

Extract of the Implementation Document for Network Code on Harmonised Transmission Tariff Structures for Gas

Approved by ENTSOG Board on 16 February 2017

Introduction

TAR NC – Network Code on harmonised transmission tariff structures for gas

The **TAR NC** has recently undergone the formal review according to Article 5a(1) to (4) and Article 7 of Council Decision 1999/468/EC ⁽¹⁾, as envisioned by Article 28(2) of Regulation (EC) No 715/2009 (**'Gas Regulation'**) ^(2,3). The Official Journal of the European Union ⁽⁴⁾ is expected to publish the TAR NC in mid-March, and it will enter into force 20 days later in mid-April.

A network code (**'NC'**) is a set of common EU-wide rules in the form of an EU regulation established in accordance with the process contemplated by Article 6 of the Gas Regulation for a given subject matter, as indicated by Article 8(6). Article 6(11) clarifies that NCs supplement the Gas Regulation and *'amend... [its] non-essential elements'*.

Extract of the TAR NC Implementation Document and disclaimer

This document constitutes an Extract of the Implementation Document for the TAR NC (**'IDoc'**). The Extract was developed by the European Network of Transmission System Operators for Gas (**'ENTSOG'**) ⁽⁵⁾. The IDoc will be non-binding, prepared for information and illustrative purposes, and will offer a set of examples and possible solutions for implementing the TAR NC. The examples used in the IDoc for any given Member State (**'MS'**) will reflect the situation as of the date of the IDoc publication, and may change in the future as an outcome of the national consultation processes foreseen in the TAR NC.

The TAR NC applies directly in all MSs. For the avoidance of doubt, the IDoc will not be part of the TAR NC; ENTSOG will provide the IDoc for information purposes only, without accepting any legal responsibility for its content, which does not give rise to any rights or obligations whatsoever. If in any respect the IDoc is not consistent with the TAR NC, then the TAR NC prevails. Further information on the disclaimer will be found in the IDoc when it is published.

⁽¹⁾ 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).

⁽²⁾ 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).

⁽³⁾ 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.

⁽⁴⁾ <http://eur-lex.europa.eu/oj/direct-access.html>.

⁽⁵⁾ See ENTSOG's website: <http://www.entsog.eu/members>. As of March 2017, ENTSOG comprises 45 TSO Members and 2 Associated Partners from 26 European countries and also has 4 Observers from EU affiliate countries.

First Application Date of the TAR NC

Entry into force and Application Dates

Article 38 does not explicitly state any date for entry into force, but the date should be 20 days after publication of the TAR NC in the Official Journal of the EU. 'Entry into force date' means that the TAR NC provisions have become legally binding.

As compared to the 'entry into force date', 'application date' ('AD') means the date for compliance with the TAR NC provisions.

The TAR NC foresees 3 different ADs for its different Chapters:

- > AD 1 is entry into force (estimated as mid-April 2017) for the following Chapters: Chapter I 'General provisions', Chapter V 'Pricing of bundled capacity and capacity at VIPs', Chapter VII 'Consultation requirements', Chapter IX 'Incremental capacity' and Chapter X 'Final provisions';
- > AD 2 is 1 October 2017 for the following Chapters: Chapter VI 'Clearing and payable price' and Chapter VIII 'Publication requirements';
- > AD 3 is 31 May 2019 for the following Chapters: Chapter II 'Reference price methodologies', Chapter III 'Reserve prices', Chapter IV 'Reconciliation of revenue'.

AD 1 coincides with the entry into force date. Article 38 sets AD 1 as a default AD, while AD 2 and 3 are viewed as exceptions.

Although two specific rules in the listed Chapters have established ADs, the TAR NC allows compliance at a later date:

- > The AD for Chapter II 'Reference price methodologies' is 31 May 2019 – but Article 27(5) permits retaining tariffs applicable at such date until the end of the prevailing tariff period. Therefore, the compliance date is later than the application date, due to different tariff periods applicable across the EU.
- > The AD for Chapter VIII 'Publication requirements' is 1 October 2017 – but compliance with publication requirements depends on the date of the auctions and on the applicable tariff period. Therefore, the compliance date is later than the application date. For one obligation the compliance date is linked to the auction date; for the other obligation, the compliance date differs due to different tariff periods applicable across the EU.

Implications of Application Date 1

The calendar year 2017 includes two out of three application dates of the TAR NC, namely AD 1 and AD 2 outlined above.

What must be done in 2017: The TAR includes explicit deadlines for obligations that must be complied with in 2017:

- > Within 1 month as from AD 1, the TSOs are obliged to send to the NRA the existing contracts or information on capacity bookings eligible for grandfathering under the TAR

NC, which foresee no change of the level of capacity- and/or commodity-based transmission tariffs, except for indexation, if any (Article 35(1) of the TAR NC).

- > Within 90 days as from AD 1, ACER is obliged to make available to TSOs and NRAs a template for the consultation document per Article 26(1), after having consulted ENTSOG (Article 26(5) of the TAR NC).
- > AD 2 for the TAR NC Chapter VIII 'Publication requirements' does not mean that the tariffs will be published at this date. The first compliance with the obligation in the TAR NC Chapter VIII 'Publication requirements' will be for MSs with tariff period January-December, for publication of the set of information before the tariff period, on TSO/NRA website, as decided by the NRA (Article 30 of the TAR NC). Simultaneously, a link to such information will be provided on ENTSOG's TP and also, the flow-based charge (if applied) and simulation of all the costs for flowing 1 GWh/day/year will be published directly on ENTSOG's TP in a standardised table, for IPs only. The reference prices and other prices applicable at points other than those where the CAM NC applies will be derived following the 'old' reference price methodology ('RPM') as the requirement for the 'new' RPM is only applicable as of AD 3 of 31 May 2019.
- > The TAR NC sets out an obligation for TSOs to submit to ENTSOG the information on their compliance with Chapter VIII 'Publication requirements' by 31 December 2017 (Article 36(2)(a) of the TAR NC). This is linked to the compliance with the publication requirements. Only the TSOs from the MSs with tariff period January-December will be able to submit to ENTSOG the information on their compliance with the requirement to publish the set of tariff information before the tariff period, as for the other cases the start of the tariff period is beyond the deadline of 31 December 2017.
- > Where only one TSO is active in an entry-exit system, the end of December 2017 is the estimated start date for preparing the final consultation document, to comply with the deadline established by the TAR NC (Article 26(1) of the TAR NC).

