firm capacity taking into account market and network characteristics. In an entry-exit system, the entry and exit capacity shall be used independently from the underlying system characteristics and, after a merger of entry-exit systems, from the different networks operated by different TSOs. Nevertheless, in the real world there are boundaries set by physical flows, the design of the networks and their interaction. Due to that, TSOs cannot guarantee a firm and freely allocable capacity usage every time, under every condition. Therefore, the TSO would need to reduce the current amount of capacity offered to the market significantly. By setting conditions, this scenario can be avoided.

Another possibility would be an investment in the network in order to ensure free allocability of firm capacity under every condition (i.e. that it is possible to flow the gas from every entry point to every exit point). The recent analysis carried out for the national network development plan

in Germany showed that billions of euro would have to be invested for that <sup>(1)</sup>. Major tariff increases resulting from these measures would have to be borne by network users. These investments are thus deemed economically inefficient and it is expected that they would have detrimental effects on the market. The introduction of specific standard capacity products, however, does promote the efficient use of the existing network.

### **Absence of an exhaustive list of specific standard capacity products in the TAR NC**

It would be inappropriate to provide an exhaustive list of specific standard capacity products as such products aim to promote the efficient use of the transmission system. A TSO or a NRA should always be free to develop new products that would promote greater efficiency. If the introduction of any new alternative product required an amendment to the TAR NC then this would be a barrier to both efficiency and innovation. Hence, instead ENTSOG chose to set out a non-exhaustive list of such products with the aim of indicating examples of such products. Instead, the TAR NC for re-submission foresees the obligation for such products to be approved by the NRA.

### **Examples of specific standard capacity products**

Below are the examples of currently offered specific standard capacity products:

- Firm restricted allocable capacity (**BZK**, in some cases also known as point-to-point products, offered in Germany): entitles on a firm basis the usage of the network at the booked entry point to one or more defined exit points or the usage of the network at the booked exit point from one or more defined entry points whereas the usage of the VTP is excluded in any case.
- Firm dynamically allocable capacity (**DZK**, offered in Germany): allows a firm transportation within the network in case of a balanced entry and exit nomination. Additionally, there is an interruptible access to the VTP (interrupted only after interruptible capacities).
- Conditional firm freely allocable capacity (**bfZK**, offered in Germany): firm depending on either temperature load or physical flows.
- **Temperature dependent** products at entry and exit points to and from storages (TAK, offered in Germany only at domestic IPs).
- **Shorthaul** capacity products (offered in Germany and UK): firm capacity between an entry and an exit point and with no access to the VTP.

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<sup>(1)</sup> Available in German language: [http://www.fnb-gas.de/files/20140318\\_netzentwicklungsplan\\_gas\\_2013.pdf](http://www.fnb-gas.de/files/20140318_netzentwicklungsplan_gas_2013.pdf).

- **Wheeling** (offered in Belgium): possibility to move gas from two IPs situated very close to each other (or even on same physical point).
- Operational capacity usage commitment (**OCUC**, offered in Belgium): bundled entry IP and exit IP capacity that do not allow access to the full entry-exit system, enables to decongestion the network.
- **Zeeplatform capacity** (offered in Belgium): service enabling the movement of gas from different entry and exit points situated in the Zeebrugge area, at a flat fee and with unlimited capacity.

#### **Why there is no cap on the revenue from specific standard capacity products**

During the elaboration of TAR NC the idea of introducing a cap (max percentage of the allowed/target revenue that can be earned from specific standard capacity products) was discussed. ENTSOG is of the opinion that there should be no arbitrary limit to the proportion of the allowed/target revenue that a TSO can collect from specific standard capacity products as this could be seen as setting a limit on efficiency.

- It would have a detrimental impact on the amount of capacity offered and future system development. E.g. in Germany a significant part of technical capacity of many import points (e.g. Waidhaus, Oude Statenzijl, Boholz) as well as export points (e.g. Medelsheim, Wallbach) is marketed in the form of specific standard firm capacity products due to the hydraulic circumstances <sup>(1)</sup> in NCG and GASPOOL. Also, for interconnectors without captive baseload demand it is essential to be able to respond to market needs and develop specific standard capacity products as necessary. The necessity of introducing the specific standard capacity products would be likely to occur also in case of further entry-exit system mergers.
- It would destroy a big amount of German interconnection capacity to/from other Member States and/or third countries exporting gas to the EU. Therefore, such a cap would lead to stranded investments. This situation is also applicable for the other countries.

#### **Pricing of specific standard capacity products**

The specific standard capacity products currently offered on the market are priced either through setting a discount to the reference price for standard capacity products, calculated according to the chosen reference price methodology (e.g. all German specific standard capacity

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<sup>(1)</sup> Specific capacity products have limitations due to hydraulic circumstances of the system: e.g. firm capacity can be booked at an entry point if capacity is booked and used at another entry point – otherwise, there is not enough pressure to get to a particular exit point.

products) or based on the cost drivers that cause the costs for these types of transmission services (British shorthaul products as well as Belgian Zeeplatform capacity and OCUC).

According to the outcome of trilateral discussions between ACER, ENTSOG and the EC, the transmission tariffs for specific standard capacity products shall be set by applying a discount to the respective reserve price. Also, the TAR NC for re-submission was amended to ensure that the manner in which the associated transmission tariffs for specific standard capacity products are subject to consultation, NRA approval and publication requirements <sup>(1)</sup>. Thus, ENTSOG believes that such pricing ensures transparency, non-discrimination and the avoidance of cross-subsidies.

The TAR NC for re-submission was amended to include a non-exhaustive list of specific standard capacity products. Also, the drafting was clarified to ensure that the transmission tariffs for such products are to be only capacity-based. This is linked to another amendment whereby such transmission tariffs are to be set by applying a discount to the respective reserve price. In addition, any such specific capacity products are subject to the NRA approval whereas the manner in which transmission tariffs for these products are set is subject to the consultation and approval requirements per Articles 14 and 15.

#### **f. Application of reference price methodology in a multi-TSO entry-exit system (Article 5)**

In the Reasoned Opinion, ACER considers that cost-reflectivity should be assessed on an entry-exit system basis, not per TSO within an entry-exit system. ACER believes that the setting of tariffs individually by each TSO triggers some deviations to the principles set in the TAR FG: (1) 'setting of tariffs individually by each TSO is inconsistent with a fully-fledged entry-exit model where ownership structures are invisible to the shipper and single cost allocation methodology applies'; (2) as a consequence of application of the reference price methodology separately by the TSOs in a multi-TSO entry-exit system, ACER has concerns with regards to the requirements for the entry-exit split and VIP tariff calculation; (3) regarding ring-fencing and tariff stability, ACER noted that 'as a result of the application of revenue reconciliation to a subset of the network constituting the entry-exit zone, the contribution of users of the entry-exit zone to revenue reconciliation will depend on the subset of the network they are using' which in addition, 'will lead to greater tariff instability in each subset, as compared to the stability over the whole entry-exit zone'.

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<sup>(1)</sup> See Article 14(1)(c), Article 15(1)(c) and Article 19(1)(a)(iii) respectively.

### **Interpretation of the TAR FG expression ‘one and the same’ methodology**

ENTSOG would like to clarify that, as compared to the vague formulation of the TAR FG ‘one and the same’ primary reference price methodology ‘shall apply to all entry and exit points on an entry-exit system’, the TAR NC clearly distinguishes between the following aspects: (1) whether is it the ‘same’ type of the reference price methodology or its ‘different’ types; and (2) whether such a reference price methodology is applied by the TSOs in a multi-TSO entry-exit system ‘jointly’ or ‘separately’.

As for the first aspect, the TAR NC indicates that the **same type** of reference price methodology is to be applied on an entry-exit system level unless the NRA took a decision to apply the reference price methodology separately and there is a merger of entry-exit systems planned, in which case the NRAs can undertake ‘intermediate steps’ – supported by an impact assessment and cost-benefit analysis – to apply **different** primary reference price methodologies in the entry-exit systems planned to be merged. The precondition for the application of such ‘different’ methodologies – namely, the separate application – was clarified in the TAR NC for re-submission as compared to the TAR NC for Reasoned Opinion.

As for the second aspect, during trilateral meetings it was discussed that the tariff setting model within an entry-exit system should be generally in line with the entry-exit network assess model. Therefore, the **joint application** of the reference price methodology was introduced into the TAR NC as a default rule. In terms of joint tariff setting, the costs for all assets constituting the entry-exit system are allocated regardless of the ownership borders. The cost-reflectivity is assessed on the level of the entry-exit system. As a consequence, disruptions between allowed and obtained/collected revenues from each TSO could occur. In order to ensure the recovery of allowed revenues by each TSO an effective inter-TSO compensations mechanism (hereafter ‘ITC mechanism’) shall be established by NRA as a **consequence** of such joint application of the reference price methodology.

However, in some cases the joint tariff setting could provide no or not enough incentives for the TSOs to operate, maintain and develop the transmission systems securely, reliably and efficiently. According to the outcome of trilateral discussions, in such cases the NRA may determine or approve the **separate application** of the reference price methodology. As compared to the case of the joint application, the establishment of an effective ITC mechanism is a **condition** for such separate application and is aimed at avoiding cross-subsidisation between different groups of network users as well as preventing detrimental effects on the transmission services revenue of the TSOs involved and its recovery. ENTSOG does not agree with the premise made in the Reasoned Opinion that the separate application of the reference price methodology necessarily results in higher tariff instability. This relates to the design and

application of an effective ITC mechanism as well as how the revenue reconciliation is taken into account in that mechanism.

Table 3 provides an overview of how the joint or separate application of the reference price methodology interrelates with the general rule set out in Article 6(4) that the **same type** of the reference price methodology is to be applied in an entry-exit system. Before that, it should be noted that for Scenario 1 of the proposed reference price methodology <sup>(1)</sup>, the notion of ‘reference price methodology’ may encompass not only the **primary** reference price methodology but also the **secondary** adjustment(s).

How	What	Comparison with a general rule
<b>Joint application</b>	Same reference price methodology and, if applicable, same secondary adjustments	Same as the general rule: <ul style="list-style-type: none"> <li>• If secondary adjustment(s) is/are used then it is/they are to be of the same type and applied jointly – this is consistent with the idea of joint publication of the consultation document where the proposed reference price methodology is to be described in full <sup>(2)</sup></li> <li>• Hence, in this joint application case, the overall reference price methodology is to be applied jointly</li> </ul>
<b>Separate application</b>	Same primary reference price methodology and, if applicable, same or different secondary adjustments	Same as the general rule: <ul style="list-style-type: none"> <li>• The secondary adjustments are not explicitly mentioned since it is clear that they are applied separately – this is consistent with the idea of separate publication of the consultation document where the proposed reference price methodology is to be described in full (secondary adjustments may only ‘complement’ the primary reference price methodology and hence, cannot be applied jointly if the primary reference price methodology is applied separately) <sup>(3)</sup></li> <li>• Hence, same or different secondary adjustments may be applied</li> </ul>
	Different primary reference price methodologies and, if applicable, same or different secondary adjustments	Different than the general rule: <ul style="list-style-type: none"> <li>• This is the case when the primary reference price methodology itself is different</li> <li>• The same conclusion as in the row above is applicable for secondary adjustments <sup>(4)</sup></li> </ul>

**Table 3. Application of the methodology in a multi-TSO entry-exit system**

<sup>(1)</sup> See ‘Approach towards reference price methodologies’ in Chapter II of this Document.

<sup>(2)</sup> Note that this clarification is only applicable for Scenario 1 where a secondary adjustment(s) is/are applied. For Scenario 1 without secondary adjustments and for Scenario 2, this is not needed as the secondary adjustments are not used or are not applicable.

<sup>(3,4)</sup> Idem.



Figures 4 and 5 illustrate the joint/separate application of the reference price methodology depending on which Scenario for the proposed reference price methodology is applied.

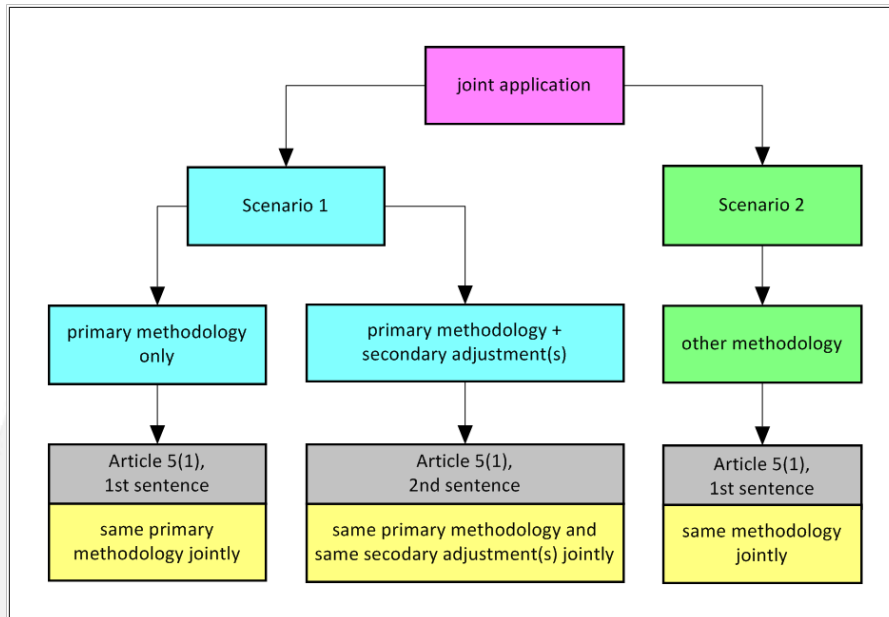


Figure 4. Scenarios for joint application of the reference price methodology

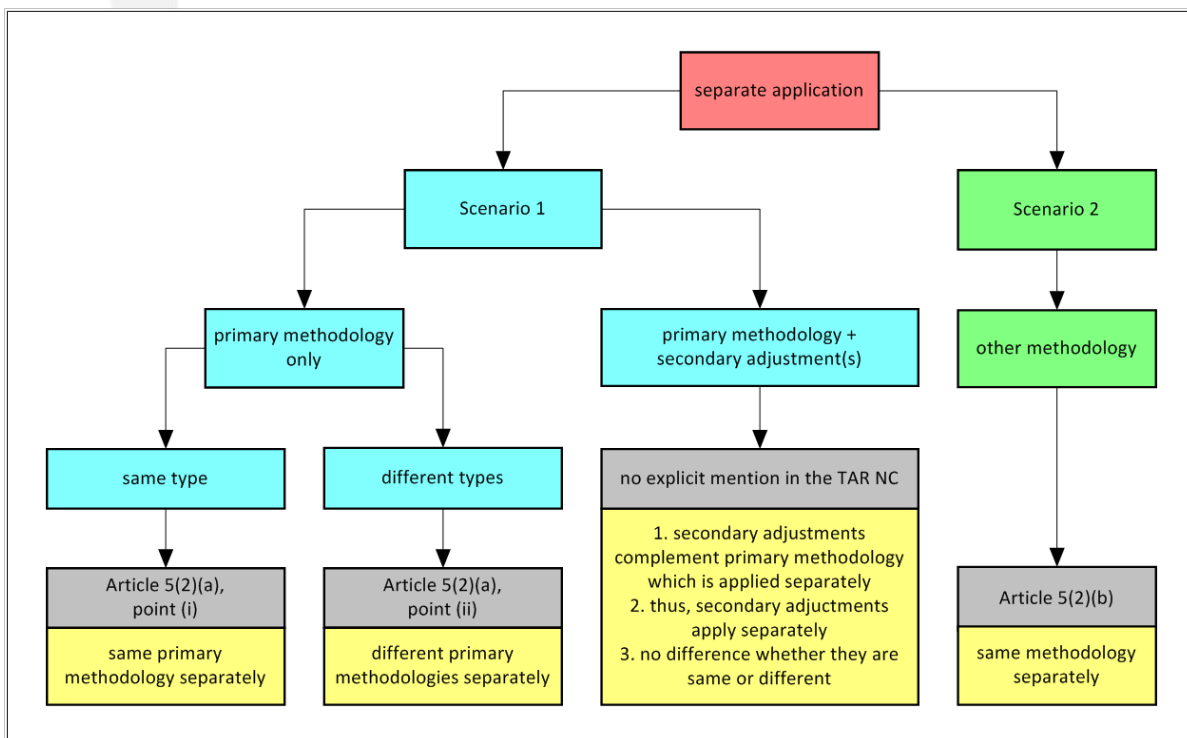


Figure 5. Scenarios for separate application of the reference price methodology

### **Process for joint/separate application of the reference price methodology**

The process aspects for separate/joint application of the reference price methodology were clarified in the TAR NC for re-submission as follows:

- An amendment was made so that the NRA decision for separate application of the reference price methodology may be granted for an initial period of up to five years as from the base case application date of TAR NC <sup>(1)</sup>. The reason behind such limitation is the necessity to review and evaluate the separate application of the reference price methodology within a multi-TSO entry-exit system. As the duration of a regulatory period across the EU normally varies between 4 and 5 years, 5 years seems to be a reasonable deadline for such a review.
- After the time period initially decided by the NRA lapses, the NRA may decide to extend the period of the separate application of the reference price methodology. To that end, the NRA shall submit to ACER a detailed explanation of the measures taken towards applying the reference price methodology jointly (i.e. what has been done so far) as well as a reasoned justification for the necessity of such extension (i.e. why is it needed in future). ACER shall deliver its opinion within three months, and the NRA is to take this decision into account when taking the decision regarding the extension of the time period for the separate application.
- Both NRA decisions for the separate application – the initial one and, if applicable, the one regarding the extension of the time period foreseen in the initial decision – are to be submitted by the NRA to ACER for information.
- In order to ensure transparency and to allow the market to express its view, the NRA shall conduct a consultation on the principles of an effective ITC mechanism and its consequences on the tariff levels. Such a consultation is to be conducted in both joint and separate application cases – simultaneously with the consultation referred to in Article 14. The consultation responses as well as a motivated decision on the ITC mechanism to be applied must be published by the respective NRA – simultaneously with the decision referred to in Article 15.

### **Other considerations**

As for ACER's concerns raised in the Reasoned Opinion, ENTSOG would like to note the following:

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<sup>(1)</sup> See 'TAR NC application date' in Chapter X of this Document.

- Where tariff calculation is carried out jointly by all TSOs within an entry-exit system, the entry-exit split at the entry-exit system level is to be set or approved by the NRA. In the case of separate application of the reference price methodology, the NRA may determine or approve different entry-exit splits for the TSOs involved and hence, the entry-exit split at the entry-exit system level is the result of all the splits. Thus, independent from both the number of TSOs within an entry-exit system and the decision of the NRA regarding the separate application of the reference price methodology, the requirements for the entry-exit split do not contradict the TAR FG.
- Regarding the VIP tariff calculation, ENTSG had already considered the correlation between the number of TSOs, the methodology of calculating tariffs and the further step to calculate the VIP tariff. From ENTSG's point of view, the calculation has been written in a clear and transparent manner and has no detrimental effect on the establishment of VIPs.

