# Commission Regulation (EU) 2017/459 of 16 March 2017 establishing a network code on capacity allocation mechanisms in gas transmission systems and repealing Regulation (EU) No 984/2013 (Text with EEA relevance)

## COMMISSION REGULATION (EU) 2017/459

## of 16 March 2017

## establishing a network code on capacity allocation mechanisms in gas transmission systems and repealing Regulation (EU) No 984/2013

## (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 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005[(1)], and in particular Article 6(11) and 7(3) thereof,

Whereas:

(1) Regulation (EC) No 715/2009 sets non-discriminatory rules for access conditions to natural gas transmission systems with a view to ensuring the proper functioning of the internal market in gas.

(2) Duplication of gas transmission systems is in most cases neither economic nor efficient. Competition in natural gas markets therefore requires a transparent and non-discriminatory access to gas infrastructure for all network users. However, in large parts of the Union the lack of equal and transparent access to transmission capacity remains a major obstacle for achieving effective competition on the wholesale market. Furthermore, the fact that national rules differ from one Member State to another hampers the creation of a well-functioning internal market for gas.

(3) Inefficient use of and limited access to the Union's high-pressure gas pipelines lead to suboptimal market conditions. A more transparent, efficient and non-discriminatory system of allocation of scarce transmission capacities needs to be implemented for the Union's gas transmission systems, so that cross-border competition can further develop and market integration can progress. Developing such rules has been consistently supported by stakeholders.

(4) Bringing about effective competition between suppliers from inside and outside the Union requires that they are able to flexibly use the existing transmission systems to ship their gas according to price signals. Only a well-functioning network of interconnected transmission grids, offering equal access conditions to all, allows gas to flow freely across the Union. That in turn attracts more suppliers, increasing liquidity at the trading hubs and contributing to efficient price discovery mechanisms and consequently fair gas prices that are based on the principle of demand and supply.

**Changes to legislation:** *Commission Regulation (EU) 2017/459 is up to date with all changes known to be in force on or before 28 December 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(5) Commission Regulation (EU) No 984/2013[(2)] establishing a network code on capacity allocation mechanism in gas transmission systems aimed to achieve the necessary degree of harmonisation across the Union. The effective implementation of that Regulation furthermore relied on the introduction of tariff systems which are consistent with the capacity allocation mechanisms proposed in this Regulation, to ensure the implementation without detrimental effect on the revenues and cash flow positions of transmission system operators.

(6) This Regulation has wider scope than Regulation (EU) No 984/2013 principally in terms of the rules for the offer of incremental capacity and clarifies certain provisions related to the definition and offer of firm and interruptible capacities and to improving the alignment of contractual terms and conditions of respective transmission system operators for the offer of bundled capacity. Provisions in this Regulation relative to the coordination of maintenance and the standardisation of communication should be interpreted in the context of Commission Regulation (EU) 2015/703[(3)].

(7) In order to allow network users to benefit from capacity allocation mechanisms harmonised to the widest extent in an integrated market, this Regulation should apply to non-exempted capacities in major new infrastructures which have received an exemption from Article 32 of Directive 2009/73/EC of the European Parliament and of the Council[(4)], to the extent the application of this Regulation does not undermine such an exemption and taking into account the specific nature of interconnectors when bundling capacity.

(8) This Regulation should be without prejudice to application of Union and national competition rules, in particular the prohibitions of restrictive agreements (Article 101 of the Treaty on the Functioning of the European Union) and of abuse of a dominant position (Article 102 of the Treaty on the Functioning of the European Union). The capacity allocation mechanisms put in place should be designed in such a way as to avoid foreclosure of downstream supply markets.

(9) In order to ensure that the offer of firm capacity is maximised by transmission system operators, a hierarchy of products should be observed by which yearly, quarterly and monthly interruptible capacity is only offered if firm capacity is not available.

(10) Where the respective terms and conditions applicable to the offer of bundled capacity products by transmission system operators on two sides of an interconnection point differ substantially, the value and usefulness for network users of booking bundled capacity may be limited. A process should therefore be launched, guided by the Agency for the Cooperation of Energy Regulators (‘the Agency’) and the European Network of Transmission System Operators for Gas (‘ENTSOG’), by which such terms and conditions of transmission system operators across the Union for bundled capacity products should be assessed and aligned to the extent possible, with a view to creating a common template of terms and conditions.

(11) A streamlined and harmonised Union-wide process for the offer of incremental capacity is necessary to react to possible market demand for such capacity. Such a process should consist of regular demand assessments followed by a structured phase of design and

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allocation, based on effective cooperation between transmission system operators and national regulatory authorities across Union borders. Any investment decision to be taken further to the assessment of market demand for capacity should be subject to an economic test to determine the economic viability. This economic test should in turn ensure that network users demanding capacity assume the corresponding risks associated with their demand to avoid captive customers from being exposed to the risk of such investments.

(12) Capacity allocation in the context of standard incremental projects should be undertaken in the form of the standard auction allocation process in order to guarantee the highest level of transparency and non-discrimination. In the case of large and complex projects affecting several Member States, transmission system operators should however be allowed to use alternative allocation mechanisms. Those mechanisms should provide the necessary flexibility to enable the investment in case there is genuine market demand, but they should still be aligned across borders. In case an alternative allocation mechanism is allowed, market foreclosure must be prevented by requiring a higher quota of capacity to be set aside for short-term bookings.