What needs to be done as from AD 1: In a number of instances, the TAR NC does not set out the start date for undertaking some activities to comply with an obligation, but only the deadline for complying with such an obligation. It appears to be reasonable to have an early start for undertaking the related activities, to ensure sufficient time for compliance:

- > First of all, the definitions set out in Article 3 of the TAR NC need to be implemented. Not only the 'new' concepts, if relevant, need to be introduced but also the 'old' concepts which are already in use before the TAR NC entry into force need to be changed. For example, a change is necessary if at a national level a certain notion is used with a different meaning than attributed to it by the TAR NC, or if the meaning of a notion is labelled differently than by the TAR NC.
- > As Article 4 of the TAR NC falls within the Chapter applicable as of AD 1, it would be necessary to start changing the way transmission and non-transmission services are delineated and the way the associated revenues are recovered. Article 4 covers all possible

TSO tariffs: (1) split between transmission and non-transmission services according to paragraph 1; (2) setting transmission tariffs to take account of conditions for firm capacity products under paragraph 2; (3) use of capacity-based transmission tariffs as a default under paragraph 3; (4) the criteria for commodity-based transmission tariffs and for non-transmission tariffs pursuant to paragraphs 3 and 4. However, Article 26 on periodic consultation and the associated Article 27(4) on NRA decision-making covers all such tariffs set out in Article 4. Therefore, although the AD for Article 4 is AD 1, the compliance date is AD 3.

- > As explained at the beginning of this Chapter, the TAR NC envisages an option of conducting a/some 'intermediate' consultations under Article 26(1) as from AD 1. Time would be needed for the preparation of the respective consultation documents.
- > As from AD 1, the TSOs may need to negotiate and agree on the attribution of the auction premium from the sales of bundled capacity (Article 21 of the TAR NC). The TAR NC is silent as to the exact deadline for entering into such an agreement, and only sets out the deadline for NRA approval, namely 3 months in advance of the annual yearly capacity auction. In absence of such approval, the 50/50 split applies. If the TSOs' agreement was previously approved by the NRAs before the TAR NC entered into force, no additional approval is needed as the deadline of 'no later than three months before the start of the annual yearly capacity auctions' is met.
- > As from AD 1, it is possible for entities operating interconnectors to prepare detailed reasoning (supporting documents and, optionally, a CBA) for their request for NRAs to grant a derogation from the application of some/all TAR NC Articles. Following the process established by Article 37 of the TAR NC, after that, NRAs will need time to assess and decide upon such requests.

What is advised to be done as from AD 1: The obligations below do not include a specific start date, and a reasonable approach is therefore to start working on their compliance as from AD 1:

- > For ACER's report on methodologies and parameters to determine the allowed/target revenue of TSO, NRAs need to clarify with ACER as from AD 1 the required information they need to send to ACER (Article 34(2) of the TAR NC). Since the time for ACER's preparation of the report on such methodologies and parameters is only 2 years after the TAR NC's entry into force, ACER would reasonably expect the information from NRAs as early as possible.
- > The same 'early' assumption applies to ACER's work on a report on the application of the RPM under Article 36(5) of the TAR NC. An early start of such work is advisable to provide the description of the full range of the applied RPMs throughout the EU.

What is advised to be done before AD 1: To comply with the obligations applicable as of AD 1 or shortly afterwards, it appears necessary to start undertaking some activities even before AD 1, in particular:

- > Analyse and update national legislative and regulatory frameworks, which need to be changed to implement the TAR NC.
- > Assess the impact on IT systems which need to be changed to implement the TAR NC.
- > Start changing the applied definitions and introduce the new definitions, if applicable.
- > Prepare internally to conduct formal consultations, including early engagement with stakeholders.
- > Start working on 'intermediate', if applicable, and final consultation documents: develop the CWD counterfactual RPM, develop a chosen RPM, determine input parameters for both methodologies, develop a capacity forecast, perform the respective calculations per chosen RPM and the CWD counterfactual, perform the respective calculations per CAA, discuss internally and with NRA (if a TSO is responsible for conducting the consultation), translate in English to the extent possible.
- > ACER's work on a template for the consultation document per Article 26(1) also appears to be a challenging task to be completed within only 90 days as of the TAR NC AD 1 – starting working earlier is advisable.

Next steps

The 29th Madrid Forum invited ENTSOG and ACER 'to support and monitor the implementation' of the TAR NC 'and report back to the Forum' ⁽⁶⁾. The IDoc is part of ENTSOG's response to this invitation.

We plan to hold a TAR NC Implementation Workshop on 29 March 2017 to inform the market about implementing the TAR NC. We have chosen this date considering its proximity to the TAR NC's entry into force, foreseen to be the mid-April, offering market participants timely notice of the implementation challenges.

⁽⁶⁾ See conclusions of the 29th Meeting of the European Gas Regulatory Forum of 6-7 October 2016:
https://ec.europa.eu/energy/sites/ener/files/documents/29th_mf_conclusions_adopted.pdf