Also, the amendments were implemented to ensure that the rules of Article 5 are only applicable for multi-TSO entry-exit systems within one Member State <sup>(1)</sup>. ENTSG believes that the TAR NC for re-submission does not infringe the TAR FG requirements. It provides robust rules on how to avoid cross-subsidies and ensure cost-reflectivity in multi-TSO entry-exit systems as well as allowing for the taking into account of particular circumstances and needs occurring on a national level.

The joint application of the reference price methodology was introduced as a default rule. As a result, the NRA must establish an effective ITC mechanism. NRA can decide on the separate application of the reference price methodology where the following conditions are met: (1) an effective ITC mechanism is established in order to prevent the detrimental effects on the transmission services revenue of the TSOs involved and its recovery as well as to avoid the cross-subsidisation between different groups of network users; and (2) in case this is necessary to incentivise the TSOs to operate, maintain and develop the transmission systems securely, reliably and efficiently and such separate application ensures that the costs correspond to those of an efficient TSO. There is a review of the applicability of the separate application of the reference price methodology, with the initial review being undertaken after max 5 years being the deadline for the initial NRA decision. All TAR NC rules related to multi-TSO entry-exit systems were moved to a new separate Article 5.

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<sup>(1)</sup> This is explicitly stated in the heading of Article 5. Also, the reference to 'NRA' in plural was deleted from the text of this Article.

## 2. OTHER CHANGES AND INFORMATION

As a consequence of amending a number of definitions to address the concerns expressed by ACER in both the Reasoned Opinion and within the trilateral discussions <sup>(1)</sup>, other definitions of the TAR NC have also been introduced or revised, in particular <sup>(2)</sup>:

- To ensure the parallel approach towards the definitions associates with transmission and non-transmission services, the following definitions were added: (1) for transmission services: ‘transmission services revenue’ (in addition to ‘reference price methodology’ definition explained above); (2) for non-transmission services: ‘non-transmission services revenue’ and ‘non-transmission service tariff methodology’.
- The definitions of ‘allowed revenue’, ‘target revenue’ and ‘regulatory account’ were revised for consistency and clarity.

The following changes were also made to Chapter I:

- The wording of subject matter of the TAR NC was refined;
- The scope was amended to ensure that Chapters with the scope ‘IPs + non-IPs’ are applicable at entry points from/exit points to third countries in any case but not subject to the respective NRA decision (whereas Chapters with the scope ‘IPs only’ may be applicable at those points subject to NRA decision);
- The partial non-application clause envisaged in Article 2.4 of the TAR NC for Reasoned Opinion was deleted as a consequence of re-drafting Chapter II <sup>(3)</sup>;
- All rules on multi-TSO arrangements were moved into one separate Article;
- Article 4 was moved to this Chapter from Chapter II on reference price methodologies since its content goes beyond the subject matter of Chapter II <sup>(4)</sup>.

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<sup>(1)</sup> See ‘Definitions’ above in this Chapter.

<sup>(2)</sup> For the amendment made to the definition of tariff period, see ‘Other changes...’ in Chapter V of this Document.

<sup>(3)</sup> See ‘Approach towards reference price methodologies’ in Chapter II of this Document.

<sup>(4)</sup> This Article covers not only capacity-based transmission tariffs (set on the basis of the reference price which derivation is set out in Chapter II) but also: (1) the distinction between transmission and non-transmission services; (2) commodity-based transmission tariffs; and (3) non-transmission tariffs.

**Additional Information:**  
**Interrelation between the TAR NC definitions**

Below is a scheme of some of the revised terms defined in the TAR NC for re-submission which explains their interrelation.

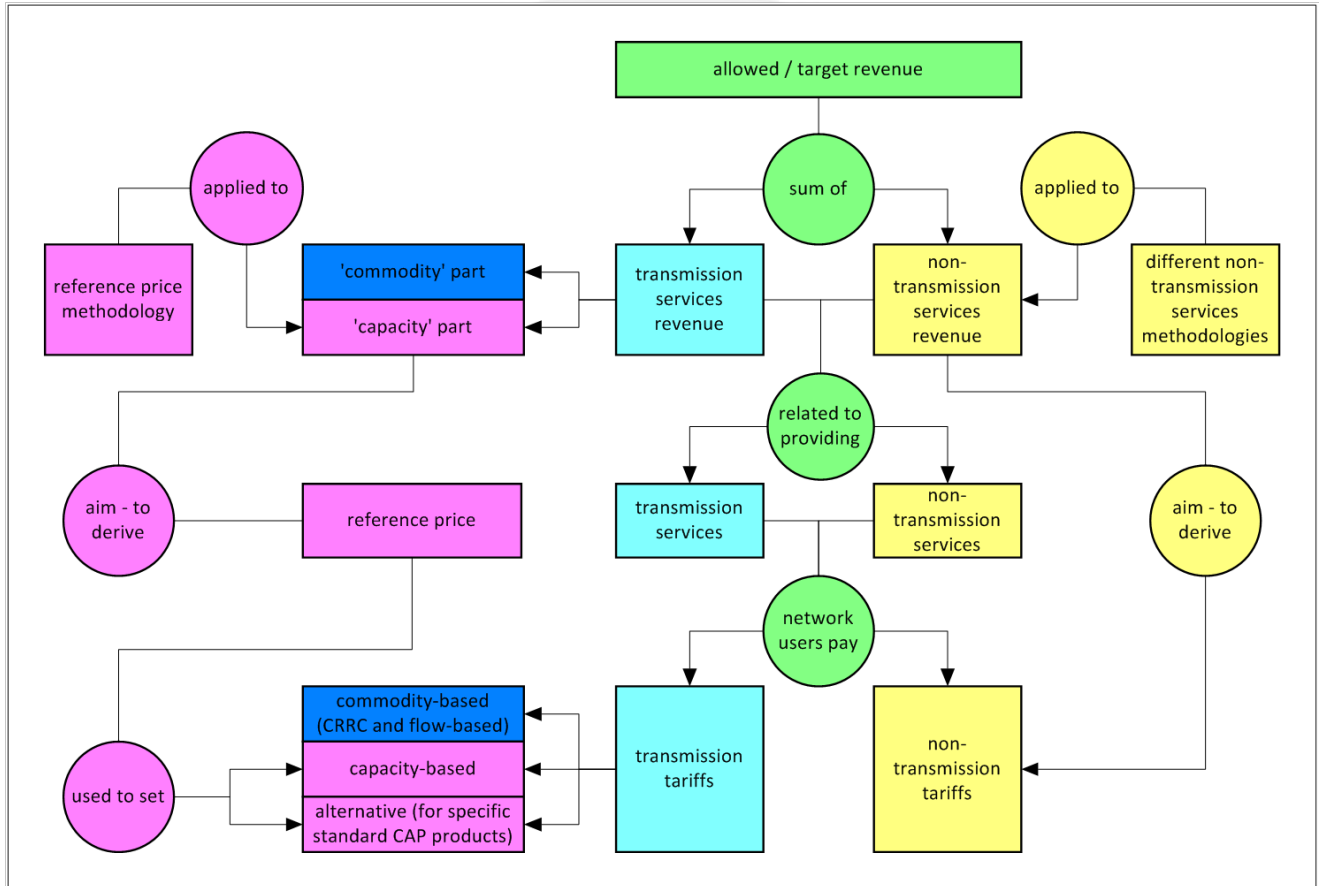


Figure 6. Interrelation between TAR NC definitions

## CHAPTER II. REFERENCE PRICE METHODOLOGIES

### 1. REASONED OPINION AND TRILATERAL DISCUSSIONS

#### a. Approach towards reference price methodologies (Chapter II) <sup>(1)</sup>

In its Reasoned Opinion, ACER raised a number of concerns with respect to Chapter II on reference price methodologies <sup>(2)</sup>, in particular ACER stated that: (1) they do not understand the value of the additional asset allocation methodology <sup>(3)</sup> and request its removal; (2) the TAR NC lacks the TAR FG requirement to ‘develop appropriate forecasting models to forecast technical capacity or sale of capacities, taking into account the relevant TYNDPs’; (3) the TAR NC lacks the TAR FG requirement for the capacity assumptions to ‘be consistent with the economic signals expected from the chosen allocation methodology <sup>(4)</sup>’; (4) the TAR NC ‘fails to define unstable flow patterns and how this instability would impact the input to the allocation methodology’; (5) with regards to the criteria for the application of a reference price methodology, ACER’s concern is that ‘a further elaboration of the circumstances and network characteristics that should lead to the choice of a particular methodology has not been provided’; (6) for the use of postage stamp methodology, ‘the reasoning’ for the 50% threshold <sup>(5)</sup> ‘has not been specified’ in the TAR NC nor the idea that ‘non-respect of the first criteria excludes the use of postage stamp’ <sup>(6)</sup>. Also, throughout the TAR NC development process, various stakeholders expressed their concern regarding too much optionality and absence of harmonisation within Chapter II.

With the aim of addressing the stakeholder concerns and the abovementioned ACER’s concerns expressed in its Reasoned Opinion, there were a number of trilateral discussions held between the EC, ACER and ENTSOG post delivery of ACER’s Reasoned Opinion to elaborate a workable approach towards the drafting.

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<sup>(1)</sup> Note that the relevant amendments to Chapter III are also covered here.

<sup>(2)</sup> The TAR FG and all the TAR NC versions prior to the TAR NC for re-submission use the term ‘cost allocation methodology’.

<sup>(3)</sup> Article 15 of the TAR NC for Reasoned Opinion.

<sup>(4)</sup> See Section 3.2.1.2 of the TAR FG: ‘(i) technical capacity shall be favoured in combination with allocation methodologies providing locational signals, while (ii) the application of booked capacity shall be limited to allocation methodologies that do not provide such signals’.

<sup>(5)</sup> For the absolute difference between the average distance for domestic exit points and for cross-border exit points.

<sup>(6)</sup> By such ‘first criteria’ both of the criteria for the use of postage stamp methodology set out in the TAR NC for Reasoned Opinion should be understood: ‘at least two thirds of the amount of transmission capacity is used by domestic or by cross-border network users’ or the above mentioned criterion regarding 50% threshold.

As a result of those discussions, the TAR NC for re-submission foresees that: (1) certain Articles of Chapter II are to be deleted or moved elsewhere; and (2) instead, the two possible Scenarios for the proposed reference price methodology are to be introduced. The overview of this approach is outlined in Table 7.

Aspect	Description <sup>(1)</sup>		
<b>What to delete</b>	Partial non-application clause (Art. 2.5), parameters of reference price methodologies that are not needed for the methodologies kept in the TAR NC (Art. 6), details (except calculation of the weighted average distance) and criteria for the parameters of reference price methodologies (Art. 7-8), the option of choosing technical capacity as a parameter of CWD methodology (Art. 11), VPB.A methodology (Art. 12), VPB.B methodology (Art. 13), matrix methodology (Art. 14), the 5 <sup>th</sup> asset allocation methodology (Art. 15), one secondary adjustment (rescaling) (Art. 16), criteria for choosing the deleted methodologies (Art. 19.2.a and b), obligation to review parameters of the applied reference price methodology at least every 4 years (Art. 22.1).		
<b>What to move</b>	Some parameters of reference price methodologies (Art. 6) to Chapter IV on publication requirements (keep the idea that these parameters are the examples) <sup>(2)</sup> ; calculation of weighted average distance (Art. 7) to the description of CWD methodology.		
<b>What to keep</b>	<ul style="list-style-type: none"> <li>The rules on entry-exit split (Art. 9).</li> <li>2 primary reference price methodologies: postage stamp (Art. 10) and CWD (Art. 11).</li> <li>3 secondary adjustments: equalisation (Art. 17), benchmarking (Art. 18) and storage (Art. 20). Note that as compared to the TAR NC for Reasoned Opinion, storage is now explicitly attributed to secondary adjustments.</li> <li>Criteria for choosing postage stamp (Art. 19.1), CWD methodology (Art. 19.2.c) <sup>(3)</sup> and secondary adjustments (Art. 19.3).</li> </ul>		
<b>What to introduce</b>	<ul style="list-style-type: none"> <li>Obligation for ACER to prepare a recommendation document with the details of reference price methodologies not detailed in the TAR NC, their parameters and criteria.</li> <li>Obligation for ACER to prepare a report on the applied reference price methodologies within 5 years as from the TAR NC entry into force.</li> <li>Criteria for choosing another methodology (Scenario 2).</li> </ul>		
<b>2 Scenarios for proposed methodology</b>	<table border="1" style="width: 100%;"> <tr> <td style="width: 50%;"><u>Scenario 1</u>: the proposed methodology is postage stamp/CWD which may be complemented by</td> <td style="width: 50%;"><u>Scenario 2</u>: the proposed methodology is other than as set out for Scenario 1 <sup>(4)</sup></td> </tr> </table>	<u>Scenario 1</u> : the proposed methodology is postage stamp/CWD which may be complemented by	<u>Scenario 2</u> : the proposed methodology is other than as set out for Scenario 1 <sup>(4)</sup>
<u>Scenario 1</u> : the proposed methodology is postage stamp/CWD which may be complemented by	<u>Scenario 2</u> : the proposed methodology is other than as set out for Scenario 1 <sup>(4)</sup>		

<sup>(1)</sup> For readability, the numbering of the Articles is aligned with the TAR NC for Reasoned Opinion.

<sup>(2)</sup> See 'Publication of relevant parameters' in Chapter IV of this Document.

<sup>(3)</sup> Note that the criteria for choosing CWD methodology were modified in the TAR NC for re-submission.

<sup>(4)</sup> Possible options under Scenario 2 are illustrated in Figure 8.

	equalisation/benchmarking/storage adjustment. The full description of equalisation and benchmarking is set out in the TAR NC.	
<b>Process aspects for 2 Scenarios</b>	<p><u>Scenario 1</u> (less burdensome):</p> <ul style="list-style-type: none"> <li>• If the proposed methodology is equivalent to/based on the postage stamp then no information on counterfactual (i.e. comparison against another methodology) is needed in the consultation document. If the proposed methodology is equivalent to/based on the CWD methodology then pure postage stamp is to be used as a counterfactual.</li> <li>• If the proposed methodology includes a secondary adjustment(s) then the cost allocation test is to be carried out twice: after the application of the primary reference price methodology and after the application of the secondary adjustment(s) <sup>(1)</sup>.</li> <li>• No additional process steps – just the NRA decision within 3 months following the closure of the consultation.</li> </ul>	<p><u>Scenario 2</u> (more burdensome):</p> <ul style="list-style-type: none"> <li>• Either pure postage stamp or pure CWD methodology can be used as a counterfactual.</li> <li>• The cost allocation test is to be carried out once since – as compared to Scenario 1 – the notions of ‘primary reference price methodology’ and ‘secondary adjustment’ are not applicable in Scenario 2.</li> <li>• Additional process steps <sup>(2)</sup>: <ul style="list-style-type: none"> <li>(i) After the closure of the consultation, the NRA is to seek an opinion from ACER on the proposed methodology (also to send the consultation responses received to ACER);</li> <li>(ii) Within 3 months after the receipt of such request, ACER is to provide a non-binding opinion on the methodology to be applied;</li> <li>(iii) Within 3 months following the receipt of the opinion from ACER, the NRA is to take a decision on the methodology to be applied (which is to include a justification of how ACER’s recommendation regarding the reference price methodologies other than detailed in the TAR NC and ACER’s opinion referred to in point (ii) were taken into account).</li> </ul> </li> </ul>

**Table 7. Description of the approach towards reference price methodologies**

The main difference between the proposed Scenarios is embedded in three process aspects: (1) whether and which counterfactual information is to be included in the consultation document; (2) how many times the cost allocation test is to be carried out; and

<sup>(1)</sup> Based on the TAR FG requirement (Section 3.2.2, 2<sup>nd</sup> paragraph).

<sup>(2)</sup> Note that because of such additional process steps, as compared to Scenario 1, there is a delay of more than 6 months for the NRA final decision on the reference price methodology to be applied.



(3) whether additional process steps associated with the NRA decision on the reference price methodology to be applied are necessary.

The possible content for each Scenario and the way to distinguish between these Scenarios (in other words, the ‘dichotomy’ of the TAR NC depending on which reference price methodology is proposed in the consultation) is reflected in Figure 8.

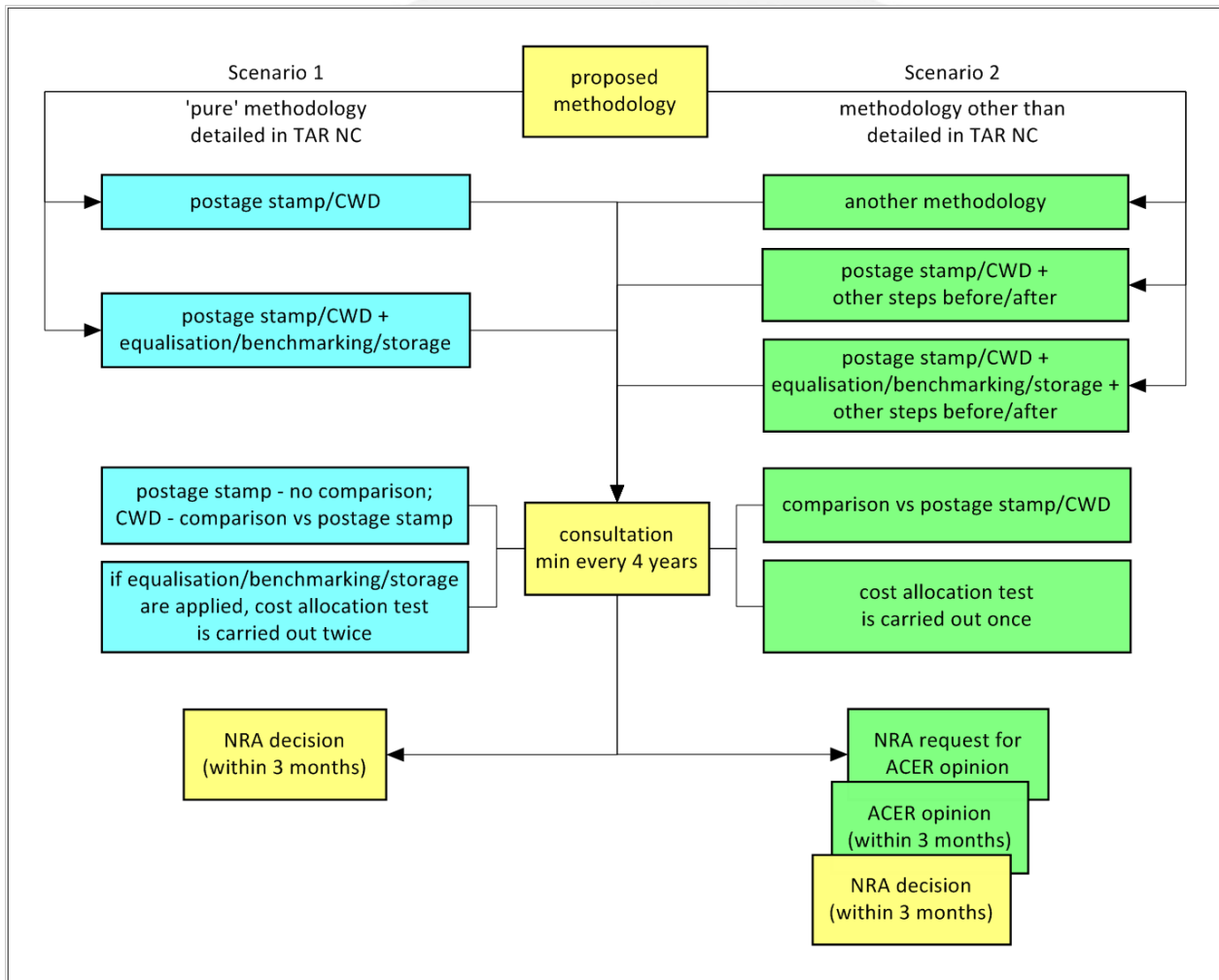


Figure 8. Description of Scenarios for the proposed methodology

A number of Articles were removed from the TAR NC whereas the description of only 2 primary reference price methodologies (postage stamp and CWD) and of only 3 secondary adjustments (equalisation, benchmarking and storage) was kept. The Article on storage was explicitly attributed to the list of secondary adjustments. Instead, the TAR NC for re-submission foresees the possibility to propose any other reference price methodology in which case it is necessary to undergo additional process steps involving a non-binding

opinion of ACER. Some of the parameters for reference price methodologies were moved to Chapter IV on publication requirements. An obligation was introduced for ACER to prepare the following documents: (1) within 1 year as from the TAR NC entry into force, a recommendation document with the details of other reference price methodologies; and (2) within 5 years as from the TAR NC entry into force, a report on the applied reference price methodologies.

