

ENTSOG PROPOSAL

on amending Commission Regulation (EU) No 984/2013 of 14 October 2013 on principles linked to the offer of incremental and new capacity in gas transmission systems

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005¹, and in particular Article 7(1) thereof, and having regard to Regulation (EU) No 984/2013²,

Whereas:

- (1) Regulation (EC) No 715/2009 sets non-discriminatory rules for access conditions to natural gas transmission systems to ensure the proper functioning of the internal market in gas.
- (2) Regulation (EC) No 715/2009 is supplemented by Commission Regulation (EU) No 984/2013 of which it forms an integral part. Commission Regulation (EU) No 984/2013 establishes a 'Network Code on Capacity Allocation Mechanisms in Gas Transmission Systems' aiming at promoting co-operation between adjacent transmission system operators in order to facilitate sales of capacity at interconnection points. In particular, it sets up harmonised commercial as well as technical rules related to capacity allocation mechanisms, by providing standardised capacity auctions for bundled capacity products.
- (3) Commission Regulation (EU) No 984/2013 applies to all technical and interruptible capacity at interconnection points as well as to additional capacity in the meaning of point 2.2.1 of Annex I to Regulation (EC) No 715/2009.
- (4) In setting up general principles of capacity allocation mechanisms, Article 16 of Regulation (EC) No 715/2009 requires transmission system operators to regularly assess

¹ OJ L 211, 14.08.2009, p. 36

² OJ L 273, 15.10.2013, p. 5

market demand for investments in developing new capacity, without prejudice to the provisions set forth by Regulation (EU) No 994/2010.

- (5) It is crucial for the market to have harmonised rules also addressing the offer and allocation of incremental capacity at already existing interconnection points and new capacity at new interconnection points, deriving from the above mentioned market-based investments.
- (6) In consideration of the need mentioned above, Commission Regulation (EU) No 984/2013 should also cover the offer and allocation of incremental capacity and new capacity in gas transmission systems, by extending and adapting the harmonised commercial and technical rules thereto.
- (7) Commission Regulation (EU) No 984/2013 should therefore be amended accordingly, in accordance with the opinion of the Committee established pursuant to Article 51 of Directive 2009/73/EC³ concerning common rules for the internal market in natural gas.

HAS ADOPTED THIS DECISION:

Article 1

Commission Regulation (EU) No 984/2013 is amended in accordance with the Annex to this Decision.

Article 2

This Decision shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union and shall apply as from whichever of the following dates is later:

- (1) 1 October 2017; or
- (2) The first day of the month following the date calculated as twenty four months after the entry into force of the Network Code on Harmonised Transmission Tariff Structures for Gas.

Done at Brussels, [xx].

³ OJ L 211, 14.8.2009, p. 94

ANNEX

Commission Regulation (EU) No 984/2013 is amended as follows:

1. Article 2(2) is replaced by the following:

‘2. This Regulation shall apply to all technical and interruptible capacity at interconnection points as well as to additional capacity in the meaning of point 2.2.1 of Annex I of Regulation (EC) No 715/2009 and to incremental capacity.

This Regulation shall not apply to interconnection points between Member States where one of these Member States holds a derogation on the basis of Article 49 of Directive 2009/73/EC.’;

2. Article 2(3) is replaced by the following:

‘3. In case an alternative allocation rule in open season procedures according to Articles 20f(2) to (4) is applied, Articles 19(2) and 27 shall not be applicable to the offer levels, unless decided otherwise by the relevant national regulatory authorities.’;

3. Article 3 is amended as follows:

(a) Article 3, Indent 1 is replaced by the following:

‘For the purposes of this Regulation, the definitions in Article 2 of Regulation (EC) No 715/2009, Article 3 of Regulation (EU) No XXX/201X (TAR NC) and Article 2 Directive 2009/73/EC shall apply. In addition, the following definitions shall apply.’;

(b) The following points (19), (20), (21) and (22) are added:

‘(19) “economic test” means a test applied to assess the economic viability of incremental capacity projects;

(20) “incremental capacity” means a possible future increase in technical capacity that may be offered based on investment or long-term capacity optimisation and subsequently allocated subject to the positive outcome of an economic test, in the following cases:

- (a) at existing interconnection points,
- (b) by establishing a new interconnection point,
- (c) as physical reverse flow capacity at an interconnection point, which has not been offered before;

(21) “offer level” means, where yearly standard capacity products for incremental capacity are offered at an interconnection point, the sum of available capacity and the respective level of incremental capacity offered for each of the yearly standard capacity products at the interconnection point;

(22) “open season procedure” means a process to assess the market demand for incremental capacity that includes a non-binding phase in which network users express and quantify their demand for incremental capacity and a binding market test phase in which binding commitments for contracting capacity are requested from network users by one or more transmission system operators.’;

4. Article 8(1) is replaced by the following:

‘1. Auctions shall be used for the allocation of capacity at interconnection points, unless provided otherwise in this Regulation.’;

5. Article 8(2) is replaced by the following:

‘2. At all interconnection points the same auction design shall apply. The relevant auction processes shall start simultaneously for all concerned interconnection points. Each auction process, relating to a single standard capacity product, shall allocate capacity independently of every other auction process except where:

(a) subject to the agreement of the directly involved transmission system operators and the co-ordinated approvals of relevant national regulatory authorities, competing capacity is allocated; or

(b) incremental capacity is allocated in the annual yearly capacity auction;’;

6. Article 8(8) is replaced by the following:

‘8. In the case of incremental capacity, an amount at least equal to 10 % of the incremental capacity at each interconnection point shall be set aside and offered no earlier than the annual quarterly capacity auction as provided for in Article 12, held in accordance with the auction calendar during the gas year preceding the start of the relevant gas year.’;

7. Article 11 is amended as follows:

(a) Paragraph 3 is replaced by the following:

‘3. The auction process shall offer capacity for no longer than the upcoming 15 years, unless provided otherwise in this Regulation.’

(b) Paragraph 6 is replaced by the following:

‘6. The capacity to be offered during the annual yearly capacity auction shall be equal to:

$$A - B - C + D + E - F$$

Where:

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

B for annual yearly auctions offering capacity for the next five years, is the amount of technical capacity (A) set aside in accordance with Article 8(7)(b); for annual yearly auctions for capacity beyond the first five years, is the amount of technical capacity (A) set aside in accordance with Article 8(7);

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

D is additional capacity, for such year, if any;

E is the incremental capacity for such year included in a respective offer level, if any;

F is the amount of incremental capacity (E), if any, set aside in accordance with Article 8(8) and 8(9).';

(c) Paragraph 8 is replaced by the following:

'8. One month before the auction starts, transmission system operators shall notify network users about the amounts of capacity to be offered for each year for the upcoming annual yearly capacity auction.'

(d) Paragraph 10 is replaced by the following:

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

In case of incremental capacity, the binding commitments of network users for contracting capacity and the results of the economic test including whether the conditions for a repeated auction according to Article 20d(3) are met shall be made available no later than the next business day after the closing of the bidding round, simultaneously to individual network users participating in the respective auction.'

8. Article 17 is amended as follows:

(a) Paragraph 3 is extended by the following:

'(f) in case incremental capacity is offered, the concerned offer level.'

(b) Paragraph 20 is replaced by:

'20. All network users who have placed valid volume bids at the clearing price are allocated the capacity according to their volume bids at the clearing price.

Where incremental capacity is allocated, the allocation of incremental capacity shall be subject to the outcome of the economic test according to Article 43(2) and Article 43(3) of Regulation (EU) No XXX/201X (TAR NC) and any necessary subsequent approval processes.

Successful network users shall pay the clearing price of the specific auction, which may be a fixed or a variable price as set out in Article 26(2), and any other possible charges applicable at the time when the capacity allocated to them can be used.’;

(c) Paragraph 21 is replaced by:

‘21. Following every closed auction, the final auction result including the aggregation of allocated capacities and the clearing price shall be published. Successful network users shall be informed about the amount of capacities they are allocated, individual information shall be communicated only to concerned parties.

