

## 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 1775/2005<sup>1</sup>, and in particular Article 7(1) thereof, and having regard to Regulation (EU) No 984/2013<sup>2</sup>,

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.

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<sup>1</sup> OJ L 211, 14.08.2009, p. 36

<sup>2</sup> OJ L 273, 15.10.2013, p. 5

- (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 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/EC<sup>3</sup> 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 1 October 2017 or as from eighteen months after the entry into force of the Network Code on Harmonised Transmission Tariff Structures for Gas, whichever date is later.

Done at Brussels, [xx].

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<sup>3</sup> 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 existing 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.

It shall furthermore apply to incremental and new capacity when identified and allocated via market based procedures in which commitments for capacity are obtained upfront from network users in the process to assess the economic viability of the incremental or new 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 Article 20e is applicable, the relevant national regulatory authorities may decide that Articles 19(2) and 27 shall not apply to incremental and new capacity to be allocated by means of the open season procedure, apart from capacity which remains unsold after it has been initially offered.’;

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), (22), (23) are added:

(19) “bidding ladder” refers to the combination of all yearly standard capacity products for one interconnection point in the annual yearly capacity auction belonging to one specific offer level;

(20) “economic test” means the mathematical calculation applied to assess the economic viability of incremental and new capacity projects;

(21) “incremental capacity” means capacity that could be made available at existing interconnection points beyond the level of existing technical capacity, excluding capacity that is made available according to Article 6 and excluding additional capacity according to point 2.2.1 of Annex I of Regulation (EC) No 715/2009;

(22) “new capacity” means capacity that could be created by establishing a new interconnection point where no technical capacity existed before, as well as physical reverse capacity at an existing interconnection point, which has not been offered before;

(23) “offer level” refers to the quantity of capacity offered in the annual yearly capacity auction or in an open season procedure for each of the yearly standard capacity products at an interconnection point, associated with one level of incremental or new capacity;

(24) “open season procedure” is a process to assess the market demand for new or incremental capacity in which binding commitments for a capacity expansion are requested from network users by one or more transmission system operators, which may include a phase for submission of non-binding expressions of interest by network users, with the objective to base an investment decision on the obtained commitments.’;

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

‘1. Auctions shall be used for the allocation of capacity at interconnection points.

In case incremental capacity is allocated, in combination with available existing capacity if any, and in case new capacity is allocated, open season procedures according to Articles 20e to 20g may be applied instead, if the circumstances for applying an open season procedure as defined in Article 20e(2) are met.’;

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 approvals of relevant national regulatory authorities, competing capacity is allocated;

(b) incremental capacity in combination with, if any, available existing capacity is allocated by means of parallel bidding ladders in the annual yearly capacity auction;

(c) new capacity is allocated by means of parallel bidding ladders in the annual yearly capacity auction.’;

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

‘6. An amount at least equal to 20 % of the existing technical capacity at each interconnection point shall be set aside and offered in accordance with paragraph 7, provided that the available capacity, at the time this Regulation enters into force, is equal to or greater than the proportion of existing technical capacity to be set aside. If the available capacity, at the time this Regulation enters into force, is less than the proportion of existing technical capacity to be set aside, the whole of any available capacity shall be set aside. This capacity shall be offered in accordance with paragraph 7(b), while any remaining capacity set aside shall be offered in accordance with paragraph 7(a).’;

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

‘8. In the case of incremental and new capacity, an amount at least equal to 10 % of the incremental and new 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.’;

8. Article 11(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 existing 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 capacity 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 or new capacity for such year and offer level, if any;

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

9. Article 11(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. In addition the transmission system operators shall notify network users whether any additional capacity may be made available.';

10. Article 11(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 and new capacity, the capacity commitments of network users shall be made available no later than the next business day, simultaneously to individual network users participating in the respective auction.';

11. Article 17 is amended as follows:

(a) The following point (f) is added to paragraph 3:

'(f) in case incremental or new capacity is allocated, the concerned bidding ladder.';

(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.

In case incremental capacity is allocated, in combination with available existing capacity if any, and in case new capacity is allocated, the allocation of capacity shall be subject to the outcome of the economic test according to Article 42(5) of Regulation (EU) No XXX/201X (TAR NC) and 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, in combination with available existing capacity if any, and in case new capacity is allocated, this shall only apply to the auction results of the bidding ladder defined in Article 42(5) of Regulation (EU) No XXX/201X (TAR NC).';

12. Chapter IVa is added as the following:

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

**'20a. Co-ordination requirements**

1. Transmission system operators and national regulatory authorities involved in an incremental or new capacity development project shall co-operate and co-ordinate their activities throughout the process.