## **b. Benchmarking issues (Article 10)**

### **Process aspects of benchmarking**

In the Reasoned Opinion, ACER noted that the TAR NC ‘does not include important aspects’ of the TAR FG, including ‘the requirement to cooperate with neighbouring NRAs’ and that ‘the decision to benchmark should only be taken following a consultation by the NRAs within the jurisdiction for the network points deemed to be in competition’.

Having considered ACER’s concerns, ENTSG amended the text of the TAR NC for re-submission to reflect the respective process steps when the benchmarking is considered to be applied and when it is actually applied.

- The possibility of ‘performance’ of a benchmarking, as a secondary adjustment, is subject to the consultation process per Articles 14 and 15. If benchmarking is considered to be applied, the consultation document referred to in Article 14 shall, with regard to benchmarking, include the following: (1) justification for the possibility to apply it; and (2) explanation of the consequences of benchmarking for other transmission tariffs and the entry-exit split derived after the application of the primary reference price methodology. Based on the results of such consultation, the NRA, as set out in Article 15, approves the possibility of applying benchmarking.
- As for the next step, the 2 situations need to be distinguished depending on the applicable regulatory regime: (1) in price cap regime, such ‘performing’ shall be triggered by the request of the respective TSO; whereas (2) in non-price cap regime, such ‘performing’ shall be triggered either by the request of the respective TSO or at NRA’s own initiative. Another pre-step before benchmarking is actually ‘performed’ is a consultation that is to be conducted by the NRA with all the relevant NRAs and stakeholders.
- Then, the NRA takes a decision on ‘performing’ benchmarking. Once this decision is made, the NRA shall perform benchmarking by decreasing the transmission tariffs at a given entry or exit point, so that the resulting tariff meets the competitive level. If the forecasted

capacity sales at points where benchmarking is carried out are not expected to ensure the allowed revenue, the TSO or the NRA, as relevant, may increase the tariffs at other entry or exit points.

The above process steps are illustrated in Figure 9.

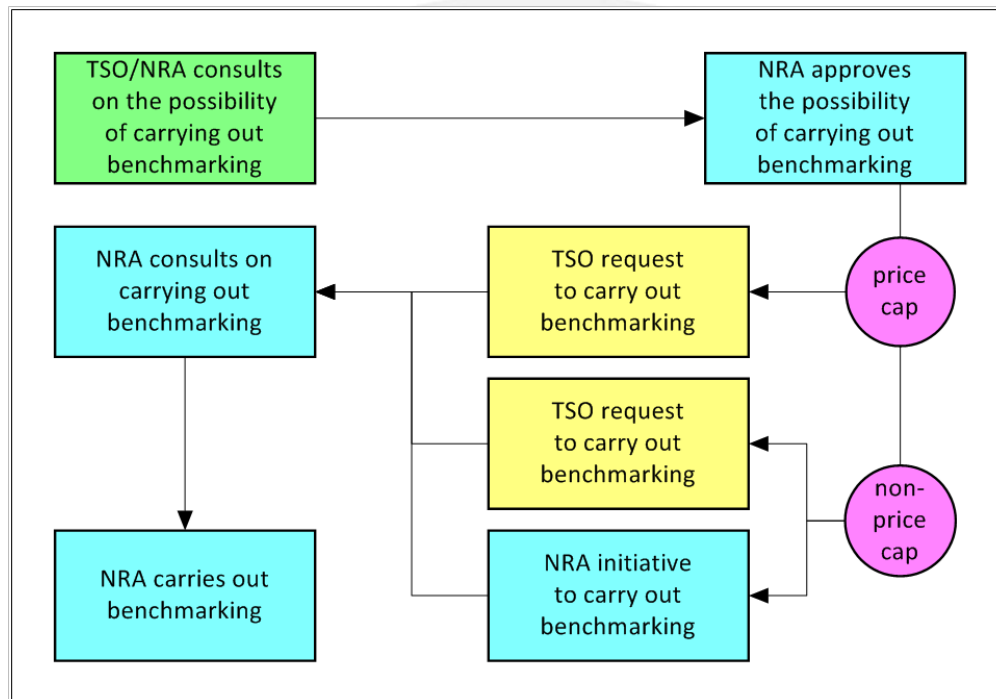


Figure 9. Process for carrying out benchmarking

### Why a TSO request is necessary

In line with Article 13 of Regulation (EC) No 715/2009, benchmarking of tariffs is performed by the NRAs. As benchmarking of tariffs is foreseen to be applied as a secondary adjustment to the initial reference price resulting from the primary reference price methodology, it directly influences the revenue recovery for the TSO at the respective entry and exit points. In systems where the TSO functions under a non-price cap regime, the NRA may also decide to apply benchmarking on its own initiative without prior request from the concerned TSO – as the TSO does not bear the risk of revenue recovery. However, in systems where the TSO functions under a price cap regime, the secondary adjustment of benchmarking should only be applied upon request of the TSO – as the TSO is bearing the risk of revenue recovery and the NRA should not ‘speculate’ on higher revenues through higher capacity sales resulting from a decrease in the reference price on behalf of the TSO.

### **Consequences for other points**

In the Reasoned Opinion, ACER also raises a concern with regard to the consequences of benchmarking for the other points on the system saying that ‘benchmarking would only be allowed if it benefitted the system as a whole and did not introduce a cross-subsidy of the benchmarked point for other users of the network’. As previously outlined in the Analysis of Decisions Document, ENTSOG had already taken this point into consideration <sup>(1)</sup>. To minimise cross-subsidisation, the increase of tariffs should be borne uniformly by all other entry or exit points within the TSO system. ENTSOG’s view is that this provision is necessary to remedy the risk of a permanent under-recovery of TSOs with competitive entry points.

Drafting changes were implemented in the TAR NC for re-submission to reflect the process of benchmarking. No changes made to the rule reflecting the consequences for other points due to the application of benchmarking.

#### **c. Storage (Article 11)**

In the TAR FG, ACER stated that the TAR NC shall include the rules according to which ‘in setting or approving tariffs for entry and exit points from and to gas storage facilities, NRAs shall consider the benefits which storage facilities may provide to the transmission system’ and ‘the need to promote efficient investments in networks’ and also, NRAs shall ‘minimise any adverse effect on cross-border flows’.

During public consultations, stakeholders expressed their concerns that the net benefits of storage facilities for the transmission system were not taken into account in the TAR NC and the drafting was not sufficiently detailed (e.g. due to the absence of a principle of no double charging or a zero default tariff). In general, ENTSOG agrees that the storage facilities may provide benefits to the gas system and therefore, discounts for entry/exit points from/to storage facilities could be provided. However, with the aim of being in line with the TAR FG, the same drafting along the lines of the TAR FG was maintained throughout different versions of the TAR NC.

This issue was further discussed at trilateral meetings between ACER, ENTSOG and the EC, and the conclusion was to keep this Article in the TAR NC as it was previously drafted. However, a number of amendments were introduced:

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<sup>(1)</sup> See p. 30 and Annex 3 of the [Analysis of Decisions Document](#).

- The drafting was clarified so that the Article on storage is explicitly considered as a secondary adjustment. Similar to other secondary adjustments, the TAR NC for re-submission was amended to explain the interrelation between the primary reference price methodology and the storage secondary adjustment <sup>(1)</sup>.
- In relation to the issue regarding the approach towards reference price methodology: where postage stamp/CWD methodology is applied together with the storage secondary adjustment <sup>(2)</sup>, such proposed methodology falls under Scenario 1 <sup>(3)</sup>.
- Where the discounts for transmission tariffs at entry/exit points from/to storage facilities are considered to be applied, the manner of setting such discounts is to be included in the consultation per Article 14 and is subject to NRA approval per Article 15 <sup>(4)</sup>.

Drafting changes were implemented in the TAR NC for re-submission to attribute Article on storage to secondary adjustments. Also, drafting changes were implemented in the consultation and NRA approval requirements to explicitly capture transmission tariffs at entry/exit points from/to storage facilities.

## 2. OTHER CHANGES AND INFORMATION

The following changes were also made to Chapter II: the interrelation between a particular secondary adjustment and a primary reference price methodology was moved to have it together with the explanation of the concept of initial/final reference prices; some drafting changes for clarity were implemented in Article 9 on equalisation and Article 12 on entry-exit split.

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<sup>(1)</sup> E.g. in the situation of applying postage stamp/CWD methodology + storage secondary adjustment: (1) where storage secondary adjustment is applied after the application of postage stamp/CWD methodology, such methodology results in the initial reference prices; (2) where storage secondary adjustment is applied as a step of postage stamp/CWD methodology, such methodology results in the final reference prices.

<sup>(2)</sup> Another case could be that postage stamp/CWD is applied not only together with the storage secondary adjustment but also with equalisation and/or benchmarking.

<sup>(3)</sup> See 'Approach towards reference price methodologies' above in this Chapter.

<sup>(4)</sup> Note that the TAR NC for re-submission keeps the provision included in the TAR NC for Reasoned Opinion according to which the NRA, when taking the decision on the methodology to be applied, is to provide 'a detailed explanation' of how the requirements of Article 11 on storage were considered (see p. 28 of the [Accompanying Document](#)).

### **Additional Information:**

#### **Entry-exit split as an output of the reference price methodology (Article 9)**

According to the TAR NC, the entry-exit split can be either an input of the reference price methodology with the default rule of 50/50 split between entries and exits or an output of the relevant methodology. This possibility to use the entry-exit split as an input parameter to reference price methodologies, which are suitable for such an approach, gives the option to the TSO to adopt a more cost-reflective approach for costs allocation among entry and exit points. In other words, this gives the TSO the possibility to allocate transmission services revenues corresponding to parts of its regulated asset base and related operational expenses to entry and exit points which such transmission services revenue and operational expenses are related to, directly as a primary step.

Whether the entry-exit split is used as a parameter for a reference price methodology (i.e. is its input) or is an output, depends on the chosen reference price methodology. Not all reference price methodologies allow the entry-exit split to be used as their parameters (i.e. inputs).

ENTSOG believes that keeping the possibility of having the entry-exit split as a parameter or as an output of the reference price methodology in the TAR NC is beneficial and the application of methodologies does not cause any problem. On the contrary, such approach provides the TSOs with the flexibility to adopt more cost-reflective allocation principles.

## CHAPTER III. CONSULTATION REQUIREMENTS

### 1. REASONED OPINION AND TRILATERAL DISCUSSIONS

#### a. Issues related to the periodic consultation (Articles 14 and 15)

Articles 14 and 15 underwent significant re-drafting due to the change in the approach towards the reference price methodologies as a result of trilateral discussions between ACER, ENTSOG and the EC <sup>(1)</sup>. Depending on which methodology is proposed per outlined Scenarios in Article 6, the respective Articles were redrafted to clarify the following differences: (1) different content of the consultation document; and (2) different process steps prior to the NRA decision on the methodology to be applied.

In the Reasoned Opinion, ACER raised a number of detailed comments on the reference price methodology consultation. Having analysed them, ENTSOG amended Article 14 as follows:

- The TAR NC for Reasoned Opinion included the deadline for completing the consultation, i.e. by the 'base case' application date or, in case a transitional period is implemented, the postponed application date <sup>(2)</sup>. The TAR NC for re-submission was amended so that it is stipulated when such consultation is to start – 'within a reasonable time' as from the entry into force of the TAR NC. In addition, the above mentioned deadline is now for the NRA to take the decision but not for completing the consultation.
- ENTSOG recognises the necessity to align the assumptions and the approach towards the cost drivers for the proposed reference price methodology and for the counterfactuals since this ensures the credibility of the comparison analysis. This was the intention behind the drafting throughout the TAR NC development process – however, to make it clearer, Article 14 was re-drafted.

Drafting changes were implemented to capture: (1) the difference in the content of the consultation document and the process steps depending on which reference price methodology is proposed; (2) the start of the consultation on the reference price methodology and the deadline for the NRA to take the decision; and (3) the consistency of the cost drivers and assumptions between the proposed methodology and the counterfactuals.

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<sup>(1)</sup> See 'Approach towards reference price methodologies' in Chapter II of this Document.

<sup>(2)</sup> See 'TAR NC application date' in Chapter X of this Document.

### **b. Issues related to the cost allocation test (Article 16)**

In the Reasoned Opinion, ACER expressed two concerns with regard to the associated requirements for the cost allocation test: (1) the TAR NC does not specify that the cost allocation test is to be based on physical cost drivers such as capacity and distance; and (2) the TAR NC does not mention that the relative importance of cost drivers shall emerge from a statistical analysis.

As for the first concern, the TAR NC for re-submission was amended so that by default the cost allocation test is based on the cost drivers of capacity and distance. In addition, the costs drivers associated with the CRRC and flow-based charge have been included. Such an ‘opener’ is necessary in the TAR NC text since all transmission services revenue needs to be included in the test as well as their cost drivers. As CRRC is a component of the transmission services revenue, it is considered important that this element and its corresponding cost driver are included in the cost allocation test in order to provide a more thorough and accurate result from the cost allocation test. It is also worth noting that the cost allocation test forms part of the overall consultation on the proposed reference price methodology and thus, justification for the selected cost drivers used and their relative importance also forms part of the consultation. This is clearly indicated in Article 14(1).

As for the second concern, no amendments were implemented in the TAR NC for re-submission since – following the idea foreseen by the TAR FG for the periodic consultation – it is not the relative importance of the cost drivers based on statistical analysis that matters but how the proposed methodology compares with the counterfactual on the basis of the same cost drivers.

The drafting was amended to ensure that the cost allocation test is to be based on the cost drivers of capacity and distance by default. In addition, the cost drivers of flows associated with commodity charges were included.

## **2. OTHER CHANGES AND INFORMATION**

The following changes were also made to Chapter III: the former Article 21 was split into 2 respective parts with aligned content of the consultation document and the NRA decision; drafting was clarified to ensure that the consultation also captures the outputs of the proposed reference price methodology and, if relevant, the outputs of the counterfactual



methodology <sup>(1)</sup>; the necessity to conduct subsequent consultations at least every 4 years after the initial decision on the reference price methodology was moved so that it is set out together with the timing for the initial consultation; the obligation of review of the parameters was removed and clarification amendments were implemented in Article 16 with regard to the cost allocation test.

Also, the drafting of Articles 14, 15, 18 and 19 was changed to ensure the parallel structure of consultation, NRA approval and publication requirements for different transmission and non-transmission tariffs <sup>(2)</sup>.

Table 10 demonstrates such parallel approach.

Consultation document (Article 14)	NRA decision (Article 15)	Publication requirements (Articles 18 and 19)	
proposed reference price methodology	reference price methodology to be applied	<i>for IPs and non-IPs where the CAM NC is applied:</i> reference prices and reserve prices (including the formulas for calculation, justification for multipliers and seasonal factors, report on the probability of interruption)	Before annual yearly auction (Art. 18)
		<i>for other points:</i> reference prices and other prices applicable at those points (transmission tariffs at entry/exit points from/to storage facilities are covered here)	Before tariff period (Art. 19)
manner in which commodity-based transmission tariffs are set	manner in which commodity-based transmission tariffs are set	commodity-based transmission tariffs	
manner in which alternative transmission tariffs for specific	manner in which alternative transmission tariffs for specific	alternative transmission tariffs for specific capacity products or	

<sup>(1)</sup> See ‘Approach towards reference price methodologies’ in Chapter II of this Document for explanation of when and which counterfactual information needs to be included in the consultation document depending on the applicable Scenario.

<sup>(2)</sup> The details of fixed payable price approach that may be offered for existing capacity under price cap regimes is covered in ‘Fixed price tariffs’ in Chapter VIII of this Document.

capacity products are set	capacity products are set	formulas for their calculation	
non-transmission service tariff methodology for a given non-transmission service provided to network users and the manner in which the associated non-transmission services revenue is reconciled	non-transmission service tariff methodology for a given non-transmission service provided to network users	non-transmission tariffs for non-transmission services provided to network users accompanied by the relevant information related to their derivation	
manner in which discounts for transmission tariffs at entry/exit points from/to storage facilities are set	manner in which discounts for transmission tariffs at entry/exit points from/to storage facilities are set	see above	

**Table 10. Comparison of consultation, NRA approval and publication requirements for different tariffs**

## CHAPTER IV. PUBLICATION REQUIREMENTS

### 1. REASONED OPINION AND TRILATERAL DISCUSSIONS

#### a. Confidentiality of commercially sensitive information (Article 17.2)

In the TAR NC for Reasoned Opinion, the protection of confidentiality of commercially sensitive information was included with no limitations. In the Reasoned Opinion, ACER noted that ‘there are diverging views on what commercially sensitive information means in a regulated world’ and expressed a concern that this clause ‘is an inappropriately broad disclaimer which, absent any further criteria, could be used as justification for stepping out of any one or more of the publication requirements.’ According to ACER’s opinion, the publication requirements of the TAR NC ‘should be non-negotiable and any derogation from meeting them should only be by exception and subject to specific criteria’. ACER also noted that the TAR NC provisions ‘are inadequate to limit such deviations from the general transparency obligations, as described in recitals (24), (25), Article 3(4) and Article 18(2) of Regulation (EC) No 715/2009’.

As for ACER’s concerns on how this clause on confidentiality of commercially sensitive fits into the requirements of the Third Energy Package, ENTSOG’s position was explained in the Analysis of Decisions Document <sup>(1)</sup>. As for ACER’s concern that the clause is too ‘broad’, ENTSOG agrees that the unlimited application of the current provisions on the protection of confidentiality of commercially sensitive information may reduce transparency. Therefore, the clause was amended to ensure that only a limited list of information for which the confidentiality should be preserved is included into the TAR NC.

