

## II

(Non-legislative acts)

## REGULATIONS

## 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 <sup>(1)</sup>, 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.
- (5) Commission Regulation (EU) No 984/2013 <sup>(2)</sup> 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.

<sup>(1)</sup> OJ L 211, 14.8.2009, p. 36.

<sup>(2)</sup> Commission Regulation (EC) 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).

- (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 <sup>(1)</sup>.
- (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 <sup>(2)</sup>, 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 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.

<sup>(1)</sup> Commission Regulation (EU) 2015/703 of 30 April 2015 establishing a network code on interoperability and data exchange rules (OJ L 113, 1.5.2015, p. 13).

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

- (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 <sup>(1)</sup>, 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.

#### 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.

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<sup>(1)</sup> 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).

## 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 <sup>(1)</sup> 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;
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;

<sup>(1)</sup> Commission Regulation (EU) 2017/460 of 16 March 2017 establishing a network code on harmonised transmission tariff structures for gas (see page 29 of this Official Journal).

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 consisting of all relevant timings for auctions, including starting dates and standard capacity products to which they apply;
16. 'gas day' means the period from 5.00 to 5.00 UTC the following day for winter time and from 4.00 to 4.00 UTC the following day when daylight saving is applied;
17. 'within-day capacity' means capacity offered and allocated after the closure of the day-ahead capacity auctions with respect to that day;
18. 'ascending clock auction' means an auction in which a network user places requested quantities against defined price steps, which are announced sequentially;
19. 'uniform-price auction' means an auction in which the network user in a single bidding round bids price as well as quantity and all network users, who are successful in gaining capacity, pay the price of the lowest successful bid;
20. 'reserve price' means the eligible floor price in the auction;
21. 'small price step' means a fixed or variable amount that is defined per interconnection point and standard capacity product which is smaller than the large price step;
22. 'first-time undersell' means an occurrence where the aggregate demand across all network users is less than the capacity offered at the end of the second bidding round or a subsequent bidding round;
23. 'virtual interconnection point' means two or more interconnection points which connect the same two adjacent entry-exit systems, integrated together for the purposes of providing a single capacity service;
24. 'f-factor' means the share of the present value of the estimated increase in the allowed or target revenue of the transmission system operator associated with the incremental capacity included in the respective offer level as set out in Article 22(1)(b) to be covered by the present value of binding commitments of network users for contracting capacity calculated as set out in Article 22(1)(a);
25. 'over-nomination' means the entitlement of network users who fulfil minimum requirements for submitting nominations to request interruptible capacity at any time within-day by submitting a nomination which increases the total of their nominations to a level higher than their contracted capacity.

## CHAPTER II

### PRINCIPLES OF COOPERATION

#### *Article 4*

#### **Coordination of maintenance**

Where maintenance of a pipeline or part of a transmission network has an impact on the amount of transmission capacity which can be offered at interconnection points, the transmission system operator(s) shall fully cooperate with their adjacent transmission system operator(s) regarding their respective maintenance plans in order to minimise the impact on potential gas flows and capacity at an interconnection point.

#### *Article 5*

#### **Standardisation of communication**

1. Transmission system operators shall coordinate the implementation of standard communication procedures, coordinated information systems and compatible electronic on-line communications, such as shared data exchange formats and protocols, as well as agree principles as to how this data is treated.
2. Standard communication procedures shall include, in particular, those relating to network users' access to the transmission system operators' auction system or a relevant booking platform and the review of auction information provided. The timing and content of the data to be exchanged shall be compliant with the provisions set out in Chapter III.

3. The standard communication procedures adopted by transmission systems operators shall include an implementation plan and duration of applicability, which shall be in line with the development of booking platform(s) as set out in Article 37. Transmission systems operators shall ensure confidentiality of commercially sensitive information.

#### Article 6

### Capacity calculation and maximisation

1. The maximum technical capacity shall be made available to network users, taking into account system integrity, safety and efficient network operation.