(13) In implementing complex entry-exit regimes, particularly with physical gas flows — destined for other markets — across those zones, transmission system operators have implemented and national regulatory authorities have approved different contractual approaches to firm capacity products the effect of which should be assessed in an Union-wide context.

(14) National regulatory authorities and transmission system operators should have regard to best practices and endeavours to harmonise processes for the implementation of this Regulation. Acting in accordance with Article 7 of Regulation (EC) No 713/2009 of the European Parliament and of the Council[(5)], the Agency and the national regulatory authorities should ensure that capacity allocation mechanisms are implemented at the applicable interconnection points across the Union in the most effective way.

(15) The measures provided for in this Regulation are in accordance with the opinion of the Committee established pursuant to Article 51 of Directive 2009/73/EC,

HAS ADOPTED THIS REGULATION:

## CHAPTER I

## GENERAL PROVISIONS

### *Article 1*

### Subject matter

This Regulation establishes a network code setting up capacity allocation mechanisms in gas transmission systems for existing and incremental capacity. This Regulation shall set out how adjacent transmission system operators cooperate in order to facilitate capacity sales, having regard to general commercial as well as technical rules related to capacity allocation mechanisms.

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*Article 2*

**Scope**

1 This Regulation shall apply to interconnection points. It may also apply to entry points from and exit points to third countries, subject to the decision of the relevant national regulatory authority. This Regulation shall not apply to exit points to end consumers and distribution networks, entry points from 'liquefied natural gas' (LNG) terminals and production facilities, and entry points from or exit points to storage facilities.

2 The standardised capacity allocation mechanisms set up in accordance with this Regulation shall include an auction procedure for relevant interconnection points within the Union and the standard capacity products to be offered and allocated. Where incremental capacity is offered, alternative allocation mechanisms may also be used, subject to the conditions set out in Article 30(2).

3 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.

4 Where an alternative capacity allocation mechanism according to Article 30 is applied, Article 8(1) to (7), Articles 11 to 18, Article 19(2) and Article 37 shall not be applicable to the offer levels, unless decided otherwise by the relevant national regulatory authorities.

5 Where implicit capacity allocation methods are applied, national regulatory authorities may decide not to apply Articles 8 to 37.

6 In order to prevent foreclosure of downstream supply markets, national regulatory authorities may, after consulting network users, decide to take proportionate measures to limit up-front bidding for capacity by any single network user at interconnection points within a Member State.

*Article 3*

**Definitions**

For the purposes of this Regulation, the definitions in Article 2 of Regulation (EC) No 715/2009, Article 3 of Commission Regulation (EU) 2017/460[(6)] and Article 2 Directive 2009/73/EC shall apply. In addition, the following definitions shall apply:

1. 'incremental capacity' means a possible future increase via market-based procedures in technical capacity or possible new capacity created where none currently exists that may be offered based on investment in physical infrastructure 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 or points;

   (c) as physical reverse flow capacity at an interconnection point or points, which has not been offered before;

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2. ‘interconnection point’ means a physical or virtual point connecting adjacent entry-exit systems or connecting an entry-exit system with an interconnector, in so far as these points are subject to booking procedures by network users;

3. ‘alternative allocation mechanism’ means an allocation mechanism for offer level or incremental capacity designed on a case-by-case basis by the transmission system operators, and approved by the national regulatory authorities, to accommodate conditional demand requests;

4. ‘standard capacity product’ means a certain amount of transport capacity over a given period of time, at a specified interconnection point;

5. ‘offer level’ means the sum of the available capacity and the respective level of incremental capacity offered for each of the yearly standard capacity products at an interconnection point;

6. ‘implicit allocation method’ means a capacity allocation method where, possibly by means of an auction, both transmission capacity and a corresponding quantity of gas are allocated at the same time;

7. ‘bidding round’ means the period of time during which network users can submit, amend and withdraw bids;

8. ‘large price step’ means a fixed or variable amount that is defined per interconnection point and standard capacity product;

9. ‘incremental capacity project’ means a project to increase the amount of technical capacity at an existing interconnection point or to establish a new interconnection point based on capacity allocation in the preceding incremental capacity process;

10. ‘economic test’ means a test applied to assess the economic viability of incremental capacity projects;

11. ‘incremental capacity process’ 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 phase, in which binding commitments for contracting capacity are requested from network users by one or more transmission system operators;

12. ‘bundled capacity’ means a standard capacity product offered on a firm basis which consists of corresponding entry and exit capacity at both sides of every interconnection point;

13. ‘interconnection agreement’ means an agreement entered into by adjacent transmission system operators, whose systems are connected at a particular interconnection point, which specifies terms and conditions, operating procedures and provisions, in respect of delivery and/or withdrawal of gas at the interconnection point with the purpose of facilitating efficient interoperability of the interconnected transmission networks, as set out in Chapter II of Regulation (EU) 2015/703;

14. ‘competing capacities’ means capacities for which the available capacity at one point of the network cannot be allocated without fully or partly reducing the available capacity at another point of the network;

15. ‘auction calendar’ means a table displaying information relating to specific auctions which is published by ENTSOG by January of every calendar year for auctions taking place during the period of March until February of the following calendar year and