The amended Article 17(2) includes only two information items (forecasted contracted capacity and forecasted flows) at the points exempted from the definition of relevant points in point 3.2(1) of the Transparency Guidelines (exit points connected to a single final customer and entry points linked directly to a production facility of a single producer that is located within the EU) <sup>(2)</sup>. The level of granularity for publication of this information at such points is aligned with that foreseen in the Transparency Guidelines for publication of other information at such points, i.e. ‘in aggregate format, at least per balancing zone’ <sup>(3)</sup>.

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<sup>(1)</sup> See p. 38 of the [Analysis of Decisions Document](#).

<sup>(2)</sup> As for the actual contracted capacity and the actual flows, these are captured in point 3.3(1)(b) and (e) of the Transparency Guidelines and hence, the information for the ‘exempted’ points is to be published as set out in point 3.2(2) of the Transparency Guidelines.

<sup>(3)</sup> See point 3.2(2) of the Transparency Guidelines.

Thus, ENTSOG believes that this approach corresponds to the current legal requirements and increases the overall transparency obligations foreseen in the TAR NC.

The clause on preserving the confidentiality of commercially sensitive information was limited to capture specific information items at specific points.

#### **b. Publication of relevant parameters (Article 19.1.c)**

In general, ACER notes in the Reasoned Opinion that the TAR NC ‘does not provide a clear list of publication requirements, but obligations in connection with various chapters’. With respect to the publication of the parameters of the reference price methodology, the Reasoned Opinion points out that the TAR FG foresees the publication of those that are ‘adjusted to the level necessary to run the methodology’. In ACER’s view, the drafting of the TAR NC ‘could be interpreted as allowing certain pieces of information to be omitted from publication if not considered relevant to the derivation of tariffs, what was not the intention of the transparency requirements set out in the Framework Guidelines’. Also, according to the Reasoned Opinion, ‘the publication of certain important pieces of information, such as the Regulated Asset Base, was considered in the interests of transparency regardless of whether they were necessary to run the methodology’.

As for the first concern, ENTSOG addressed the issue of clarity regarding the ‘list of publication requirements’ as part of the overall restructuring of Chapter IV of the TAR NC <sup>(1)</sup>. ENTSOG believes that the TAR NC approach – whereby the description of a primary reference price methodology starts with a non-exhaustive list of its relevant parameters – is viable and transparent. All the relevant parameters of a reference price methodology (but not only the ones that are explicitly mentioned in the respective Article describing the primary reference price methodology) are subject to the periodic consultation as outlined in **Article 14(1)**.

As for the second concern, ENTSOG has addressed the issue of publication of data by considering the scope of the TAR NC and what information stakeholders need to have in order to ensure transparency of the parameters used in developing transmission tariffs. The scope of the TAR NC is not about the calculation of the regulated income of a TSO but the allocation of this regulated income across the entry and exit points of the transmission system. The development of a reference price methodology and the application of this methodology will determine the costs and hence, the price that network users will pay. ENTSOG believes that it is the publication of the parameters and data associated with the methodology that is important

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<sup>(1)</sup> See ‘Other changes...’ below in this Chapter.

to the understanding and replication of the transmission tariffs. To reflect this understanding in the TAR NC drafting, some of the parameters from the former Article 6 of the TAR NC for Reasoned Opinion were moved to **Article 19** of the TAR NC for re-submission outlining the set of information to be published before the tariff period. However, the concepts of ‘observed costs’ and ‘incremental costs’ have not been moved but deleted; as these cost concepts were only used in some of the methodologies which are now removed from the TAR NC <sup>(1)</sup>, these cost concepts are no longer required as potential examples of parameters that may be used.

Thus, the drafting of the TAR NC for re-submission: (1) corresponds to the outcome of the trilateral discussions between ACER, ENTSOG and the EC regarding the approach towards the reference price methodologies according to which it is possible to propose any methodology in the consultation <sup>(2)</sup> and hence, to include the parameters used in the consultation document per Article 14(1); and (2) ensures that the parameters expressly mentioned in Article 19 are only examples and the parameters that are actually used in the applied reference price methodology are to be published.

As for the third concern, ENTSOG would like to point out the following:

- ENTSOG is of the opinion that publication of non-relevant data, e.g. inputs to the revenue calculation such as regulated asset base (RAB) will broaden the scope of consultation and would mean that it is necessary to consult on parameters that are out of scope of the TAR NC. The subject matter of the TAR NC is the harmonised transmission tariff structures for gas and not the details of the allowed/target revenue calculation. There are specific rules for its calculation in Member States and it is solely the task of the respective NRA to approve the justified costs and set the regulated revenue.
- One of the aims of the TAR NC is to enable network users to understand and forecast transmission tariffs. The details of revenue calculation do not provide any added value in terms of better predictability of transmission tariffs for network users.
- ENTSOG does not believe that the publication of RAB etc. will help stakeholders to better predict future tariffs beyond the current regulatory period.

No changes were made in terms of the scope of what parameters will be published. However, the TAR NC obliges TSOs/NRAs to publish all parameters used in the development of transmission tariffs. For primary reference price methodologies detailed in the TAR NC

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<sup>(1)</sup> See ‘Approach towards reference price methodologies’ in Chapter II of this Document.

<sup>(2)</sup> Idem.

(postage stamp and CWD), a non-exhaustive list of parameters is outlined in respective Articles with their description. 'Observed costs' and 'incremental costs' have been deleted from the TAR NC as examples that may be published as they are no longer required for any of the methodologies included in the TAR NC. The parameters for alternative methodologies would fall under the obligation in Articles 14(1) and 19 to publish the parameters used in the applied alternative methodology.

## 2. OTHER CHANGES AND INFORMATION

As a consequence of addressing a number of the concerns expressed by ACER and the EC, the structure of Chapter IV was revised so that the following logic is reflected: Article 17 sets out the general principles for tariff-related transparency, Article 18 outlines 'what' must be published before the annual yearly capacity auction whereas Article 19 outlines 'what' must be published before the tariff period, Article 20 sets out 'how' this information is to be published (i.e. in the 'standardised format'), Article 21 sets out 'who' must publish this information and 'when'.

For clarification purposes and to ensure consistency with the possibility of different durations of the tariff period, the drafting of the rule on publishing the information on tariff changes/trends and simplified tariff model/sensitivity analyses was amended. This amendment was made to reflect the fact that in some systems the duration of the tariff period extends further than 1 year and hence, it would not make sense to republish the same information of the estimated difference of zero. It is important to note that this does not allow a TSO/NRA to avoid publication of such information but instead avoids any potential confusion.

The rule on the binding reserve prices and the cases where they can be updated within the tariff period were moved to Chapter V <sup>(1)</sup>. However, the rule on the possibility of updating CRRC within the tariff period was kept in Chapter IV since this is a commodity charge and it does not fit in Chapter on reserve prices. Also, the drafting was clarified to ensure that each update of the respective transmission tariffs within the tariff period is accompanied by the explanations of the reasons therefor <sup>(2)</sup>. In case the discounts for monthly and daily standard capacity products are updated within the tariff period, in addition to such explanation, an updated report on the probability of interruption must be published.

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<sup>(1)</sup> See 'Binding tariffs and harmonisation of the tariff setting year' in Chapter V of this Document.

<sup>(2)</sup> See 'Other changes...' in Chapter V of this Document for further information.

### Additional Information:

#### Explanation of the standardised format for publishing tariff information

It should be noted that the 'standardised format' foreseen by the TAR NC has 2 aspects: what goes into the 'standardised table' and the 'manner' in which to publish this standardised table and other information. The respective illustration is provided in Figure 11.

The information that is to be structured in the standardised table is: (1) all information to be published before the annual yearly capacity auction; and (2) some information to be published before the tariff period, namely: (i) other transmission and non-transmission tariffs; (ii) information on the allowed/target revenue of TSOs; and (iii) information on the parameters of the applied reference price methodology.

The link on ENTSOG's Transparency Platform – being part of what is understood by the 'manner' mentioned above – is to lead to such standardised table and the information on: (1) tariff changes/trends; and (2) simplified tariff model/sensitivity analyses.

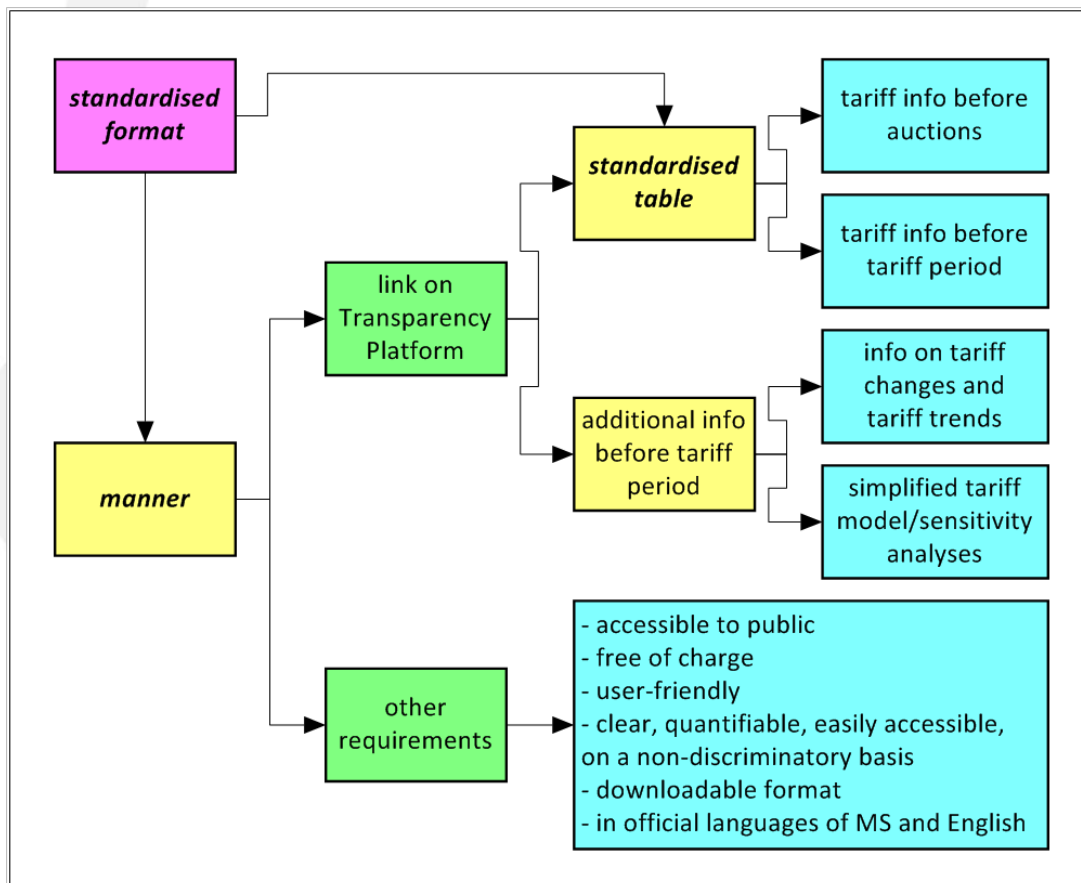


Figure 11. Explanation of the standardised format

## CHAPTER V. RESERVE PRICES

### 1. REASONED OPINION AND TRILATERAL DISCUSSIONS

#### a. Binding tariffs and harmonisation of the tariff setting year (Articles 21.1 and 22.2)

##### **Publication of binding tariffs before the annual yearly capacity auctions**

Throughout the development of the TAR NC, stakeholders requested to know the reserve prices for all standard capacity products before the first auctions takes place, i.e. the yearly one. Stakeholders remarked that without this information, they would book capacity in auctions without knowing the definitive price of the capacity they are bidding for.

Within the consultations responses, most stakeholders specifically noted that this was deemed as an important issue for the market. In particular, for the initial draft TAR NC consultation <sup>(1)</sup>, 32 of 34 respondents answered that it is important for them to know the transmission tariffs before the auctions. For the refined draft TAR NC consultation in the form of SSP <sup>(2)</sup>, stakeholders were of the strong opinion that binding reference prices should also be published prior to auctions and not just indicative ones.

ACER stated in the Reasoned Opinion that it would be appropriate: (1) for the TAR NC to specify the publication period of binding tariffs and related multiplier information ahead of the capacity auctions; and (2) to explore the possibility of optimising the timing of the CAM auctions to facilitate such tariff certainty.

##### **Moving of the annual yearly and quarterly auctions**

In order to provide binding tariffs, ENTSG sees a clear benefit in postponing the annual yearly capacity auctions, as this will provide more time in order to gather the information needed and to do the calculations required for this publication. NRAs (or TSOs) will gain time in order to improve the accuracy of those tariffs.

The following picture illustrates how the issue of binding tariffs is solved in the TAR NC for re-submission based on 3 different examples of the tariff setting year:

- Case 1: The tariff year starts in January;
- Case 2: The tariff year starts in October, in parallel to the gas year;

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<sup>(1)</sup> Summary of the initial draft TAR NC consultation responses is available [here](#).

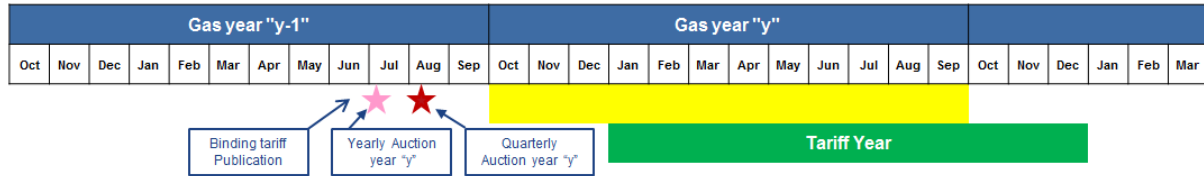
<sup>(2)</sup> Report on the SSP for the refined draft TAR NC is available [here](#).



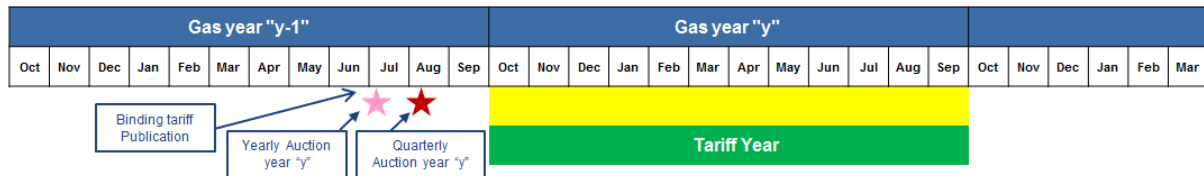
- Case 3: The tariff year starts in April <sup>(1)</sup>.

Figure 12 demonstrates that network users will know the price of all standard capacity products ahead of the yearly auction.

**Case 1: for tariff setting year = calendar year**



**Case 2: for tariff setting year = gas year**



**Case 3: for tariff setting year = April - April**



Figure 12. Tariff setting year, tariff publication and timing of auctions

**Timing for the publication**

NRAs or TSOs (depending on the party responsible for calculating tariffs) will need to publish the reference price, multipliers, seasonal factors and the reserve prices for all the standard capacity products at the latest seven days ahead of the annual yearly auctions following the transparency requirements described in Article 21 of the TAR NC (via a link on the Transparency Platform that would lead to the website of the NRA or TSO, as relevant).

The timing of seven days before the annual yearly auctions was decided taking into account: (1) on the one hand, that shippers need to have enough time for the planning of their booking strategies; and (2) on the other hand, that enough time is needed for the tariff calculations.

<sup>(1)</sup> For clarification purposes, ENTSOG would like to remark that those are just three examples of current practices, but there are other tariff setting years applied across EU. For further information on the tariff setting year, please see ENTSOG's Impact Assessment on Harmonisation of the Tariff Setting year which is published [here](#).

ENTSOG considers that the timing of seven days before the annual yearly capacity auctions is an appropriate balance between the two.

The time gained for NRAs (or TSOs) for the calculation of tariffs will benefit the accuracy of those tariffs. Some particular benefits of postponing this publication as close as possible to the start of the tariff period are that the following aspects will improve: the accuracy of both the forecasts of bookings and the allowed revenue (for non-price cap regimes) as well as the estimation of the under-/over-recoveries from the previous year.

#### **Safeguard related to this provision**

Providing binding tariffs for IPs (and non-IPs where the CAM NC is applied) means an increase in the TSOs' risks. Transmission tariffs for IPs will be calculated a few months in advance compared with the current scenario, and thus the TSO will face risks related to under-/over-recoveries. Hence, ENTSOG has considered appropriate to include the following safeguard in Article 27(3) to minimise the TSOs' exposure: 'The application of this Regulation shall avoid incurring detrimental effects on the revenue and cash flow position of the transmission system operator.' The sentence is kept aligned with what was already included in Article 26 of the CAM NC, an Article that will be deleted once the TAR NC is in place. The sentence covers TSOs functioning under all types of regulatory regimes (price cap and non-price cap regimes).

ENTSOG understands the issue raised by many stakeholders and ACER and hence, the TAR NC for re-submission includes the obligation for NRAs or TSOs (depending on the party responsible for calculating tariffs) to publish binding reference prices and reserve prices in advance of the annual yearly capacity auctions for the first gas year following such auctions for all IPs in. The same rule shall apply for non-IPs where the NRA took a decision to apply the CAM NC. Also, drafting changes were implemented to introduce the safeguard related to the publication of binding tariffs prior to the annual yearly capacity auctions. In addition, a clarification regarding the 'binding' nature of such prices was introduced in Article 22(2) as well as an exhaustive list of cases where they can be updated within the tariff period.

#### **b. NRA decision to apply multipliers (Article 22.3)**

In the Reasoned Opinion, ACER asked ENTSOG to reconsider the approach on multipliers. The issue was that in the TAR FG, the choice to implement multipliers was voluntary as it was mentioned that 'NRAs may decide to apply multipliers'.

ENTSOG's approach in the TAR NC was to make the use of multiplier compulsory. Formulas for the use of multipliers were included in the text, and to maintain coherency, those formulas should always be used and there should always be a consultation. NRAs' freedom to choose a

multiplier equal to 1 (i.e. no multiplier) was not reflected as a default rule in the TAR NC but is still possible per TAR NC. The existence of a default rule for multipliers was not considered appropriate and hence, the TAR NC for Reasoned Opinion foresaw that even a multiplier equal to 1 should be approved by the NRAs. Elaborating on that, the role of a multiplier has a dual purpose:

- To ensure that short-term products, and as a consequence short-term network users, are priced in a legitimate way in comparison to the long-term network users ensuring the timely identification of new investments in the gas networks (long-term bookings allow the TSO to predict the operation of the network under the technical requirements and to plan any upgrade of the network).
- To maintain TSOs' financial stability by minimising shortfall of revenues attributed to an excessive profiling of network users through short-term contracts.

By not applying the default rule, the TAR NC aims to motivate the NRAs to assess the aforementioned possible situations before applying the level of short-term multipliers. A default rule of 1, except for the fact that it cannot be justified, can be considered as an 'easy and safe' way to argue that products are offered in a non-discriminatory manner and in a way 'to promote the natural gas trade'. However, the adoption of short-term multipliers by default, namely the adoption of multipliers that stem from a methodology not based on historical data may create a shortfall of revenues with undesirable consequences.