(a) In order to maximise the offer of bundled capacity through the optimisation of the technical capacity transmission system operators shall take the following measures at interconnection points, giving priority to those interconnection points where there is contractual congestion pursuant to point 2.2.3(1) of Annex I to Regulation (EC) No 715/2009: the transmission system operators shall establish and apply a joint method, setting out the specific steps to be taken by the respective transmission system operators to achieve the required optimisation:

(1) the joint method shall include an in-depth analysis of the technical capacities, including any discrepancies therein on both sides of an interconnection point, as well as the specific actions and detailed timetable — including possible implications and containing the regulatory approvals required to recover costs and adjust the regulatory regime — necessary to maximise the offer of bundled capacity. Such specific actions shall not be detrimental to the offer of capacity at other relevant points of the concerned systems and points to distribution networks relevant for security of supply to final customers, such as those to storage facilities, LNG terminals and protected customers as defined in Regulation (EU) No 994/2010 of the European Parliament and of the Council <sup>(1)</sup>;

(2) the calculation methodology and the rules of making available the capacity, adopted by the transmission system operators, shall address specific situations where competing capacities across systems involve interconnection points and exit points to storage facilities;

(3) this in-depth analysis shall take into account assumptions made in the Union-wide 10-year network development plan pursuant to Article 8 of Regulation (EC) No 715/2009, national investment plans, relevant obligations under the applicable national laws and any relevant contractual obligations;

(4) the relevant transmission system operators shall apply a dynamic approach to re-calculating technical capacity, where appropriate in conjunction with the dynamic calculation applied for additional capacity on the basis of point 2.2.2.2 of Annex I to Regulation (EC) No 715/2009, jointly identifying the appropriate frequency for re-calculation per interconnection point and having regard to the particular specificities thereof;

(5) in the joint method, adjacent transmission system operators shall consult other transmission system operators specifically affected by the interconnection point;

(6) transmission system operators shall have regard to information that network users may provide with regard to expected future flows when re-calculating the technical capacity.

(b) the transmission system operators shall jointly assess at least the following parameters and where appropriate adjust them:

(1) pressure commitments;

(2) all relevant demand and supply scenarios, including details on reference climatic conditions and network configurations associated with extreme scenarios;

(3) calorific value.

<sup>(1)</sup> Regulation (EU) No 994/2010 of the European Parliament and of the Council of 20 October 2010 concerning measures to safeguard security of gas supply and repealing Council Directive 2004/67/EC (OJ L 295, 12.11.2010, p. 1).

2. Where the optimisation of technical capacity causes costs to the transmission system operators, particularly costs that unevenly impact transmission system operators on either side of an interconnection point, transmission system operators shall be allowed to recover such efficiently incurred costs via the regulatory framework established by the relevant regulatory authorities in accordance with Article 13 of Regulation (EC) No 715/2009 and Article 42 of Directive 2009/73/EC. Article 8(1) of the Regulation (EC) No 713/2009 shall apply.
3. Where appropriate, national regulatory authorities shall consult network users on the applied calculation method and joint approach.
4. Changes in the amount of bundled capacity offered at interconnection points as a result of the process pursuant to paragraph 1 shall be included in the report of the Agency published pursuant to point 2.2.1(2) of Annex I to Regulation (EC) No 715/2009.

#### *Article 7*

### **Exchange of information between adjacent transmission system operators**

1. Adjacent transmission system operators shall exchange nomination, re-nomination, matching and confirmation information at relevant interconnection points on a regular basis.
2. Adjacent transmission system operators shall exchange information about the maintenance of their individual transmission network in order to contribute to the decision making process with regard to the technical use of interconnection points. The procedures to exchange data between transmission system operators shall be integrated in their respective interconnection agreement.

#### CHAPTER III

### **ALLOCATION OF FIRM CAPACITY PRODUCTS**

#### *Article 8*

### **Allocation methodology**

1. Auctions shall be used for the allocation of capacity at interconnection points, except where the alternative allocation methodology pursuant to Article 30 is applied.
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 incremental capacity is offered or where, subject to the agreement of the directly involved transmission system operators and the approval of relevant national regulatory authorities, competing capacity is allocated. The national regulatory authority of any adjacent and affected Member State may provide a position which shall be considered by the relevant national regulatory authority. In case incremental capacity is offered, the independent allocation shall not apply to the simultaneous auction processes for the respective offer levels, since these are dependent on each other, as only one offer level can be allocated.
3. The standard capacity products shall follow a logical order by which products covering yearly capacity shall be offered first, followed by the product with the next shortest duration for use during the same period. The timing of the auctions provided for in Articles 11 to 15 shall be consistent with this principle.
4. The rules on standard capacity products as set out in Article 9 and auctions as set out in Articles 11 to 15 shall apply to bundled capacity and unbundled capacity at an interconnection point.
5. For a given auction, the availability of the relevant standard capacity products shall be communicated in accordance with Articles 11 to 15 and according to the auction calendar.
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. If the available capacity is less than the proportion of technical capacity to be set aside, the whole of any available capacity shall be set aside. This capacity shall be offered in accordance with point (b) of paragraph 7, while any remaining capacity set aside shall be offered in accordance with point (a) of paragraph 7.