In case incremental capacity is allocated, this shall only apply to the auction results of the offer level offering the largest amount of capacity that resulted in a positive economic test according to Article 43(3) of Regulation (EU) No XXX/201X (TAR NC).’;

9. Chapter IVa is added as the following:

(a) Article 20a is added as the following:

‘20a. General provisions

1. Transmission system operators shall co-operate in the processes of assessing market demand for incremental capacity and of conducting technical studies for incremental capacity projects for their joint interconnection points.

2. Incremental capacity shall be offered as standard yearly capacity products in the annual yearly capacity auction, unless otherwise provided in this Regulation and, if any, in combination with available capacity for the respective standard capacity products.

3. Open season procedures shall be conducted for incremental capacity if at least one of the following conditions is met for at least one of the involved transmission system operators:

(a) when the incremental capacity project involves more than two entry-exit systems or is connected to or impacted by exempted infrastructure according to Article 36 of Directive 2009/73/EC or Article 22 of Directive 2003/55/EC;

(b) when conditional binding commitments of network users for contracting capacity according to Article 20e(2) are envisaged;

(c) when the required offer levels cannot be efficiently derived from the demand assessment report according to Articles 20b(5) to (8);

(d) when the time horizon of 15 years for binding commitments of network users for contracting capacity provided in the auction procedures as set out in Article 11 is assumed not to be sufficient for a positive economic test at the reserve price.

4. Based on the information submitted by the transmission system operators involved in an incremental capacity project, the relevant national regulatory authorities shall issue co-ordinated decisions on the parameters of a single economic test to assess the economic viability of the incremental capacity project, according to Article 45 of Regulation (EU) No XXX/201X (TAR NC).

5. Transmission system operators and national regulatory authorities shall publish respective points of contact for incremental capacity projects.

6. The national regulatory authorities involved in an incremental capacity project shall co-ordinate their decision-making throughout the process to ensure consistent approaches for all transmission system operators involved in an incremental capacity project.

Where national regulatory authorities cannot find agreement on the joint capacity allocation procedure and/or on the required parameters for an incremental capacity project in the agreed timeframes, they shall submit a request to the Agency for decision as set out in Article 8(1)(b) of Regulation (EC) 713/2009.’;

(b) Article 20b is added as the following:

‘20b. Process of demand assessment for incremental capacity

1. Transmission system operators shall enable network users to indicate their demand for incremental capacity by submitting non-binding demand indications for incremental capacity.

2. Non-binding demand indications shall contain at least the following information:

(a) the two or more adjacent entry-exit systems between which demand for incremental capacity is expressed and the requested direction;

(b) the gas year(s) for which a demand for incremental capacity is expressed;

(c) the amount of capacity demanded between the respective entry-exit systems;

(d) information on non-binding demand indications which were or will be submitted to any other transmission system operator, in case such indications are linked to each other, such as demand for capacities forming a transport route, or are at least partially mutually exclusive.

3. Transmission system operators shall respond to received non-binding demand indications within 8 weeks after their receipt. The response shall provide at least the following:

(a) whether the demand indicated can be considered by the transmission system operator in the context of an incremental capacity project that has already been initiated; or

(b) whether the demand indicated is sufficient to consider the initiation of an incremental capacity project to cover this demand; or

(c) in which demand assessment report according to paragraph 5 the indicated demand will be taken into account, provided that the demand indicated cannot be considered under (a) or (b).

4. In case of a situation described in paragraph 3(b), a transmission system operator may charge fees for activities resulting out of the submission of non-binding demand indications. If a fee is applied, it shall be approved by the relevant national regulatory authority. Such fees shall be reimbursed to the respective network user if the economic test for at least one offer level that includes incremental capacity at the respective interconnection point is positive.

5. Transmission system operators shall publish a demand assessment report at least in English within 16 weeks after the start of the annual yearly capacity auction in all even-numbered years, in which the prospective demand for incremental capacity of all network users is evaluated.