Further to that, the insertion of the approval by the NRA of the level of multiplier – even if it is equal to 1 – in the TAR NC is fully compatible with its main objectives of transparency and cost-reflectivity. In other words, the current formulation does not forbid the approval of short-term multipliers equal to 1 but it is a safeguard for TSOs and network users that the approved level will be in favour of both long- and short-term users.

No changes to the legal text.

### **c. Process for NRA approval of multipliers (Article 22.3)**

In the TAR NC for Reasoned Opinion, ENTSOG included the right for TSOs to propose the level of multipliers, seasonal factors and discounts for interruptible products to the NRAs. ACER showed concerns on this point, since it implied that a NRA shall decide on multipliers at the request of a TSO. In order to clarify the process, the TAR NC for re-submission was amended. There is no specific mention of this TSO's right of proposal and it has been clarified that the NRA's decision

and publication should be done every tariff period and meet the same timings as the publication of binding tariffs prior to the annual yearly capacity auctions.

Seven days before the annual yearly capacity auctions, the decision on the level of multipliers, seasonal factors (if applied) and interruptible discounts should be published by the NRA. The TSO's right of proposal is currently possible in some countries and for those countries, this will still be the case.

The requirement of the NRA to take and publish a decision on the level of multipliers and seasonal factors each year was amended to each tariff period to reflect the fact that in some systems tariff periods extend further than 1 year and hence, would not make sense to republish the same information every year.

ENTSOG considers that the process for multiplier approval needs to be clarified and thus, the following changes were made in the TAR NC for re-submission: (1) timelines of the NRA approval (every tariff period and seven days ahead of annual yearly capacity auctions, at the latest); and (2) no specific mention of the right of the TSO to propose the multipliers levels.

#### **d. Multiplier ranges (Article 23.1-3)**

##### **Higher multiplier cap**

The issue of the appropriate cap for multipliers has been widely discussed throughout the TAR NC development. According to the TAR FG, multipliers should not be higher than 1.5 in any circumstance. However, ENTSOG has been advocating since the first draft of the TAR FG that a safeguard needs to be included to allow for higher multipliers for certain cases, in order to prevent negative consequences in some systems.

In order to address those concerns and following trilateral discussions between ACER, ENTSOG and the EC, ENTSOG has decided to reduce the absolute cap for the multipliers in the TAR NC for re-submission from 5 to 3 only for daily standard capacity products and within-day standard capacity products. The TAR NC for Reasoned Opinion proposed a safeguard for when the cap could be exceeded and included a clear criterion for its application. It was the original intention that the criterion should be to evaluate the ratio of the peak contracted short-term capacity calculated to a yearly basis and the sum of the actually contracted short-term capacities. However, a reference to this cap has now been removed from the TAR NC for re-submission.

ENTSOG has provided examples in several documents and in past SJWSs on the impact that low multipliers could have on some IPs, and still maintains this position. E.g. at SJWS 4 <sup>(1)</sup> ENTSOG presented the impact of low multipliers using actual information for an IP of GRTgaz. The impact was that the reference price at a given IP would have to increase up to 40% to compensate for revenue shortfalls if multipliers are lower than 1.5 and shippers optimise their bookings to minimise their bills.

ACER is of the opinion that for the cases where low multipliers lead to under-recovery for an IP, for non-price cap regimes the revenue shortfall should be compensated by an increase in the reference price the following tariff year. ENTSOG considers this as an unsuccessful solution as it covers only non-price cap regimes and even for those, unnecessary cross-subsidies will be created. Therefore, subject to trilateral discussions the TAR NC for re-submission sets out the following ranges: for quarterly and monthly standard capacity products, the level of the respective multiplier shall be no less than 1 and no more than 1.5, whilst for daily and within-day standard capacity products, the level of the respective multiplier shall be no less than 1 and no more than 3.

It is further envisaged in the TAR NC for re-submission that after four years as from the TAR NC base case application date <sup>(2)</sup>, the level of multipliers for daily and within-day standard capacity products will be no more than 1.5. However, prior to such 'automatic' reduction to the cap of 1.5, there should be two reports prepared by ACER on the appropriateness of the ranges for all multipliers which should examine the following aspects:

- (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.

The first report is to be prepared within two years as from the TAR NC base case application date, whereas the second report (i.e. update of the first one) – within 2 years as from the publication of the first report. Also, ACER shall publish together with the report an opinion, based on the conclusions of the report, whether an amendment to Articles 23 and 25 is

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<sup>(1)</sup> SJWS 4 took place on 26 March 2014 and the presentations are available [here](#).

<sup>(2)</sup> See 'TAR NC application date' in Chapter X of this Document.

necessary. Such opinion is ‘without prejudice’ to the possibility of ‘persons who are likely to have an interest in [...] network code’ to propose a draft amendment to the TAR NC as foreseen by the general rule in Article 7(1) of Regulation (EC) No 715/2009.

Figure 13 illustrates the different deadlines mentioned above.

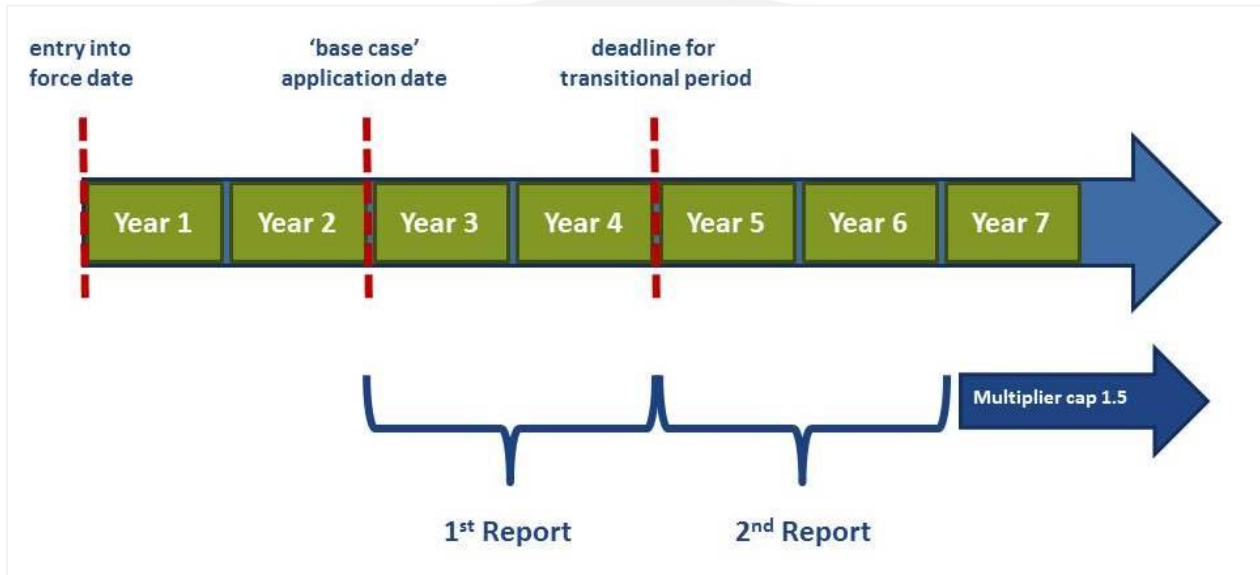


Figure 13. Reports on multiplier ranges

The TAR NC for re-submission was amended so that the level of multipliers for quarterly and monthly standard capacity products is no less than 1 and no more than 1.5, whilst for daily and within-day standard capacity products, the level of the respective multiplier is no less than 1 and no more than 3. After 4 years as from the base case application date, the multiplier cap for daily and within-day standard capacity products is to be no more than 1.5. An obligation was introduced for ACER to prepare 2 reports on the appropriateness of multiplier ranges as well as an opinion whether a respective amendment to the TAR NC is necessary based on the conclusions made in such reports.

**e. Methodology for seasonal factors based on flows (Article 25)**

Previously ENTSOG was of the view that the input to the methodology for the calculation of seasonal factors could be the forecasts of either gas flows or contracted capacity. ENTSOG considered it positive to allow flexibility for the inputs. However, the EC is of the view that the seasonal factors methodology should be based uniquely on the gas flows. ENTSOG has taken into account this view and in the TAR NC for re-submission introduced the change according to which the methodology for the calculation of seasonal factors must be based on the forecasted

flows unless the gas flow for at least one month is 0. If this is the case, then the methodology should be based on contracted capacity.

Drafting changes were implemented in the legal text to reflect the default rule of basing the seasonal factors methodology on forecasted flows.

#### **f. Calculation of reimbursement should capacity be interrupted (Article 26)**

According to Article 26, the reserve prices for standard capacity products for interruptible capacity shall be calculated by applying an ex-ante discount to the reserve prices for the respective standard capacity products for firm capacity. In the TAR NC for Reasoned Opinion, in addition to an ex-ante discount, a reimbursement in case of interruption was possible to apply where certain conditions are met (which are aimed at measuring the absence of either physical or contractual congestion).

As mentioned in the Reasoned Opinion, ACER does not support the ex-post discount, as, in their view, it goes against the principles set by the congestion management procedures, most importantly pushing the financial risk of interruption to shippers. In ACER's opinion, an ex-post discount for interruptible capacity reflects the event of interruption, not the 'probability of interruption' as specified in Article 14(1)(b) of Regulation (EC) No 715/2009. This issue was further raised in trilateral discussions between ACER, ENTSOG and the EC and also with several stakeholders. Therefore, ENTSOG has concluded that despite its opinion that it could be seen as a fair and adequate way of providing a discount in case of interruption, this method of calculating interruption is to be removed from the TAR NC for re-submission.

The possibility of providing a combination approach of ex-ante and ex-post discounts in case of interruption has been removed from the TAR NC for re-submission.

#### **g. A and B factor (Article 26)**

The TAR NC for Reasoned Opinion set the pricing of interruptible products proportional to the probability of interruption (factor 'Pro') and the adjustment factors A and B. In the Reasoned Opinion, ACER considered that these factors are not defined in the TAR NC and are unjustified, arbitrary and contradict any further harmonisation of interruptible products.

ENTSOG's initial view was that there are adjustment factors that are applied in order to help TSOs to reflect the estimated economic value of the type of interruptible product, given the fact that the economic value of the capacity at the moment when it is congested and had to be

interrupted is much higher than in normal situations. It does not need to be harmonised at the EU level as its appropriate value will depend on the specificities of each type of product. This flexibility will help TSOs and NRAs to find the appropriate discount that better reflects the economic value of each type of interruptible product offered.

It was felt that the factor A would help NRAs and TSOs to adapt the discounts if needed to reflect the actual value of the capacity and to add extra discounts if deemed necessary.

Following the trilateral discussions between ACER, ENTSOG and the EC, ENTSOG deleted this factor from the formula for ex-ante discount. As the combination approach of ex-ante and ex-post discount in case of interruption was removed <sup>(1)</sup>, the concern regarding the adjustment factor B is no longer applicable.

The text was redrafted and the formula now excludes the presence of the A factor.

*Di ex-ante = Pro × 100%*

*Where:*

*Di ex-ante is the level of an ex-ante discount;*

*Pro is the probability of interruption of the type of standard capacity product for interruptible capacity.*

#### **h. Pricing of non-physical backhaul capacity as interruptible capacity (Article 26.4)**

According to Article 26(4) of the TAR NC, the methodology for pricing of interruptible capacity products described in Article 26(1)-(3) shall apply to all standard capacity products for interruptible capacity regardless of the direction of the gas flow at a given IP. In these terms, the TAR NC does not follow the TAR FG requirements – instead, the same approach as the one taken in the initial draft TAR NC is followed: pricing of non-physical backhaul capacity in the same way as interruptible capacity products.

In the Reasoned Opinion, ACER emphasises that the TAR FG, based on a rationale detailed in the Justification Document <sup>(2)</sup>, expects non-physical backhaul products to be priced at marginal costs. Regarding the example provided by ENTSOG of a situation where such pricing could lead to unintended consequences (competing situation between backhaul capacity priced at marginal costs at one point and interruptible capacity sold in the same direction at a bi-directional point), ACER agrees that ‘in such situations, backhaul capacity priced at marginal cost would not be appropriate’. ACER also noted that ‘such contradictions should be transient’

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<sup>(1)</sup> See ‘Calculation of reimbursement should capacity be interrupted’ above in this Chapter.

<sup>(2)</sup> See p. 83 of ACER’s [Justification Document](#) for the TAR FG.



since in accordance with the CAM NC requirements, such points should be merged eventually into a VIP.

Following the trilateral discussions between ACER, ENTSOG and the EC, ENTSOG is of the opinion that the same approach as the one taken previously should be kept. ENTSOG, consistent with its previously maintained position, supports the rationale provided by half of the stakeholders as outlined in the arguments below.

**Argument 1: non-physical backhaul capacity is an interruptible capacity product and therefore, should be priced on the same principles as interruptible capacity**

During the TAR NC development process, ENTSOG had already provided the arguments supporting this statement, such as <sup>(1)</sup>:

- Interruptible capacity is defined in Article 2(1)(13) of Regulation (EC) No 715/2009 as '[...] capacity that may be interrupted by the TSO in accordance with the conditions stipulated in the transport contract' without making a distinction between interruptible capacity offered at a bi-directional IP and non-physical backhaul capacity offered at uni-directional IP.
- Pricing of non-physical backhaul capacity at marginal costs for providing this service means that the TSOs will be forced to offer much larger discounts for this product as compared to other interruptible products. This contradicts the rule set out in Article 14(1)(b) of Regulation (EC) No 715/2009 saying that 'the price of interruptible capacity shall reflect the probability of interruption'.
- Non-physical backhaul capacity has the similar nature as the one of other interruptible products: the difference being the type of physical infrastructure (bi-directional or uni-directional IP) or the conditions for interruption (non-physical backhaul capacity is interrupted if there are not enough nominations in the direction of the gas flow and other interruptible capacity is interrupted if there are too many nominations). In some Member States, non-physical backhaul capacity can be interrupted: (1) even if there is a forward flow; or (2) in the absence of physical flow in the direction where the capacity has been booked. However, the possibility to offer non-physical backhaul capacity occurs only in the situation where there is a physical flow in the opposite direction. Hence, the precondition is the presence of physical network and physical flows at a point where the non-physical backhaul capacity is offered.

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<sup>(1)</sup> See p. 46 of the [Accompanying Document](#).

- Also, a parallel to entry-exit model could be raised. The contractual world and physical flows are completely independent in an entry-exit system model. The pricing of capacity products is not dependent on the physical flows. Following the different pricing of the non-physical backhaul capacity depending on whether there is a physical flow or not will be discriminatory.
- Apart from the rule established by Article 14(1)(b), Regulation (EC) No 715/2009 does not foresee the requirements for pricing of non-physical backhaul capacity. The CAM NC – which supplements and forms an integral part of Regulation (EC) No 715/2009 – does not foresee the rules for its pricing either. Since non-physical backhaul capacity products are of the similar nature as interruptible capacity products, the rules stipulated in the existing legislation for interruptible capacity products are to be applied.
- The TAR NC which is to supplement and form an integral part of Regulation (EC) No 715/2009 cannot contradict Regulation (EC) No 715/2009. As explained above, pricing of non-physical backhaul capacity at marginal costs, which ACER envisages to be foreseen by the TAR NC, appears to contradict pricing by reflecting the probability of interruption already envisaged in Regulation (EC) No 715/2009.

**Argument 2: the use of a different approach for non-physical backhaul capacity appears to treat the network users differently, i.e. discriminating between them**

A marginal approach could create competition issues when firm and backhaul products are offered in parallel. If stable forward flows are present in these cases, backhaul products could be used for gas transmission at very low prices, creating cross-subsidies and a detrimental situation for TSOs.

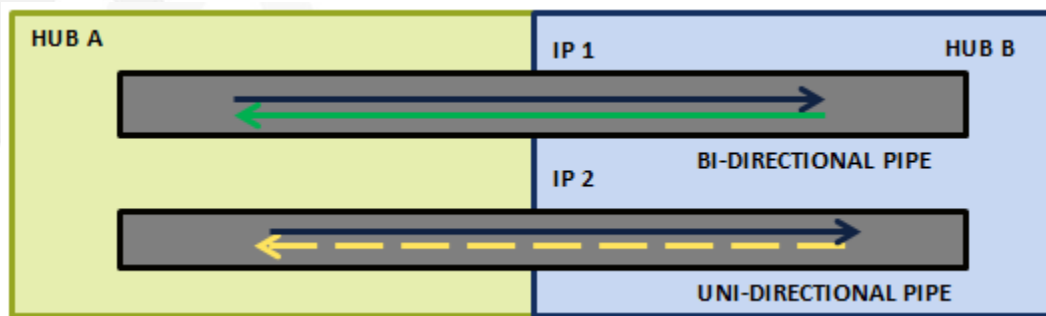


Figure 14. Non-physical backhaul product 1

Bi-directional connection	Uni-directional connection
<ul style="list-style-type: none"> <li>• The offer of interruptible physical capacity (green arrow) is possible due to investment</li> </ul>	<ul style="list-style-type: none"> <li>• Non-physical backhaul capacity (yellow arrow) is possible to offer only if the capacity is booked in the main direction =&gt;</li> </ul>

<p>decision as well as operation of the pipe</p> <ul style="list-style-type: none"> <li>• The pricing of interruptible capacity reflects capital and operation costs as well as the probability of interruption</li> <li>• The amount of offered backhaul capacity is limited by technical capacity</li> </ul>	<p>the non-physical backhaul capacity is possible only due to investment decision and operation of the pipe</p> <ul style="list-style-type: none"> <li>• The amount of backhaul capacity offered is limited to the amount of capacity book into the main direction, which is limited by technical capacity</li> <li>• Non-physical backhaul capacity impacts the volume of physical flows in the main direction</li> </ul>
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**Table 15. Comparison between bi-directional and uni-directional point**

In the Reasoned Opinion, ACER agrees that in such situations, non-physical backhaul capacity priced at marginal cost at one point would be competing with interruptible capacity sold in the same direction at the other point.

In fact, competition between non-physical backhaul and physical interruptible products occurs not only within one entry-exit system connected with more than one IPs - but also among different supply routes across several entry-exit systems. For example, network users shipping gas from the Netherlands to the Czech Republic can choose among at least two different routes. Whereas the supply route from the Netherlands through GASPOOL (Germany) to the Czech Republic includes only physical interruptible products, the alternative route from the Netherlands through NCG (Germany) to the Czech Republic includes also non-physical backhaul capacity products offered at the border between NCG and the Czech Republic. Different pricing of non-physical backhaul and physical interruptible capacity causes discrimination of network users and leads to a potential change in booking behaviour and therefore, to a distortion of competition among different routes. The TSO(s) offering physical firm and interruptible capacity could lose capacity bookings with detrimental effects on revenue reconciliation and reference prices. Furthermore, the changing gas flows could lead to uneconomic (dis-)investment signals.

For the reasons outline above, the same approach as the one taken previously by ENTSG is maintained in the TAR NC for re-submission, i.e. pricing of non-physical backhaul capacity in the same way as interruptible capacity.