7. Any capacity set aside pursuant to paragraph 6 shall be offered, subject to the following provisions:
- (a) an amount at least equal to 10 % of the existing technical capacity at each interconnection point shall be offered no earlier than in the annual yearly capacity auction as provided for in Article 11 held in accordance with the auction calendar during the fifth gas year preceding the start of the relevant gas year; and
  - (b) a further amount at least equal to 10 % of the existing technical capacity at each interconnection point shall first be 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. In the case of incremental capacity, an amount at least equal to 10 % of the incremental technical capacity at the concerned 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.
9. The exact proportion of capacity to be set aside pursuant to paragraphs 6 and 8 shall be subject to a stakeholder consultation, alignment between transmission system operators and approval by national regulatory authorities at each interconnection point. National regulatory authorities shall in particular consider setting aside higher shares of capacity with a shorter duration to avoid foreclosure of downstream supply markets.
10. Capacity created via non-market based procedures and for which the final investment decision has been taken without prior commitments from network users shall be offered and allocated as available standard capacity products as set out in this Regulation.

#### *Article 9*

### **Standard capacity products**

1. Transmission system operators shall offer yearly, quarterly, monthly, daily and within-day standard capacity products.
2. Yearly standard capacity products shall be the capacity which may be applied for, in a given amount, by a network user for all gas days in a particular gas year (starting on 1 October).
3. Quarterly standard capacity products shall be the capacity which may be applied for, in a given amount, by a network user for all gas days in a particular quarter (starting on 1 October, 1 January, 1 April or 1 July respectively).
4. Monthly standard capacity products shall be the capacity which may be applied for, in a given amount, by a network user for all gas days in a particular calendar month (starting on the first day of each month).
5. Daily standard capacity products shall be the capacity which may be applied for, in a given amount, by a network user for a single gas day.
6. Within-day standard capacity products shall be the capacity which may be applied for, in a given amount, by a network user from a start time within a particular gas day until the end of the same gas day.

#### *Article 10*

### **Applied capacity unit**

The capacity offered shall be expressed in energy units per unit of time. The following units shall be used: kWh/h or kWh/d. In case of kWh/d a flat flow rate over the gas day is assumed.

#### *Article 11*

### **Annual yearly capacity auctions**

1. The yearly capacity auctions shall be held once a year.



2. Capacity for each yearly standard capacity product shall be auctioned through the annual yearly capacity auction using an ascending-clock auction algorithm in accordance with Article 17.
3. The auction process shall offer capacity at least for the upcoming 5 gas years and for no longer than the upcoming 15 gas years for existing capacity. When offering incremental capacity, the offer levels may be offered in yearly capacity auctions for a maximum of 15 years after the start of operational use.
4. As from 2018, annual yearly capacity auctions shall start on the first Monday of July each year unless otherwise specified in the auction calendar.
5. During the annual yearly capacity auction network users shall be able to participate in one or several concurrent auctions in relation to each interconnection point in order to apply for standard capacity products.
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 5 years, is the amount of technical capacity (A) set aside in accordance with Article 8(7); for annual yearly auctions for capacity beyond the first 5 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 (9).
7. The capacity to be offered may be either bundled capacity or unbundled capacity in accordance with Article 19. This also applies to all other auctions as set out in Articles 12 to 15.
8. At least 1 month before the auction starts, transmission system operators shall notify network users about the amount of firm capacity to be offered for each year for the upcoming annual yearly capacity auction.
9. The bidding rounds of each auction shall take place between 8.00 UTC to 17.00 UTC (winter time) or 7.00 UTC to 16.00 UTC (daylight saving) on all relevant gas days. Bidding rounds shall be opened and closed within each gas day, as specified in Article 17(2).
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, including whether the conditions for a repeated auction pursuant to Article 29(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. The results of the economic tests shall be made available no later than 2 business days after the closing of the bidding round, simultaneously to individual network users participating in the respective auction.

11. Aggregated information on auction results shall be published to the market.

#### Article 12

#### **Annual quarterly capacity auctions**

1. Four annual quarterly capacity auctions shall be held during each gas year.
2. Capacity for each quarterly standard capacity product shall be auctioned through the annual quarterly capacity auctions using an ascending-clock auction algorithm in accordance with Article 17.