6. The demand assessment report shall take into account the following criteria:

(a) whether the Community-wide Ten Year Network Development Plan identifies a physical capacity gap in the sense that a specific region is undersupplied in a reasonable peak scenario and offering incremental capacity at the interconnection point in question could close the gap; or a national network development plan identifies a concrete and sustained physical transport requirement;

(b) whether no yearly standard capacity product linking two adjacent entry-exit systems is available in the annual yearly capacity auction for the year in which incremental capacity could be offered for the first time and in the three subsequent years, because all the capacity has been contracted;

(c) whether network users submitted non-binding demand indications no later than 8 weeks after the start of the annual yearly capacity auction in the year of the publication of the respective demand assessment report requesting incremental capacity for a sustained number of years and all other economically efficient means for increasing the availability of capacity between the two respective entry-exit systems or along the relevant transport route are exhausted.

7. The demand assessment report shall include at least the following:

(a) the non-binding demand indications received until no later than 8 weeks after the start of the annual yearly capacity auction in the year of the publication of the respective demand assessment report;

(b) for the common interconnection points with each adjacent entry-exit system, an assessment of the expected amount and duration of demand for incremental capacity;

(c) a conclusion on whether, for which interconnection points and for which expected demand level technical studies for incremental capacity projects will be conducted;

(d) a conclusion on whether the conditions as set out in Article 20a(3) are met and an open season procedure should be initiated.

8. In entry-exit systems with more than one transmission system operator, the demand assessment report shall be developed jointly for capacity demand to and from the same adjacent entry-exit system and published jointly by the involved transmission system operators that are active at least at one interconnection point.

9. No later than 12 weeks after the publication of the demand assessment report, the relevant transmission system operators or the relevant national regulatory authorities, as applicable, shall organise a joint consultation to ensure the appropriate degree of cross-border co-ordination on the outcome of demand assessment reports referring to a specific potential incremental capacity project.

The consultation shall cover at least the following elements:

(a) the conclusions taken in the respective demand assessment reports according to paragraph 7(c) leading to offer levels for bundled capacity products at an interconnection point;

(b) the conclusion on whether an open season procedure shall be applied for the potential incremental capacity project according to paragraph 7(d);

(c) prospective timelines of the potential incremental capacity project;

(d) general rules and conditions for network users to participate in the potential incremental capacity project;

(e) in case a fixed price approach is followed for the incremental capacity project, the elements IND and RP described in Article 42(1)(b) of Regulation (EU) No XXX/201X (TAR NC).';

(c) Article 20c is added as the following:

'20c. Design phase for incremental capacity

1. Transmission system operators active at the respective interconnection point shall conduct technical studies for incremental capacity projects in order to design co-ordinated offer levels for incremental capacity (design phase) based on the demand assessment reports according to Articles 20b(5) to (8) or based on non-binding demand indications, if the demand indicated is sufficient to allow the initiation of an incremental capacity project according to Article 20b(3)(b).

In the process of designing co-ordinated offer levels, the transmission system operators shall take into account the results of the consultation foreseen by Article 20b(9).

2. Transmission system operators involved in an incremental capacity project shall publish a design phase notice at least in English taking into account the responses to the consultation according to Article 20b(9) covering at least the elements set out in Articles 20b(9)(a) to (d).

3. Following the finalisation of technical studies for an incremental capacity project, the involved transmission system operators shall submit the following as a proposal for co-ordinated approvals to the relevant national regulatory authorities:

(a) all offer levels, reflecting the range of expected demand for incremental capacity at the relevant interconnection points as identified in the demand assessment reports according to Article 20b(5) and as result of the consultation held according to Article 20b(9) or indicated via non-binding demand indications.

(b) prospective timelines of the incremental capacity project according to the results of the consultation held according to Article 20b(9), including possible changes thereto, and consistent policies to mitigate effects of delays;

(c) the parameters defined in Article 46(1) of Regulation (EU) No XXX/201X (TAR NC);

(d) in case of open season procedures, whether an extended time horizon for incremental capacity offer of up to 20 years is applied for the incremental capacity according to Article 20e(1);

(e) in case of open season procedures, whether and which conditions between binding commitments of network users for contracting capacity are allowed according to Article 20e(2);

(f) in case of open season procedures, which alternative allocation rule shall be allowed for the allocation of the incremental capacity according to Articles 20f(2) to (4);

(g) in case a fixed price approach is followed for the incremental capacity project, the elements described in Article 42(1)(b) of Regulation (EU) No XXX/201X (TAR NC).’;

4. The relevant national regulatory authorities shall publish co-ordinated decisions on the parameters defined in paragraph 3, including justifications for the decision, at least in English.