## **2. OTHER CHANGES AND INFORMATION**

The following changes were also made to Chapter V: a clarification sentence was introduced in Article 22(1) to capture the fact that multipliers, seasonal factors and interruptible discounts can differ per IP/some IPs or be the same at all IPs; the drafting was simplified regarding NRA considerations when deciding on the level of multipliers/seasonal factors.

Also, the definition of the tariff period was amended to capture the understanding that this is the time period when ‘a particular level of the reference price’ – not ‘transmission tariff’ – is applicable. Hence, as a consequence of this change: (1) in combination with the amendments made to the timing of NRA decision regarding the level of multipliers/seasonal factors/interruptible discounts in Article 22(3), the provisions regarding the annual review of the level multipliers/interruptible discounts were deleted as they were deemed to be redundant; and (2) for systems where the duration of the tariff period is longer than 1 year, the set of information to be published before the tariff period (Article 19) must be published not each time the transmission tariff level is changed (e.g. due to the yearly indexation) but only when the reference price is recalculated and hence, its level is changed.

#### **Additional Information:**

##### **Update of transmission tariffs within the tariff period (Article 22.2)**

###### Update of discounts for monthly and within-day interruptible products

It should be noted that it is not the intention that a disincentive for accurate forecasting of interruptible capacity sales is created by allowing discounts for interruptible capacity to be recalculated within the tariff period if the probability of interruption changes by more than 20%. The intention is merely to allow for a safeguard for TSOs/NRAs to have the ability to recalculate them in certain situations, e.g. if there was a drastic change in demand assumptions and a large under-recovery was foreseen as a consequence. The updated transmission tariffs are subject to NRA approval

###### Update of reference prices

The TAR NC allows for the possibility to recalculate the reference price within the tariff period due to exceptional cases and subject to the NRA approval. This provision means a protection in case e.g. the demand scenario which was used to calculate the tariffs for the tariff period was in fact much higher than a constant decreasing demand witnessed within the tariff period. If the updated demand scenario for the rest of the tariff period indicates that the situation would not change for the rest of the period, then the reference price might be recalculated.

Other examples of such ‘exceptional cases’ leading to an update of the reference price within the tariff period could be: excessive rates of the fuels costs, drastic rise of the interest rate, exceptionally warm winter, change in the legislation/court decision.

## CHAPTER VI. TRANSMISSION SERVICES REVENUE RECONCILIATION

### 1. REASONED OPINION AND TRILATERAL DISCUSSIONS

#### a. Issues related to the transmission services revenue recovery (Articles 27.4, 29.2 and 30.3)

In the Reasoned Opinion, ACER outlined a number of detailed concerns with regards to Chapter VI. ENTSOG's consideration of such concerns is as follows:

- As explained above regarding the issue of publication of binding tariffs <sup>(1)</sup>, a safeguard related to revenue recovery has been included in Article 27(4) on the general provisions of revenue reconciliation. As providing binding tariffs for IPs means an increase of the TSOs' risk, the avoidance of detrimental effects on the revenue and cash flow position of TSOs was introduced as a safeguard to take into account for the application of the TAR NC.
- With regard to Article 29(2), ACER believes that a reference to Article 13 of Regulation (EC) No 715/2009 is missing. As any over- or under-recovery is subject to NRA approval, ENTSOG is of the opinion that such a reference is not needed.
- ACER also raised a concern regarding Article 30(3) and in particular, with reference to the situation whereby revenue is reconciled within year as is the case currently in some Member States. It appears that ACER believes that this is not possible with the current text. However again, as the reconciliation period is subject to NRA approval, ENTSOG is of the opinion that this option still remains.

No changes to the legal text – apart from the introduction of a safeguard in Article 27(4) to mitigate against the publication of binding tariffs prior to the annual yearly capacity auctions.

### 2. OTHER CHANGES AND INFORMATION

Some changes were also implemented in Chapter VI to improve the clarity of the drafting and avoid having redundant text; the definitions of price cap and non-price cap regimes were moved to Article 3 <sup>(2)</sup>.

A new paragraph was added to Article 27 saying that Chapter VI 'may also apply to non-transmission services revenue, *mutatis mutandis*'. This aims at clarifying the fact that the

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<sup>(1)</sup> See 'Binding tariffs and harmonisation of the tariff setting year' in Chapter V of this Document.

<sup>(2)</sup> See 'Definitions' in Chapter I of this Document.

regulatory account can also include differences between actually obtained revenue from non-transmission services and non-transmission services revenue. Also, the drafting of Article 28 was clarified so that the regulatory account can include not only the difference in revenues but also the difference between the allowed and realised costs.

With regard to the treatment of the revenue earned from the auction premia set out in Article 29(4), in the TAR NC for Reasoned Opinion it was specified that the NRA 'may decide to use this auction premia for reducing physical congestion'. This text has now been amended to explicitly state that the NRA may also decide to use the auction premia for the purpose of decreasing the transmission tariffs for the next tariff period instead of reducing physical congestion.

#### **Additional Information:**

##### **Reconciliation of the regulatory account via CRRC**

Reconciliation of the regulatory account through use of the applied reference price methodology is an ex-post process which is driven by the difference between the transmission services revenue and the actually obtained revenue from transmission services.

The CRRC can be used ex-ante by determining its value after the long-term capacity auctions in order to mitigate any forecast under-recovery arising from the actual sale of long-term capacity as opposed to the forecast sales used in determining the capacity tariff. The CRRC thus acts to reduce volatility when setting the capacity tariff for the next tariff period.

The CRRC can be set to zero if the forecast capacity auction revenue is at or above the target level.

## CHAPTER VII. PRICING OF BUNDLED CAPACITY AND CAPACITY AT VIRTUAL INTERCONNECTION POINTS

### 1. REASONED OPINION AND TRILATERAL DISCUSSIONS

#### a. Split of revenue from bundled capacity (Article 33.3)

During the TAR NC development process, ENTSOG noted the content overlap between the TAR NC and Article 26 of the CAM NC 'Tariffs' <sup>(1)</sup>. In particular, it was noted that the CAM NC foresees that the split of the auction premium from bundled capacity sales is to be done per 'agreement between the TSOs, approved by the relevant NRA, where appropriate, in advance of the auctions' whereas the TAR NC for Reasoned Opinion stipulated that it is to be done: (i) either per 'decision of the relevant NRA, where the IP concerned connects adjacent entry-exit systems within one MS or an entry-exit system with an interconnector'; (ii) or per 'agreement between the relevant NRAs, where the IP concerned connects adjacent entry-exit systems of two MSs'.

During the trilateral discussions between ACER, ENTSOG and the EC, it was pointed out by the EC that Article 26 of the CAM NC will be deleted since it is overruled by the TAR NC provisions. Hence, the TAR NC for Reasoned Opinion contained a sentence on the interaction between the TAR NC and the CAM NC: 'To the extent covered by this Regulation, Article 26 of Commission Regulation (EU) No 984/2013 shall not be applied as from the date referred to in the third subparagraph.' <sup>(2)</sup>. Following this sentence and noting the difference between the TAR NC and the CAM NC described above, there could be an issue of co-existence of different rules at either side of an IP where: (i) the transitional period foreseen by the TAR NC (i.e. 'postponing' the application of the TAR NC up to 2 years as from the base case application date) <sup>(3)</sup> is implemented at only one side of an IP; or (ii) the transitional period implemented at both sides of an IP is of different duration.

To eliminate this issue, ENTSOG redrafted the respective Article on bundled capacity pricing aligning the approach with the one currently foreseen in the CAM NC, i.e. the split of the auction premium from bundled capacity is to be done per agreement between the TSOs subject to the subsequent NRA approval. The approval from the NRAs involved shall be published no later than three months before the annual yearly auction. All the involved NRAs shall approve

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<sup>(1)</sup> See p. 116 of SJWS 1 [material](#) where the issue was discussed publicly.

<sup>(2)</sup> Meaning the base case application date. See 'TAR NC application date' in Chapter X of this Document.

<sup>(3)</sup> See 'TAR NC application date' and 'Other changes...' in Chapter X of this Document.

the same auction premium split, otherwise, the default split shall apply (the auction premium shall be attributed to the respective TSOs equally).

The drafting was changed so that the auction premium from bundled capacity sales is split per agreement between TSOs subject to the subsequent NRA approval. The timing for the approval, the NRA obligation to inform ACER of such agreement where it involves entry-exit systems of two Member States and the default rule of 50/50 split are maintained in the TAR NC for re-submission. The interaction between the CAM NC and the TAR NC is moved to the recitals.

## 2. OTHER CHANGES AND INFORMATION

Some changes were also implemented in Chapter VII to improve the clarity of the drafting and avoid having redundant text.

### Additional Information:

#### Combination mechanisms to set the reserve prices for VIPs (Article 32)

Two methodologies to arrive at the reserve prices for capacity products at VIPs are established in Article 32 of the TAR NC: (1) VIP reserve price is a direct result of the primary reference price methodology; and (2) VIP reserve price is calculated by calculating the weighted average of the reference prices of all physical IPs bundled in the VIP. For the second case, the formula is set out in the TAR NC.

The two methodologies are necessary because within the reference price methodologies detailed in the TAR NC (postage stamp and CWD in case all physical IPs involved in the VIP are clustered in one cluster), the VIP reserve price can be calculated directly. The TAR NC for re-submission does not contain the example of the reference price methodology to underpin the second case. However, it is possible to opt for another methodology (under Scenario 2) <sup>(1)</sup> which may allow for that.

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<sup>(1)</sup> See 'Approach towards reference price methodologies' in Chapter II of this Document.



## CHAPTER VIII. CLEARING PRICE AND PAYABLE PRICE

### 1. REASONED OPINION AND TRILATERAL DISCUSSIONS

#### a. Fixed price tariffs (Articles 34.2 and 35)

ACER's opposition to fixed payable price is based on the fact that fixed price network users will pay more or less than those on a floating price resulting in potential cross-subsidies.

The option of fixed payable price approach has been included in the TAR NC with the aim of meeting stakeholder requirements. Stakeholders have strongly indicated that uncertainty with floating tariffs would discourage them from purchasing long-term capacity. If fixed mechanisms were not allowed, network users' opportunity to conclude long-term contracts could be undermined, since they might not be able to manage their margin risk due to unknown or unpredictable changes in transmission tariffs. Providing price certainty to these network users may facilitate an increase in longer term contracts.

#### **For existing capacity**

The concept of binding tariffs for the first gas year following annual yearly capacity auctions has been introduced in the TAR NC for re-submission as a result of including the obligation to publish the binding tariffs at least seven days ahead of such auctions <sup>(1)</sup>. The fixed price concept extends this premise to annual capacity products further than one year ahead. The TAR NC for re-submission distinguishes between price cap and non-price cap regimes:

- For **price cap** regimes: ACER's concerns are focused on the potential for cross-subsidies between network users booking on fixed price basis and those booking on floating price basis resulting from reconciliation of under-recovery. As this does not apply under a price cap regime, ENTSG believes that TSOs under a price cap regime should be able to offer capacity with a fixed tariff, without any impact on cross-subsidisation.
- For **non-price cap** regimes: subject to trilateral discussions between ACER, ENTSG and the EC on the topic, the TAR NC for re-submission foresees that fixed tariffs are not allowed, in order to prevent cross-subsidisation between fixed and floating network users. Thus, TSOs functioning under non-price cap regimes must only offer the floating payable price approach for existing capacity.

As outlined by ACER, the TAR NC aims at (in part) addressing the cross-subsidies concern with the introduction of indexation and a risk premium concept in the formula for the calculation of

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<sup>(1)</sup> See 'Binding tariffs and harmonisation of the tariff setting year' in Chapter V of this Document.

the fixed payable price. For fixed tariffs, the indexation used (if any) and how the risk premium is utilised (if any) will be included in a public consultation; the application is subject to the discretion of the NRA and TSO. For incremental capacity, the consultation will be part of the consultation process for the incremental capacity <sup>(1)</sup>, whereas for existing capacity in a price cap regime, the parameters will be consulted as part of the standard consultation <sup>(2)</sup>.

**For incremental capacity**

In addition, network users highlighted that the fixed price option would seem more appropriate for incremental capacity where predictability is needed for shippers to bid for sufficient long-term capacities and thus, pass the economic test. ENTSOG strongly believes that the option to offer fixed tariffs for incremental capacity is needed to ensure that stakeholders have some certainty when they provide long-term commitments for the investment. This requirement is set out in the TAR NC for re-submission. However, it is envisaged that ‘where the fixed payable price approach is offered, the duration of its offer shall be as set out in Article 11(3) and 20e(1) of Commission Regulation (EU) No 984/2013’ <sup>(3)</sup>.

Figure 16 provides an overview of conditions for offering different payable price approaches depending on the type of capacity and the regulatory regime.



Figure 16. Overview of payable price approaches

<sup>(1)</sup> See Article 40(2)(b) of the TAR NC.

<sup>(2)</sup> See Articles 14(1)(f) and 15(1)(f) of the TAR NC.

<sup>(3)</sup> The cross-references are provided to the [Incremental Proposal](#) submitted in December.

The TAR NC for re-submission distinguishes between fixed payable price approach for incremental and existing capacity. In addition, it distinguishes between non-price cap and price cap regimes with regard to the conditions for offering the payable price approaches foreseen in the TAR NC. The use of indexation and risk premium will be consulted upon.

## **2. OTHER CHANGES AND INFORMATION**

As a consequence of making changes in consideration of ACER's concern outlined above, the structure of Chapter VIII was revised so that the following logic is reflected: Article 33 sets out the rules for the calculation of clearing price and is applicable regardless of the regulatory regime, Article 34 sets out the rules for the calculation of floating/fixed payable price and is applicable regardless of the regulatory regime, Article 35 outlines the conditions for offering floating/fixed payable price depending on whether the capacity is existing or incremental and on the regulatory regime.

## CHAPTER IX. INCREMENTAL CAPACITY

### 1. REASONED OPINION AND TRILATERAL DISCUSSIONS

#### a. Recovery mechanisms for 1-f share of investment costs

In point 3.5.1, the TAR FG state that the part of the increase in allowed or target revenues not covered by upfront commitments of network users will either be recovered by future bookings at that point or from all network users via the revenue recovery mechanism. ENTSOG specified this principle in the Incremental Proposal that was submitted to ACER <sup>(1)</sup> by defining concrete mechanisms and a merit order for how the part of the investment costs not covered by binding commitments of network users will be recovered.

ENTSOG considers the provisions on the revenue recovery related to investment costs of an incremental capacity project as a necessary element of the TAR NC which covers revenue allocation by means of setting transmission tariffs as well as revenue recovery. As the determination of the residual part, i.e. the 1-f part of the incremental capacity project costs replaces shipper commitments by virtue of the NRA's decision on the f-factor, there is a necessity to substitute those shipper commitments with guarantee mechanisms to the extent future contracting of the incremental capacity does not occur. The actually incurred investment costs shall be reflected by an increase in the allowed revenues or target revenues. ENTSOG would like to emphasise that the procedure for incremental capacity involves commitments from both TSOs and NRAs. When TSOs commit to investments in incremental capacity and the agreed criteria for economic viability (via the economic test) are met, NRAs should not be entitled to retroactively question the efficiency of such an investment decision after implementation in accordance with the agreed criteria for the incremental capacity project.

Based on the suggestions made by ACER during the bilateral and trilateral discussions on the TAR NC for Reasoned Opinion, ENTSOG has modified the respective principles on the recovery of the investment costs.

Article 37(2) is supplemented by a clarification that the entire investment costs of an incremental capacity project will be included in the regulated asset base and will be reflected in an increase in the allowed revenues or target revenues in accordance with the applicable national rules. Due to this clarification, Article 37(3) is now covered by the revenue recovery mechanisms set out in Article 37(2) and is therefore deleted.

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<sup>(1)</sup> [Incremental Proposal](#) compiles: (1) an amendment proposal to the CAM NC to include the offer of incremental capacity; and (2) Chapter IX of the TAR NC.

### **b. Fixed payable price for incremental capacity**

The TAR FG do not foresee the possibility of a fixed payable price for capacity products but is limited to the application of floating prices. Many stakeholders have stressed throughout the TAR NC development process that floating prices for capacity are a disincentive for long-term capacity bookings as network users have no certainty on the tariff in the future and might therefore not be willing to commit for long-term capacity.

ENTSOG concluded that floating prices for capacity could therefore be an obstacle to incremental capacity projects in general, as long-term commitments from network users are essential in order to pass an economic test. For this reason, ENTSOG includes the possibility to apply fixed prices to incremental capacity.

In order to limit cross-subsidisation between network users, ENTSOG furthermore defines that as a default, the difference between the projected and the actual investment costs of the incremental capacity project will lead to a proportional adjustment of the projected fixed payable price as is known at the time of the auction. This default prevents situations in which a difference between the projected and the actual investment costs has to be covered by other network users, while users with a fixed price would be insulated. Arrangements other than the default, for instance where TSOs are incentivised to outperform the projected investment costs, are subject to approval of the relevant NRA.

Article 40(2) has been amended to include the principle that if a fixed payable price approach is followed for incremental capacity then the difference between the projected investment costs and the actual investment costs will lead to a proportional adjustment of the fixed price.

### **c. Use of mandatory minimum premium to mitigate cross-subsidisation risk**

In the TAR FG, the mandatory minimum premium is established as a mechanism to be applied in case an economic test cannot be passed with a given estimated reference price, even if all offered capacity is contracted. In such a case, the auction for incremental capacity can start at a higher price (reference price plus mandatory minimum premium) to ensure that the economic test can be positive. ENTSOG has followed this approach and included the principle of a mandatory minimum premium in the TAR NC for Reasoned Opinion.

In the TAR FG, ACER invited ENTSOG to assess alternative procedures for adjusting tariffs in addition to the mandatory minimum premium. Several alternative procedures were developed, presented and discussed with stakeholders at the ENTSOG's SJWSs on the Incremental Proposal. The outcome of the discussions with stakeholders was that the application of a mandatory

minimum premium for those network users contracting incremental capacity is the only identified viable solution for adjusting the tariff for incremental capacity.

In the Reasoned Opinion, ACER's comments on a risk of cross-subsidy due to a mandatory minimum premium as a mechanism to reduce the risk of future under-recovery. ENTSOG is of the opinion that the proposed mechanism actually reduces the risk of cross-subsidy. The mandatory minimum premium ensures that revenues to recover the investment costs are paid by those network users that contract the incremental capacity. Since capacity can only be offered for a rather limited number of years in the future, the mandatory minimum premium allows for an 'advance payment' and thereby reduces the risk that costs associated with the incremental capacity after the initial booking horizon have to be socialised in case future bookings do not occur.

In the TAR NC for Reasoned Opinion ENTSOG included specific proposals to achieve such risk mitigation. Based on the Reasoned Opinion, ENTSOG has changed the proposal to define the general mechanism that can be established subject to NRA approval. The non-exhaustive list of more detailed possibilities has been included in the TAR NC recitals.

Article 40(7) has been amended to define that the mechanism established to use the revenues from the mandatory minimum premium is subject to public consultation and NRA approval. The non-exhaustive list of more detailed possibilities initially proposed has been included in the recitals.