3. Capacity for quarters of the upcoming gas year shall be auctioned via concurrent auctions for each quarter and in relation to each interconnection point as follows:

- (a) for quarters one (October-December) through four (July-September) in the first annual quarterly capacity auction;
- (b) for quarters two (January-March) through four (July-September) in the second annual quarterly capacity auction;
- (c) for quarters three (April-June) through four (July-September) in the third annual quarterly capacity auction;
- (d) for the last quarter (July-September) in the fourth annual quarterly capacity auction.

For each annual quarterly auction network users shall be able to participate in all of the concurrent auctions.

4. Each gas year the annual quarterly capacity auctions shall start on the following days, unless otherwise specified in the auction calendar:

- (a) the first annual quarterly capacity auctions shall start on the first Monday of August;
- (b) the second annual quarterly capacity auctions shall start on the first Monday of November;
- (c) the third annual quarterly capacity auctions shall start on the first Monday of February;
- (d) the fourth annual quarterly capacity auction shall start on the first Monday of May.

5. The capacity to be offered in all annual quarterly capacity auctions shall be equal to:

$$A - C + D$$

Where:

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

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 quarter, if any.

6. Two weeks before the auctions start, transmission system operators shall notify network users about the amount of capacity to be offered for each quarter for the upcoming annual quarterly capacity auction.

7. The bidding rounds of each auction, shall take place between 8.00 UTC to 17.00 UTC (winter time) or 7.00 UTC to 16.00 UTC (daylight saving) on all relevant gas days. Bidding rounds shall be opened and closed within each gas day, as specified in Article 17(2).

8. The allocation results of the auction shall be published, 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.

9. Aggregated information on the auction results shall be published to the market.

### Article 13

#### Rolling monthly capacity auctions

1. The rolling monthly capacity auction shall be held once a month.

2. Capacity for each monthly standard capacity product shall be auctioned through the rolling monthly capacity auction using an ascending-clock auction algorithm according to Article 17. Each month, the monthly standard capacity product for the following calendar month shall be auctioned.

3. During the rolling monthly capacity auction network users shall be able to apply for one monthly standard capacity product.

4. Rolling monthly capacity auctions shall start on the third Monday of each month for the following monthly standard capacity product unless otherwise specified in the auction calendar.

5. The capacity to be offered in the rolling monthly capacity auction shall be, each month, equal to:

$$A - C + D$$

Where:

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

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 month, if any.

6. One week before the auction starts, transmission system operators shall notify network users about the amount of capacity to be offered for the upcoming rolling monthly capacity auction.

7. The bidding rounds of each auction shall take place between 8.00 UTC to 17.00 UTC (winter time) or 7.00 UTC to 16.00 UTC (daylight saving) on all relevant gas days. Bidding rounds shall be opened and closed within each gas day, as specified in Article 17(2).

8. The allocation results of the auction shall be published, 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.

9. Aggregated information on the auction results shall be published to the market.

#### Article 14

#### **Rolling day-ahead capacity auctions**

1. The rolling day-ahead capacity auction shall be held once a day.

2. Every day, a standard capacity product for the following gas day shall be auctioned through the rolling day-ahead capacity auction.

3. Capacity for each daily standard capacity product shall be auctioned through the rolling day-ahead capacity auction using a uniform price auction algorithm according to Article 18. Each day, the daily standard capacity product for the following gas day shall be auctioned.

4. During the rolling day-ahead capacity auction network users shall be able to apply for capacity for one daily standard capacity product.

5. The bidding round shall open every day at 15.30 UTC (winter time) or 14.30 UTC (daylight saving).

6. A capacity bid for the daily standard capacity product for the rolling day-ahead capacity auction shall be handled as follows: submission, withdrawal or amendment from 15.30 UTC to 16.00 UTC (winter time) or 14.30 UTC to 15.00 UTC (daylight saving).

7. The capacity to be offered in the rolling day-ahead capacity auction shall be, each day, equal to:

$$A - C + D$$

Where:

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

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 day, if any.

8. At the time the bidding round opens, transmission system operators shall notify network users about the amount of capacity to be offered for the upcoming rolling day-ahead capacity auction.

9. The allocation results of the auction shall be published, no later than 30 minutes after the closing of the bidding round, simultaneously to individual network users participating in the respective auction.
10. Aggregated information on the auction results shall be published to the market.