2. In the process of conducting technical studies and subsequently establishing an offer level or offer levels, transmission system operators shall agree on the capacities to be combined into bundled capacity according to Article 19.

3. For the offer of incremental or new capacity at an interconnection point, transmission system operators shall aim at delivering offer levels that result in harmonised capacity levels, single offer timeframes, aligned commissioning timeframes and a consistent policy in case of delays including applicable mitigating measures.

4. Transmission system operators involved in an incremental or new capacity project shall co-ordinate an offer level or offer levels based on the demand assessment defined in Article 20c(6) and shall take into account comments of concerned network users.

5. The allocation of incremental and new capacity shall as a default be conducted according to Article 20d. In case national regulatory authorities involved in an incremental or new capacity process agree that the circumstances for applying an open season procedure as defined in Article 20e(2) are met, the allocation of incremental or new capacity shall be conducted according to Article 20g.



6. Transmission system operators and national regulatory authorities involved in an incremental or new capacity development process shall co-ordinate decision-making towards a single economic test, according to Article 44 of Regulation (EU) No XXX/201X (TAR NC).

7. National regulatory authorities involved in an incremental or new capacity process shall coordinate to ensure the alignment of their decision-making and approval processes through transparent measures such as joint consultations or guidelines.’;

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

**‘20b. Information provision**

1. Transmission system operators shall provide to their respective national regulatory authority at least every other year an assessment according to Article 20c(6) for approval.

2. Following technical studies of the transmission system operators involved in a given incremental or new capacity development process, the following shall be provided to the respective national regulatory authorities for approvals:

(a) the offer level or offer levels

(b) an indicative timeline for the project development until the expected final commissioning of the incremental or new capacity;

(c) the parameters of the economic test according to Article 45(1) of Regulation (EU) No XXX/201X (TAR NC) for the offer level or the respective offer levels;

(d) whether to conduct an auction or open season procedure for the allocation of incremental or new capacity;

(e) the features of the open season procedure, if applicable, including the allocation rules to be applied.

3. The parameters defined in paragraph 2 and approved by the relevant national regulatory authorities including any justification provided by the national regulatory authority shall be published by the involved transmission system operators at least one month before the annual yearly capacity auction or beginning of the binding phase of

the open season procedure on the respective websites of the transmission system operators or relevant platforms at least in English.

4. Transmission system operators shall provide co-ordinated points of contact for network users during the incremental or new capacity process.’;

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

**‘20c. When to offer incremental and new capacity**

1. The process of establishing a possible offer level or offer levels for incremental or new capacity shall be launched by transmission system operators, if at least one of the following conditions is met:

(a) in case the ENTSOG Ten Year Network Development Plan or the relevant network development plan of the respective Member State identifies a physical capacity gap in the sense that a specific region is undersupplied in a reasonable peak scenario and offering incremental or new capacity at the interconnection point in question could close the gap;

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

(c) in case network users submit a non-binding demand indication requesting incremental or new capacity for a sustained number of years and all other economic efficient means for increasing the availability of capacity between the two respective entry-exit-zones or along the relevant transportation route are exhausted.

2. The non-binding demand indications according to paragraph 1 lit. (c) shall at least contain the following information:

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

- (b) the gas years for which a demand for incremental or new capacity is expressed;
- (c) the amount of capacity demanded at the respective interconnection point or along the respective transportation route;
- (d) corresponding information which was or will be submitted to any other transmission system operator, in case the non-binding indications are in any way linked to each other or are at least partially mutually exclusive.

3. For the purpose of the submission of non-binding indications according to paragraph 1 lit. (c), transmission system operators may specify and publish a due date for non-binding indications to be submitted in order to be taken into account for an aggregated demand assessment according to paragraph 6. The period between two subsequent due dates shall not exceed a period of 24 months.

4. Transmission system operators may charge fees for activities resulting out of the submission of non-binding demand indications. These fees shall be reimbursed to the network user if the economic test for at least one offer level at the respective interconnection point is positive.

5. Transmission system operators shall provide a specified format and a point of contact for network users to submit non-binding demand indications to.

6. Transmission system operators shall assess at least every other year the expected demand for incremental and new capacity based on the conditions defined in paragraph 1. This assessment shall include all non-binding indications that were received until the specified due date according to paragraph 3 and shall include a recommendation to the relevant national regulatory authority for approval whether and to which extent the received non-binding indications justify an incremental or new capacity project.