## CHAPTER X. FINAL AND TRANSITIONAL PROVISIONS

### 1. REASONED OPINION AND TRILATERAL DISCUSSIONS

#### a. Protection of existing contracts (Article 44)

In the Reasoned Opinion, ACER expressed a concern with regards to the TAR NC rule that it does not affect 'the level of transmission tariffs foreseen in the contracts... concluded before [its] entry into force where such contracts foresee no change of their level except for the indexation, if any'. The TAR FG states that the TAR NC 'provisions... including those relating to or affecting the tariff levels, shall apply to all contracts from 1 October 2017 at the latest'. Reiterating this, ACER notes in the Reasoned Opinion that the TAR NC 'exempts certain contracts from the application of the code, where the [TAR] FG states that it will apply to all contracts'.

#### Intention of the TAR FG

ENTSOG believes that the wording of the TAR FG leaves room for interpretation since the reference to 'all contracts' can mean: (i) 'all the contracts concluded after the application date'; or (ii) 'all contracts concluded both before and after the application date'. However, the overview of different draft TAR FG versions demonstrates that its intention was that the TAR NC is to apply to the existing contracts <sup>(1)</sup>.

#### Protection of legitimate expectations

ENTSOG reiterates its previously expressed position that the application of the TAR NC to the existing contracts undermines the principle of legal certainty and the protection of legitimate expectations, i.e. the right to act expecting that the existing laws will continue to apply <sup>(2)</sup>. The protection of legitimate expectations and respecting the principle of legal certainty needs to be recognised. Indeed, the application of the TAR NC to all the contracts (including the fixed price existing contracts) would affect the legitimate expectations of the parties to such contracts more than legitimate expectations of the parties to the floating price existing contracts since at the time when the contract was concluded, the parties to fixed price contracts did not anticipate the change in the transmission tariff level other than as foreseen by the contract itself (but not due to the application of the TAR NC).

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<sup>(1)</sup> 4 September 2012 [version](#): 'The Network Code on Tariffs shall be implemented within 12 months from its entry into force and shall apply to both new and existing contracts.' The [evaluation of responses](#) to consultation on this draft TAR FG: 'ACER carefully considered proportionality, foreseeability and applicability of the measures to existing contracts. ACER is considering to allow for the network code provisions, including those relating to or affecting the tariff levels, to apply to all contracts at the latest from the 1 October 2017.'

<sup>(2)</sup> See p. 72 of the [Analysis of Decisions Document](#), p. 52 of the [Accompanying Document](#).

### **Additional justification for grandfathering the existing contracts**

Other arguments for safeguarding the transmission tariffs level in the fixed price existing contracts are:

- It cannot be concluded that the economic equilibrium existing before the entry into force of the TAR NC <sup>(1)</sup> should be disrupted due to some overriding public interest. In other words, the harmonisation aim does not constitute such overriding public interest that justifies the possibility of disruption of the economic equilibrium achieved by the fixed price contracts.
- The necessity of safeguarding the transmission tariff level in the fixed price contracts is recognising the proportionality principle. Since such contracts are concluded before the entry into force of the TAR NC, the only way to respect the initial will of the parties to such contracts with respect to the transmission tariff level foreseen in such contracts is to safeguard it.
- Moreover, the two alternative scenarios for the TAR NC application – mitigating measures and transitional period – are not suitable for protection of the existing fixed price contracts. The application of a mitigating measure is not suitable since it is only possible to do so where it is demonstrated that the increase of the reference price by 20% – whereas the fixed price contracts do not foresee the possibility of the change in the level of the transmission tariffs save for the possible indexation. The application of transitional period is not suitable either – since the term of the fixed price contracts may go well beyond the deadline foreseen for the transitional period.

### **Intention of the TAR NC**

There are 3 necessary aspects explaining the intention of the clause included in the TAR NC for re-submission for grandfathering the existing contracts:

Aspect of type: under those contracts we understand the fixed price contracts and not the floating price contracts since at the time of the conclusion of the latter it was foreseen that the price will change in future. Besides, mitigating measures as set out in the TAR NC can be applied for such floating price contracts, namely measures aimed to reduce the impact of tariff increases of more than 20% due to the application of the TAR NC <sup>(2)</sup>.

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<sup>(1)</sup> The entry into force date was foreseen as the 'border date' in the TAR NC for Reasoned Opinion. See the explanation of the change in the approach for such date below.

<sup>(2)</sup> For the issue of commodity-based charges, see p. 59 of the [Accompanying Document](#).



Aspect of extent: not all the contracts would be exempted but only some parts of it, namely the transmission tariff level. This means that in principle, the TAR NC will apply to fixed price contracts – however, the parts of the contracts related to transmission tariff level will not be affected.

Aspect of time: under the ‘existing’ fixed price contracts we understand the following 2 types:

- All the fixed price contracts concluded before the TAR FG publication.

In the previous TAR NC versions (<sup>1</sup>), the ‘border date’ was the date of the TAR NC entry into force. During the trilateral discussions between ACER, ENTSOG and the EC this ‘border date’ was moved to the one earlier and was ascertained as the date of the TAR FG publication (29 November 2013). It was discussed that the legitimate expectations of market participants were sufficient at that time since the TAR NC – to be adopted in the form of the EC regulation – is to be developed in line with the TAR FG which foresaw no fixed payable price approach at all.

- Some fixed price contracts concluded in the ‘grey zone’ between the date of the TAR FG publication (29 November 2013) and the date of the TAR NC application (which is dependent on the TAR NC entry into force and – for the ‘base case’ scenario (<sup>2</sup>) – is calculated as 24 months therefrom).

This grey zone was created due to the moving backwards the ‘border date’ as explained above. Figure 17 indicates which fixed price contracts concluded within this time period are protected in the same way as the contracts concluded before the date of the TAR FG publication: all contracts for incremental capacity and contracts for existing capacity in price cap regime. Below is the respective explanation provided for contracts illustrated therein.

- (1) For Contracts 1, transmission tariff levels for both **existing** and **incremental** capacity in *both regulatory regimes* are protected as the ones concluded before the TAR FG publication date;
- (2) For Contracts 2, transmission tariff levels are:
  - (a) protected for both **existing** and **incremental** capacity only in *price cap regime*: the TAR NC rules for calculation of the fixed price are supposed to be implemented as from the TAR NC application date, and before that date – since the TAR NC rules are not yet to be followed – the fixed price may be calculated per another method.

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<sup>(1)</sup> The version as from the [refined draft TAR NC](#). The [initial draft TAR NC](#) did not foresee this clause.

<sup>(2)</sup> If the transitional period is applied, the application date can be postponed up until another 24 months as from the base case application date. See ‘Other changes...’ below in this Chapter for further information.

- (b) protected only for **incremental** capacity in *non-price cap regime*.
- (c) to be calculated per TAR NC rules for **existing** capacity in *non-price cap regime* when it is used after the TAR NC application date.
- (3) For Contracts 3:
- (a) transmission tariff levels are to be calculated per TAR NC rules for both **existing** and **incremental** capacity in *price cap regime*: since the TAR NC rules for calculation of the fixed price are to be followed as from its application date.
- (b) fixed price contracts are not allowed for **existing** capacity in *non-price cap regime* <sup>(1)</sup>.
- (4) For Contracts 4, there is no impact on transmission tariff levels for **existing** capacity in *both regulatory regimes* when it is used before the TAR NC application date: per the same explanation as in point (2)(a) above.

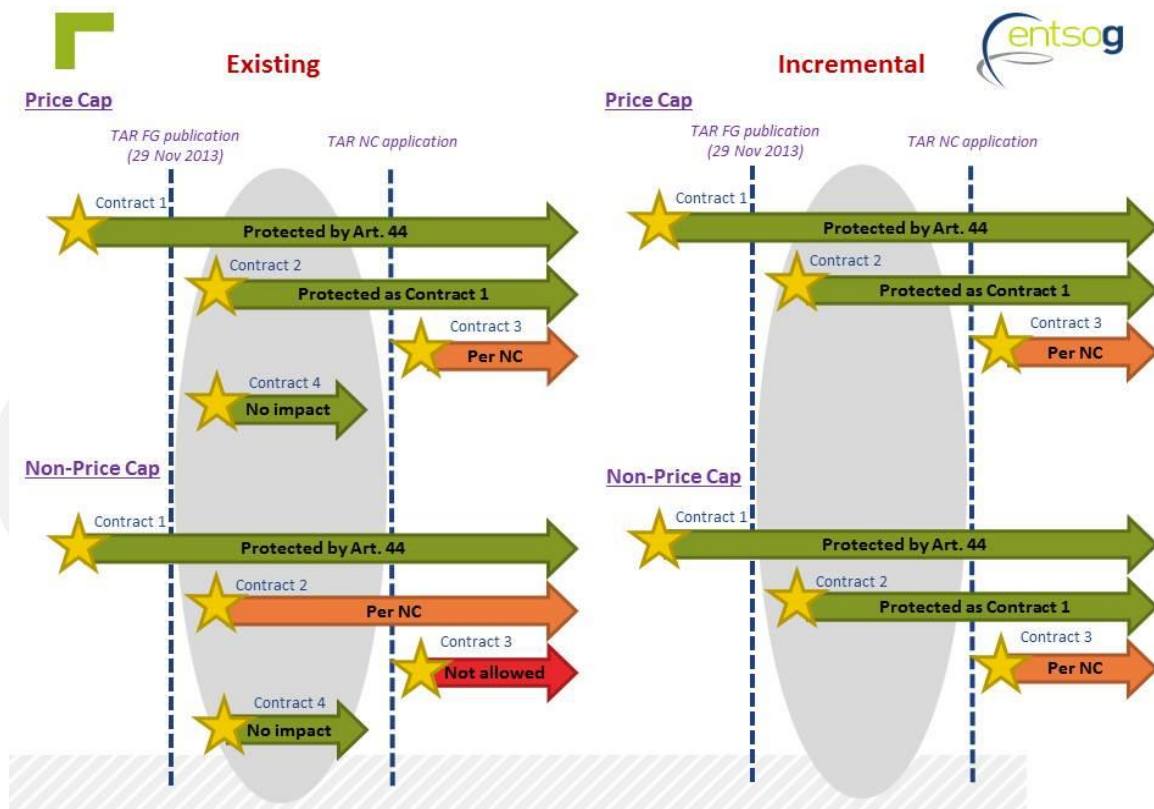


Figure 17. Application of the TAR NC to existing contracts

<sup>(1)</sup> See 'Fixed price...' in Chapter VIII of this Document.

ENTSOG maintains the position with regard to safeguarding certain elements of certain existing contracts from application of the TAR NC and hence, keeps the corresponding provision in Article 44 of the TAR NC. As compared to the TAR NC for Reasoned Opinion, the following amendments were made to the TAR NC for re-submission: (1) the 'border date' was moved to the date of the TAR FG publication (29 November 2013); (2) the clarification was added to also safeguard certain fixed price contracts concluded in the 'grey zone' between the 'border date' and the date of the TAR NC application; (3) for all such safeguarded contracts the following rules were added: (i) the clarification to ensure that they are not renewed or prolonged; and (ii) the obligation for the TSOs to send them to the NRA for information.

#### **b. TAR NC application date (Article 44, 2<sup>nd</sup> subpara)**

In the Reasoned Opinion, ACER points out that the approach foreseen in the TAR NC with regard to its application date 'is more flexible than the one allowed in the TAR FG'.

On a number of occasions, ENTSOG pointed out to the necessity of having sufficient time to apply the TAR NC rules <sup>(1)</sup>. To ensure that there is indeed sufficient time, instead of following the TAR FG requirement on 1 October 2017 as a 'base case' application date, ENTSOG suggested an alternative approach of calculating such date depending on the date when the TAR NC enters into force. Indeed, it seems logical not to set the application date of the legal acts upfront when such legal act is yet to be finalised and established.

This approach aligns the timing for the TAR NC implementation with such timing allocated for the previous NCs: 24 months for the CAM NC and 17.5 months for the BAL NC. This approach was also widely supported by the market <sup>(2)</sup> and hence, ENTSOG chooses to keep it for the TAR NC for re-submission. ENTSOG does acknowledge the fact that the exact application date will be ascertained within the comitology procedure for the TAR NC, as was the case for the previous NCs, and would keep its position on having sufficient time for its implementation.

Having calculated the timings of different stages of the NC establishment on the basis of the CAM NC and the BAL NC processes, the entry into force date of the TAR NC is estimated as

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<sup>(1)</sup> See p. 66 of SJWS2 [material](#), p. 78 of the [Supporting Document](#), p. 67 of the [Analysis of Decisions Document](#).

<sup>(2)</sup> See p. 107 of the [Consultation Responses Report](#) and answers to Question 53 within the [2-month consultation on the initial draft TAR NC](#).

October 2016. Based on that, the ‘base case’ application date is estimated as October 2018 <sup>(1)</sup> and the deadline for the ‘postponed’ application in case a transitional period or a transitional period and mitigating measures is/are applied – as October 2020.

For clarification purposes of the difference between the ‘base case’ application date and the possible application dates where transitional period and/or mitigating measures <sup>(2)</sup> are applied, ENTSOG includes two illustrations showing these different scenarios for the TAR NC application date. Figure 18 shows the case of a maximum duration of mitigating measures/transitional period (for TSO 1, the TAR NC is to be applied as from October 2018, whereas for TSO 2, it is October 2020). Figure 19 shows the case of consecutive application of transitional period and mitigating measures (for TSO 3, the TAR NC is to be applied as from October 2019).

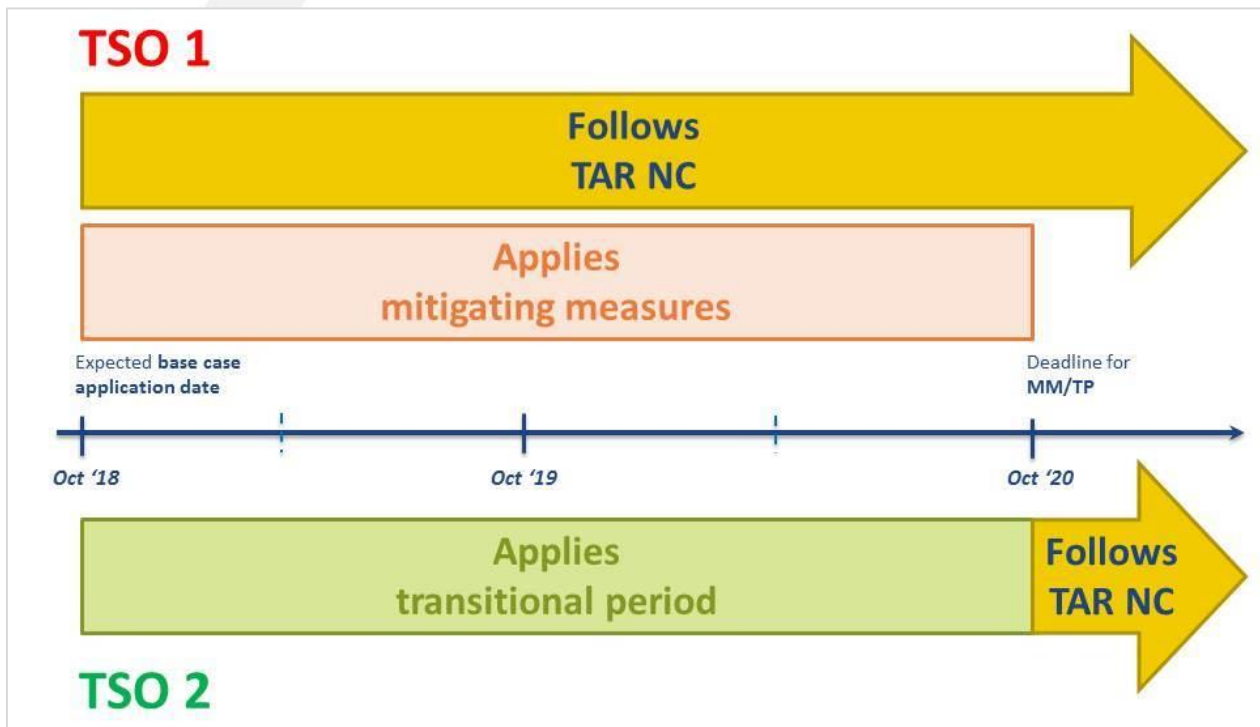


Figure 18. Application of the TAR NC 1

<sup>(1)</sup> Note that certain rules of the TAR NC are to be applied earlier than the base case application date. See ‘Other changes...’ below in this Chapter.

<sup>(2)</sup> See ‘Other changes...’ below in this Chapter for further explanation of the differences and similarities between the concepts of ‘mitigating measure’ and ‘transitional period’.

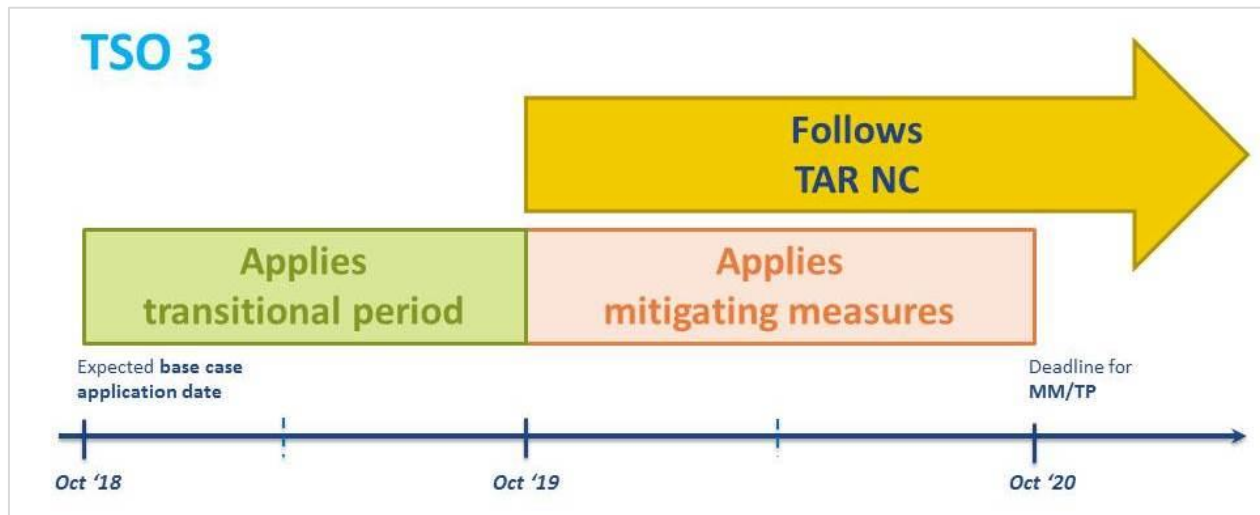


Figure 19. Application of the TAR NC 2

No changes were made to the legal text for the amendment of the 'base case' application date apart from the clarification added for the Articles that are to be applied earlier than such date.

### c. Implementation monitoring

In the Reasoned Opinion, ACER stated that the TAR NC 'does not include any provision on Implementation monitoring'. In response to that, ENTSOG would like to reiterate its previously expressed opinion that the TAR NC must not include any rules regarding the monitoring of its implementation. This position has been maintained throughout the TAR NC development process <sup>(1)</sup> as well as within the TAR FG preparation process <sup>(2)</sup>.