#### Article 15

##### **Within-day capacity auctions**

1. Subject to capacity being made available, a within-day capacity auction shall be held every hour during gas day using a uniform price auction algorithm in accordance with Article 18.
2. The first bidding round shall open directly on the next hour bar following the publication of results of the last day-ahead auction (including interruptible capacity if offered) in accordance with Article 14. The first bidding round closes at 1.30 UTC (winter time) or 0.30 UTC (daylight saving) before the gas day. The allocation of successful bids shall be effective from 5.00 UTC (winter time) or 4.00 UTC (daylight saving) on the relevant gas day.
3. The last bidding round shall close at 0.30 UTC (winter time) or 23.30 UTC (daylight saving) on the relevant gas day.
4. Network users shall be entitled to place, withdraw or amend bids from the opening of each bidding round until closure of that bidding round.
5. Each hour on the relevant gas day, capacity effective from the hour + 4 shall be auctioned as within-day capacity.
6. Each bidding round shall open at the start of every hour on the relevant gas day.
7. The duration of each bidding round shall be 30 minutes as of the opening of the bidding round.
8. The capacity to be offered in the within-day capacity auction shall be, each hour, equal to:

$$A - C + D$$

Where:

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

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, if any.

9. Transmission system operators shall publish the available amount of within-day firm capacity on offer, after closure of the last day-ahead auction and in accordance with Article 32(9).
10. Transmission system operators shall provide network users who bid in the day-ahead auctions with the option to have valid unsuccessful bids automatically entered into the subsequent within-day auction.
11. The capacity shall be allocated within 30 minutes of the closure of the bidding round provided that the bids are accepted and the transmission system operator runs the allocation process.
12. The results of the auction shall be made available simultaneously to individual network users.
13. Aggregated information on the auction results shall be published at least at the end of each day.

#### Article 16

##### **Auction algorithms**

1. If several standard capacity products are offered during an auction, the respective allocation algorithm shall be applied separately for each standard capacity product when it is being allocated. Bids for the different standard capacity products shall be considered independently from each other in the application of the auction algorithm.

2. For annual yearly, annual quarterly and rolling monthly capacity auctions, an ascending clock auction algorithm, with multiple bidding rounds, as provided for in Article 17, shall be applied.
3. For rolling day-ahead capacity auctions and within-day capacity auctions, a uniform-price auction algorithm, with a single bidding round, shall be applied in accordance with Article 18.

#### Article 17

##### **Ascending clock auction algorithm**

1. Ascending clock auctions shall enable network users to place volume bids against escalating prices announced in consecutive bidding rounds, starting at the reserve price  $P_0$ .
2. The first bidding round, with an associated price equal to the reserve price  $P_0$ , shall have a duration of 3 hours. Subsequent bidding rounds shall have a duration of 1 hour. There shall be a period of 1 hour between bidding rounds.
3. A bid shall specify:
  - (a) the identity of the network user applying;
  - (b) the concerned interconnection point and direction of the flow;
  - (c) the standard capacity product for which the capacity is applied for;
  - (d) per price step, the amount of capacity for the respective standard capacity product applied for;
  - (e) where incremental capacity is offered, the concerned offer level.
4. A bid shall be considered valid if it is submitted by a network user and complies with all provisions of this Article.
5. In order for network users to participate in an auction, it shall be mandatory for network users to place a volume bid in the first bidding round.
6. Transmission system operators shall provide network users with the option to enter bids automatically against any price step.
7. Once the relevant bidding round closes, no modification, withdrawal or variation to valid bids shall be accepted. All valid bids shall become binding commitments of a network user to book capacity to the amount requested per announced price, provided the clearing price of the auction is that which is announced in the relevant bidding round.
8. The volume bid in any bidding round per network user shall be equal or smaller to the capacity offered in a specific auction. The volume bid per network user at a specific price shall be equal to or less than the volume bid placed by this network user in the previous round, except where paragraph 16 applies.
9. Bids may be freely entered, modified and withdrawn during a bidding round, providing all bids comply with paragraph 8. Valid bids shall remain valid until modified or withdrawn.
10. A large price step and a small price step shall be defined per interconnection point and per standard capacity product and shall be published in advance of the relevant auction. The small price step shall be set such that an increase by an integer number of small price steps is equal to an increase by a large price step.
11. The determination of the large price step shall seek to minimise, as far as reasonably possible, the length of the auction process. The determination of the small price step shall seek to minimise, as far as reasonably possible, the level of unsold capacity where the auction closes at a price higher than the reserve price.
12. If the aggregate demand across all network users is less than or equal to the capacity offered at the end of the first bidding round, the auction shall close.
13. If the aggregate demand across all network users is greater than the capacity offered at the end of the first bidding round or a subsequent bidding round, a further bidding round shall be opened with a price equal to the price in the previous bidding round, plus the large price step.