7. The approved assessment according to paragraph 6 shall be the basis for conducting technical studies which subsequently will be used to establish an offer level or offer levels.’;

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

**‘20d. Allocation of incremental and new capacity via auctions**

1. In case an auction is used for the allocation of incremental or new capacity, the involved transmission system operators shall offer the incremental or new capacity together with the existing capacity in the annual yearly capacity auction according to Article 11, 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. For each offer level, one bidding ladder shall offer either the available existing capacity at an interconnection point in combination with the respective level of incremental capacity or the respective level of new capacity. The bidding ladders shall run in parallel and independently to each other in accordance with Article 17.

3. In case the bidding ladder representing the highest level of incremental or new capacity resulting in a positive economic test outcome clears with an auction premium, a new auction shall start offering at least the bidding ladder representing 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 or new capacity resulting in a positive economic test outcome will prevail according to Article 17(20) and 17(21).’;

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

**‘20e. Applicability of open season procedures**

1. Transmission system operators shall submit a proposal for co-ordinated approvals to the relevant national regulatory authorities to conduct an open season procedure in cases where an auction process as set out in Article 20d does not appear to be a robust approach to the realisation of incremental or new capacity, taking into account the provisions as set out in paragraph 2.

2. The national regulatory authorities shall take into account each projects uniqueness when assessing the suitability of open season procedures instead of auctions. Open season procedures may be conducted in particular under the following circumstances:

(a) when the project for incremental or new capacity involves more than one interconnection point or more than two entry exit zones or is linked to or

impacted by the realisation of an exempted infrastructure according to Article 36 of Directive 2009/73/EC;

(b) when conditional commitments according to Article 20f(3) are envisaged;

(c) when the required offer level or offer levels cannot be efficiently derived from the demand assessment according to Article 20c(6);

(d) when the horizon of 15 years for network user commitments provided in the auction procedures as set out in Article 11 would not be sufficient for a positive economic test at the reserve price;

(e) when transmission system operators and national regulatory authorities might select the iterative approach as described in Article 44(4) lit. c of Regulation (EU) No XXX/201X (TAR NC) as a mechanism for possible redistribution of revenues.’;

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

**‘20f. Principles of open season procedures**

1. In open season procedures, network user commitments for incremental or new capacity can be obtained for 15 years after commissioning. Beyond that, commitments for an additional period of up to 5 years may be obtained. The additional period is subject to co-ordinated approvals of the relevant national regulatory authorities.

2. If existing technical capacity is still available at an interconnection point for the years for which binding requests for incremental capacity are invited in an open season procedure, this capacity shall be included in the offer of incremental capacity.

3. Conditional commitments, such as commitments across a number of years, commitments linking or excluding commitments at other interconnection points or commitments conditional to the allocation of a minimum amount of capacity can be obtained in open season procedures subject to the approvals of the relevant national regulatory authorities.

4. The national regulatory authorities involved in the open season procedure shall jointly monitor the progress of the open season procedure.

5. 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).

6. Open season procedures shall be transparent and non-discriminatory;

7. The transmission system operators involved in an open season procedure shall consult all relevant stakeholders on the features of the open season procedure;

8. A notice describing the different features of the open season procedure shall be published by the transmission system operators at least in English. The notice shall contain at least the following general information:

(a) the start and end dates for making non-binding capacity request, if applicable;

(b) how to submit non-binding capacity requests, if applicable;

(c) how and when the economic test parameters will be determined, if the parameters are not already disclosed in the notice;

(d) possibility of conditional commitments;

(e) the allocation rules that will be applied in case the capacity demand expressed in the binding phase of the open season cannot be fully met;

(f) the date by which binding commitments need to be submitted by the network users participating in the open season procedure;

(g) the date on which capacity allocations will be assigned to the network users participating in the open season procedure;

(h) drafts of the legally binding agreements;

(i) the procedures and timeframe for the ensuing regulatory approvals.’;

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

**‘20g. Allocation of incremental and new capacity in open season procedures**

1. In the binding phase of the open season procedure, the network users express their demand for incremental or new capacity to the transmission system operators, including the amount of capacity requested per year, the premium to the reserve prices per year, if any, and the conditions of the commitment in accordance with Article 20f(3), if any.
  2. In case not all capacity demand expressed by network users according to paragraph 1 can be met while the economic test is positive, a transparent and non-discriminatory allocation rule shall be applied.
  3. The default allocation rule in open season procedures ranks the capacity commitments of network users for each year according to the price per unit of capacity they are willing to pay. The default allocation procedure may be based on an auction algorithm as defined in Articles 17 or 18.
  4. When the default allocation rule leads to a situation in which the economic test is negative, an alternative allocation rule may be applied. The alternative allocation rule shall consider the higher contribution of long term capacity commitments for the economic viability of the incremental or new capacity project. The alternative allocation rule shall be subject to the approval of the national regulatory authorities and shall be identified as such in the open season notice in accordance with Article 20f(8)(e).'
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