ENTSOG maintains that the network code implementation monitoring task should be tackled outside of the network code for the following reasons:

<sup>(1)</sup> See p. 80 of the [Supporting Document](#), p. 75 of the [Analysis of Decisions Document](#), p. 31 of the [Accompanying Document](#).

<sup>(2)</sup> See p. 8 of ENTSOG's [response](#) to the consultation on the draft TAR FG of 4 September 2012, p. 2 of ENTSOG's working level [response](#) on the Open House material of 31 January 2013, p. 11 of ENTSOG's [response](#) on the draft TAR FG of 18 July 2013.

- ENTSOG's obligation to monitor and analyse the NC implementation is foreseen by Article 8(8) of Regulation (EC) No 715/2009 <sup>(1)</sup> and hence, any repetition of such provision in the TAR NC which – following the precedent established by the CAM NC and the BAL NC – is to supplement and form an integral part of Regulation (EC) No 715/2009 would be a redundancy and duplication. Regulation (EC) No 715/2009 is binding in its entirety and directly applicable, and each NC is developed on its basis and following the process set out therein.
- ENTSOG believes that it is out of scope of the NC to identify the details of monitoring its implementation. ENTSOG notes that the TAR FG goes well beyond the provisions of Regulation (EC) No 715/2009 related to the NC implementation monitoring. Not only does it state that ENTSOG is to determine 'in full' and communicate to ACER the information 'relevant to implementation monitoring' and includes a detailed but yet non-exhaustive list of such information – it also attempts to impose an obligation on ENTSOG to maintain the associated 'comprehensive, standardised, digital data archive of the information required by the Agency'. ENTSOG is of the opinion that each NC constitutes a set of rules regarding the specific subject matter but not regarding how to monitor the implementation of those rules.
- ENTSOG is the forum of the TSOs' cooperation as envisaged in Article 4 of Regulation (EC) No 715/2009 and Article 4 of ENTSOG's Articles of Association 'Purpose and activities'. It is up to the NRAs to ensure and monitor the compliance of the TSOs with their obligations, and this duty is underpinned by the power to require any information from the TSOs (see Article 41 of Directive 2009/73/EC).
- Neither the CAM NC, nor the BAL NC which are in force tackle the issue of monitoring of their implementation. If the rules on network code implementation monitoring are included in the TAR NC, the consistency across different NCs that are developed on the basis of the same Regulation (EC) No 715/2009 would not be kept.

## 2. OTHER CHANGES AND INFORMATION

During the TAR NC development process, ENTSOG noted that the respective Articles on mitigating measures and transitional period need to be re-drafted to ensure the clear distinction between these concepts, in particular with regard to the consequences for the application date

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<sup>(1)</sup> ENTSOG notes that Regulation (EC) No 715/2009 and No 713/2009 foresee the task of NC implementation monitoring also for ACER but with a wider scope. For details, see Article 9(1) of Regulation (EC) No 715/2009 and Article 6(6) of Regulation (EC) No 713/2009.

of the TAR NC. Hence, ENTSG implemented the drafting changes based on the following understanding:

Criterion for comparison	Mitigating measure	Transitional period
<b>General idea</b>	Does not postpone the application of the TAR NC but facilitates it	Postpones the application of the TAR NC
<b>NRA role</b>	Implementation and the detailed design are subject to NRA approval	Implementation and the exact duration are subject to NRA approval
<b>When to request</b>	Once the TAR NC enters into force	
<b>What to request</b>	Request to implement a mitigating measure	Request to postpone the TAR NC application
<b>What to demonstrate</b>	Application of the TAR NC results in an increase of the reference price at a minimum of one point by >20% as compared to the tariff period before its application	Application of the TAR NC: (1) may affect the execution of specific contracts; or (2) does not coincide with regulatory period or tariff period
<b>When to start implementing</b>	As from the base case application date	
<b>Max period</b>	24 months as from the base case application date	
<b>Interrelation</b>	No simultaneous implementation but possible consecutive implementation (respecting the 24-month deadline) <sup>(1)</sup>	

**Table 20. Comparison of mitigating measures and transitional period**

Also, Article 45 was clarified to capture that certain Articles of the TAR NC are to be applied earlier than the base case application date, namely: Article 6(5) on the obligation of ACER to prepare a recommendation on reference price methodologies other than detailed in the TAR NC, Article 14(2) on the timing of the start of the consultation, Article 15(4) on the deadline for the NRA decision on the reference price methodology <sup>(2)</sup> to be applied, Article 41(1) on the timing of the TSO's request for mitigating measures/transitional period and Article 44(3) on the obligation of the TSOs to send to the NRA the safeguarded contracts <sup>(3)</sup>.

The drafting was changed so that a new Article on the commonalities of mitigating measures and transitional period is created and the differences are kept within the two respective Articles.

<sup>(1)</sup> See 'TAR NC application date' above in this Chapter for the respective illustrations in Figures 18 and 19.

<sup>(2)</sup> As well as other aspects enlisted in Article 15(1).

<sup>(3)</sup> See 'Protection of existing contracts' above in this Chapter.

## ANNEXES

### ANNEX 1. SEASONAL FACTORS METHODOLOGY

Seasonal factors can be applied in addition to the multiplier to calculate reserve prices for short term products. The purpose of seasonal factors is to have reserve prices that increase if the utilisation rate increases for one month, and that decrease for months with a low utilisation rate, in order to promote an efficient use of the system by providing incentives for a change in gas flows from high demand periods to lower ones and by reducing the negative impact that profiled capacity bookings may have on revenue and tariff stability.

ENTSOG has developed a methodology to calculate seasonal factors based on the utilisation rate of the transmission system per month. There are different options on the applicability of seasonal factors: TSOs can apply the same set of seasonal factors to all IPs, to a group of IPs or a different set of seasonal factors per IP. TSOs will evaluate which approach is more appropriate to promote efficient use of the system. When applying the same seasonal factors to all IPs (or a group of IPs), the methodology would be based on average flow/booking profile of the network (group of points). When applying seasonal factors per IP, the methodology would be based on profiles per IP.

**For monthly standard capacity products:** seasonal factors for monthly products are calculated using as an input the forecasted flows for each month. Only if the forecasted flows for one month (or more) are 0, forecasted contracted capacity should be used in the calculations.

(a) For each of the months, calculate the forecasted flows or forecasted contracted capacity.

$$Month_i \rightarrow Flows_i$$

(b) For each of the months, calculate the usage rate for each month:

$$Usage\ rate_i = \frac{Flows_i}{\sum_{i=1}^{12} Flows_i}$$

(c) For each of the months, calculate the primary factor:

$$Primary\ factor_i = Usage\ rate_i \cdot 12$$

\*If one of the above calculated primary factors is equal to 0, then this value needs to be corrected. Its value will be changed to the lowest of the other primary factors or to 0.1, whichever is lower.



(d) For each of the months, calculate the initial level of the seasonal factors:

$$Initial SF_{monthly,i} = Primary factor_i^s$$

\* The parameter  $s$  is applied in order to penalise/incentivise more clearly the months that deviate the most from a flat usage. With  $s=1$ , the seasonal factors are directly proportional to the use for the system. With  $0 \leq s < 1$ , seasonal factors would be 'soften' and can be utilised for cases where flow changes are extreme between the different periods. With  $1 < s \leq 2$ , seasonal factors increase/decrease in an exponential way as shown in Figure 21:

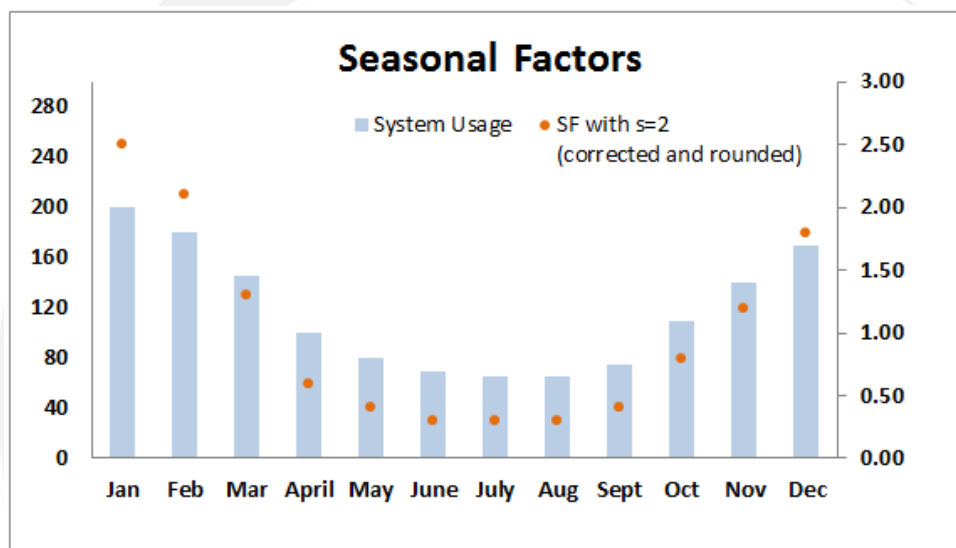


Figure 21. Seasonal factors and power factor

(e) A correction step is needed now in order to check that the average over the year for the product of multiplier and seasonal factor is equal to or higher than 1 and equal to or lower than 1.5.

$$Average = \frac{\sum_{i=1}^{12} M_{monthly} \cdot Initial SF_{monthly,i}}{12}$$

(f) If the value of the average falls within the range from 1 to 1.5, there is no correction step needed. If the average is lower than 1 or higher than 1.5, the following correction step is needed:

$$\text{If } 1 \leq Average \leq 1.5, \text{ then: } SF_{monthly,i} = Initial SF_{monthly,i}$$

$$\text{If } Average < 1, \text{ then: } SF_i = Initial SF_{monthly,i} \cdot \frac{1}{Average}$$

$$\text{If } 1.5 < Average, \text{ then: } SF_i = Initial SF_{monthly,i} \cdot \frac{1.5}{Average}$$

**For daily and within day standard capacity products:** seasonal factors for daily and within-day products are calculated on the basis of the initial seasonal factors, applying the steps (e) and (f) above taking into account the corresponding multipliers:

$$Average = \frac{\sum_{i=1}^{12} M_{daily} \cdot Initial SF_{daily,i}}{12}$$

If the value of the average falls within the range from 1 to 3, there is no correction step needed. If the average is lower than 1 or higher than 3, the following correction step is needed:

$$\text{If } 1 \leq Average \leq 3, \text{ then: } SF_{daily,i} = Initial SF_{daily,i}$$

$$\text{If } Average < 1, \text{ then: } SF_i = Initial SF_{daily,i} \cdot \frac{1}{Average}$$

$$\text{If } 3 < Average, \text{ then: } SF_i = Initial SF_{daily,i} \cdot \frac{3}{Average}$$

**For quarterly standard capacity products:** seasonal factors for quarterly products are calculated as follows:

(a) Calculate the initial level of the seasonal factors by one of the following alternatives:

$$\text{Alternative 1: } Initial SF_{quarterly,i} = \frac{\sum_{i=1}^3 SF_{monthly,i}}{3}$$

Alternative 2:  $Initial SF_{quarterly,i}$  is equal to any number within the range of the minimum and maximum corresponding seasonal factors of the quarter.

(b) Apply the steps (e) and (f) above as set out for monthly seasonal factors taking into account the quarterly multiplier.

$$Average = \frac{\sum_{i=1}^4 M_{quarterly} \cdot Initial SF_{quarterly,i}}{4}$$

$$\text{If } 1 \leq Average \leq 1.5, \text{ then: } SF_{quarterly,i} = Initial SF_{quarterly,i}$$

$$\text{If } Average < 1, \text{ then: } SF_i = Initial SF_{quarterly,i} \cdot \frac{1}{Average}$$

$$\text{If } 1.5 < Average, \text{ then: } SF_i = Initial SF_{quarterly,i} \cdot \frac{1.5}{Average}$$

## ANNEX 2. LIST OF ABBREVIATIONS

**ACER** – Agency for the Cooperation of Energy Regulators established by Regulation (EC) No 713/2009

**BAL NC** – Commission Regulation 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)

**CAM NC** – Commission Regulation 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)

**CWD** – capacity weighted distance reference price methodology

**CRRC** – Complementary Revenue Recovery Charge

**Directive 2009/73/EC** – 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)

**EC** – the European Commission

**ENTSOG** – European Network of Transmission System Operators for Gas

**EU** – European Union

**INT NC** – Commission Regulation No 2015/703 establishing a Network Code on Interoperability and Data Exchange Rules (OJ L 113, 1.5.2015, p. 13)

**IP** – interconnection point, as defined by Article 3(10) of the CAM NC

**ITC mechanism** – inter-TSO compensation mechanism

**Letter** – Amendment Suggestions of the Agency for the Cooperation of Energy Regulators of 26 November 2014 on ENTSOG's Refined Draft Network Code on Harmonised Transmission Tariff Structures for Gas, as approved by the ENTSOG Board on 6 November 2014

**NRA** – national regulatory authority

**Preliminary Opinion** – Main Preliminary Views of the Agency for the Cooperation of Energy Regulators of 31 July 2014 on ENTSOG's Initial Draft Network Code on Harmonised Transmission Tariff Structures for Gas, as approved by the ENTSOG Board on 28 May 2014

**Reasoned Opinion** – Opinion of the Agency for the Cooperation of Energy Regulators No 02/2015 of 26 March 2015 on the Network Code on Harmonised Transmission Tariff Structures for Gas

**Regulation (EC) No 713/2009** – 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).

**Regulation (EC) No 715/2009** – 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 (OJ L 211, 14.8.2009, p. 36)

**SJWS** – Stakeholder Joint Working Session

**TAR FG** – Framework Guidelines on rules regarding harmonised transmission tariff structures for gas, 29 November 2013

**TAR NC** – the Network Code on Harmonised Transmission Tariff Structures for Gas

**TAR NC for Reasoned Opinion** – the Network Code on Harmonised Transmission Tariff Structures for Gas submitted to ACER on 26 December 2014 for Reasoned Opinion

**TAR NC for re-submission** – the Network Code on Harmonised Transmission Tariff Structures for Gas for Re-Submission to ACER on 31 July 2015

**Transparency Guidelines** – Chapter 3 of Annex I to Regulation (EC) No 715/2009

**TSO** – transmission system operator

**VIP** – Virtual Interconnection Point

**VTP** – Virtual Trading Point

### ANNEX 3. LIST OF FIGURES AND TABLES

<b>Table 1.</b> Criteria to distinguish between transmission and non-transmission services .....	15
<b>Table 2.</b> Interrelation between services and their beneficiaries .....	15
<b>Table 3.</b> Application of the methodology in a multi-TSO entry-exit system .....	24
<b>Figure 4.</b> Scenarios for joint application of the reference price methodology .....	25
<b>Figure 5.</b> Scenarios for separate application of the reference price methodology .....	25
<b>Figure 6.</b> Interrelation between TAR NC definitions .....	29
<b>Table 7.</b> Description of the approach towards reference price methodologies .....	32
<b>Figure 8.</b> Description of Scenarios for the proposed methodology .....	33
<b>Figure 9.</b> Process for carrying out benchmarking .....	35
<b>Table 10.</b> Comparison of consultation, NRA approval and publication requirements for different tariffs .....	42
<b>Figure 11.</b> Explanation of the standardised format .....	47
<b>Figure 12.</b> Tariff setting year, tariff publication and timing of auctions .....	49
<b>Figure 13.</b> Reports on multiplier ranges.....	54
<b>Figure 14.</b> Non-physical backhaul product 1.....	58
<b>Table 15.</b> Comparison between bi-directional and uni-directional point.....	59
<b>Figure 16.</b> Overview of payable price approaches.....	66
<b>Figure 17.</b> Application of the TAR NC to existing contracts .....	74
<b>Figure 18.</b> Application of the TAR NC 1.....	76
<b>Figure 19.</b> Application of the TAR NC 2.....	77
<b>Table 20.</b> Comparison of mitigating measures and transitional period.....	79
<b>Figure 21.</b> Seasonal factors and power factor .....	81
<b>Table 22.</b> TAR NC versions .....	86

## ANNEX 4. VERSIONS OF THE TAR NC AND ADDITIONAL MATERIAL

Date	Version of the TAR NC	Version of Additional Document
31 July 2015	TAR NC for Re-Submission (TAR0500-15)	Explanatory Document (TAR0501-15)
26 December 2014	<a href="#">TAR NC for Reasoned Opinion</a> (TAR0450-14)	<a href="#">Accompanying Document</a> (TAR0451-14)
7 November 2014	<a href="#">Refined Draft TAR NC</a> (TAR0350-14)	<a href="#">Analysis of Decisions Document</a> (TAR0351-24)
30 May 2014	<a href="#">Initial Draft TAR NC</a> (TAR200-14)	<a href="#">Supporting Document</a> (TAR300-14)
Date	Other Material	
30 January 2014	<a href="#">Final Project Plan for the TAR NC</a> (TAR202-14)	
22 January 2014	<a href="#">Launch Documentation for the TAR NC</a> (TAR136-13)	
Date	Basis for Development	
19 December 2013	<a href="#">Invitation to Draft TAR NC</a> (EC)	
29 November 2013	<a href="#">TAR FG</a> (ACER)	

Table 22. TAR NC versions

## ANNEX 5. CORRELATION TABLE

TAR NC for Reasoned Opinion (26 December 2014)	TAR NC for re-submission (31 July 2015)
Article 1	Article 1
Article 2	Article 2
Article 3	Article 3
Article 4	Article 4
Article 5(4)-(6), Article 9(2), Article 21(5), Article 25(2), Article 40(3)	Article 5
Article 5	Article 6
Article 10	Article 7
Article 11	Article 8
Article 17	Article 9
Article 18	Article 10
Article 20	Article 11
Article 9	Article 12
Article 19	Article 13
Article 21(1)-(2)	Article 14
Article 21(3)-(4), Article 22(2)	Article 15
Article 23	Article 16
Article 24	Article 17
Article 25(1)(d)(i)-(ii), Article 32(3)	Article 18
Article 25(1)(a)-(c), (d)(iii)-(v), (e), Article 6(2)-(5), Article 26	Article 19
Article 25(3)-(4)	Article 20
Article 27	Article 21
Article 28	Article 22
Article 29	Article 23
Article 30	Article 24
Article 31	Article 25
Article 32, Article 33	Article 26
Article 35	Article 27
Article 36	Article 28
Article 37	Article 29
Article 38	Article 30
Article 39	Article 31
Article 40	Article 32

Article 41	Article 33
Article 42(1)	Article 34
Article 42(2)	Article 35
Article 43	Article 36
Article 44	Article 37
Article 45	Article 38
Article 46	Article 39
Article 47	Article 40
Article 48(1), Article 49(1)	Article 41
Article 48	Article 42
Article 49	Article 43
Article 50, 4 <sup>th</sup> subparagraph	Article 44
Article 50, 1 <sup>st</sup> , 3 <sup>rd</sup> and 5 <sup>th</sup> subparagraphs	Article 45