5. Upon the publication of the decisions of the relevant national regulatory authorities according to paragraph 4 and no later than two month before the offer of incremental capacity in the annual yearly capacity auction, the transmission system operators shall publish jointly an allocation notice at least in English including the following minimum information:

(a) the parameters defined in paragraph 3 as approved by the national regulatory authorities;

(b) drafts of the legally binding agreements related to the capacity offered.’;

(d) Article 20d is added as the following:

‘20d. Auctioning of incremental capacity

1. In case of the allocation of incremental capacity, the involved transmission system operators shall offer the incremental capacity together with the respective available capacity in the annual yearly capacity auction as bundled products to the extent possible in accordance with Article 19 and subject to the short-term reservation in accordance with Article 8(8) and 8(9).

2. The offer of yearly standard capacity products for the respective offer levels shall be conducted in parallel and independently to each other in accordance with Article 17.

3. In case the auction for the offer level representing the highest level of incremental capacity resulting in a positive economic test outcome closes with an auction premium for at least one yearly standard capacity product for which incremental capacity is on

offer, a new auction shall start offering all yearly standard capacity products for at least the next higher offer level, if any, in order to give network users the possibility to obtain capacity at a higher offer level.

4. If the new auction according to paragraph 3 does not result in a positive economic test outcome, the allocation results of the preceding auction representing the highest level of incremental capacity resulting in a positive economic test outcome will prevail according to Articles 17(20) and 17(21).’;

(e) Article 20e is added as the following:

‘20e. Principles of open season procedures

1. In case open season procedures are applied, binding commitments of network users for contracting capacity can be obtained for 15 years after the commissioning of the incremental capacity. Subject to co-ordinated approvals of the relevant national regulatory authorities, binding commitments of network users for contracting capacity for an additional period of up to 5 years may be obtained. Where open season procedures are selected as a result of Article 20a(3)(a), the national regulatory authorities shall align the length of the additional period for which binding commitments can be obtained, with the period for which the exemption applies.

2. Binding conditional commitments for contracting capacity, meaning that the allocation of a given yearly standard capacity product is subject to the fulfilment of a specified condition, may be submitted by network users in open season procedures. Whether and which conditions between binding commitments of network users for contracting capacity are allowed in an open season procedure is subject to co-ordinated decisions of the relevant national regulatory authorities.

The conditions between binding commitments of network users for contracting capacity may include commitments across a number of different yearly standard capacity products at an interconnection point, commitments linking or excluding commitments at other interconnection points or commitments conditional to the allocation of a specific or minimum amount of capacity.

3. The national regulatory authorities involved in the open season procedure shall cooperate to ensure that the open season procedure is transparent and non-discriminatory.

4. Open season procedures shall aim at satisfying all expressed capacity demand provided that the economic test outcome is positive at this offer level, taking also into consideration capacity amounts set aside for short-term reservation in accordance with Article 8(8) and 8(9).’;

(f) Article 20f is added as the following:

‘20f. Allocation of incremental capacity in open season procedures

1. In the binding phase of the open season procedure, network users express their demand for incremental capacity by submitting binding commitments for contracting capacity in the annual yearly capacity auction according to Article 20d. Network users may submit conditions between binding commitments for contracting capacity in accordance with Article 20e(2).

2. In cases where the offer of incremental capacity in an open season procedure leads to a negative economic test outcome while not all capacity demand expressed by network users according to paragraph 1 is met, an alternative allocation rule to the one used in the auction procedure for yearly capacity products may be used.

3. The principles of the alternative allocation rule according to paragraph 2 shall be submitted by the involved transmission system operators to the relevant national regulatory authorities for co-ordinated approvals before the offer of incremental capacity, in accordance with Articles 20c(3)(f) and 20c(4). The principles of the alternative allocation mechanism shall furthermore be published according to Article 20c(5).

4. The alternative allocation mechanism according to paragraph 2 shall consider the higher contribution of long term capacity binding commitments for the economic viability of the incremental capacity project.’.