14. If the aggregate demand across all network users is equal to the capacity offered at the end of the second bidding round or a subsequent bidding round, the auction shall close.
15. If a first-time undersell occurs, a price reduction shall take place and a further bidding round shall be opened. The further bidding round will have a price equal to the price applicable in the bidding round preceding the first-time undersell, plus the small price step. Further bidding rounds with increments of the small price step shall then be opened until the aggregate demand across all network users is less than or equal to the capacity offered, at which point the auction shall close.
16. The volume bid per network user in all bidding rounds where small price steps are applied shall be equal to or less than the volume bid placed by this network user in the bidding round which preceded the first-time undersell. The volume bid per network user for a specific small price step shall be equal to or smaller than the volume bid placed by this network user in the previous bidding round of small price steps. The volume bid per network user in all bidding rounds where small price steps are applied shall be equal to or greater than the volume bid placed by this network user during the bidding round in which the first-time undersell occurred.
17. If the aggregate demand across all network users is greater than the capacity offered in the bidding round with a price equal to that which led to the first-time undersell, minus one small price step, the auction shall close. The clearing price shall be the price that led to the first-time undersell and the successful bids shall be those submitted during the original bidding round in which the first-time undersell occurred.
18. After each bidding round, the demand of all network users in a specific auction shall be published as soon as reasonably possible in an aggregated form.
19. The price announced for the last bidding round in which the auction closes shall be considered as the clearing price of the specific auction, except cases where paragraph 17 applies.
20. All network users who have placed valid volume bids at the clearing price shall be allocated the capacity according to their volume bids at the clearing price. Where incremental capacity is offered, the allocation of incremental capacity shall be subject to the outcome of the economic test according to Article 22. Successful network users shall pay the clearing price of the specific auction, which may be a fixed or a floating payable price approach set out in Article 24 of Regulation (EU) 2017/460, and any other possible charges applicable at the time when the capacity allocated to them can be used.
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. Where incremental capacity is allocated, this paragraph 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 22(3).
22. If an ascending clock auction has not ended by the scheduled starting point (according to the auction calendar) of the next auction for capacity covering the same period, the first auction shall close and no capacity shall be allocated. The capacity shall be offered in the next relevant auction.

#### Article 18

##### **Uniform-price auction algorithm**

1. In a uniform-price auction, there is a single bidding round in which the network user bids price as well as quantity.
2. During the bidding round of a given auction, network users may submit up to 10 bids. Each bid shall be treated independently from other bids. After the closure of the bidding round, remaining bids may not be modified or withdrawn.
3. A bid shall specify:
  - (a) the identity of the network user applying;
  - (b) the concerned interconnection point and direction of the flow;

- (c) the standard capacity product for which the capacity is applied for;
  - (d) the amount of capacity for the respective standard capacity product applied for, which shall be equal to or smaller than the capacity offered in a specific auction;
  - (e) the minimum amount of capacity for the respective standard capacity product which the network user is willing to be allocated according to the relevant algorithm in case the network user is not allocated the amount requested in accordance with point (d);
  - (f) the bid prices, which shall not be less than the reserve price applicable for the relevant standard capacity product, which the network user is willing to pay in respect of the capacity applied for. Bids with a bid price below the reserve price shall not be accepted.
4. The transmission system operator shall rank all bids relating to a given standard capacity product according to their bid price, the highest price ranking first.
5. All remaining bids at bidding round closing time shall be considered as binding on those network users that are allocated at least the minimum amount of capacity requested in accordance with point (e) of paragraph 3.
6. Following the ranking of the bids in accordance with paragraph 4, and subject to paragraphs 7 to 10, capacity shall be allocated to the bids in function of their price ranking. All bids for which capacity is allocated shall be considered as successful. After the allocation of capacity, the remaining unallocated capacity shall be reduced by such quantity.
7. Following the application of paragraph 6 and subject to paragraph 9, where the amount of capacity bid for by a network user exceeds the remaining unallocated capacity (after capacity has been allocated to network users placing higher bids), this network user shall be allocated capacity equal to the remaining unallocated capacity.
8. Following the application of paragraph 7 and subject to paragraph 9, where each of two or more bids specifies the same bid price, and the amount of relevant capacity remaining applied for in aggregate under such bids exceeds the remaining unallocated amount, the remaining unallocated amount shall be allocated pro rata to the amounts applied for in each such bid.
9. Where the amount to be allocated in respect of a bid pursuant to paragraphs 6, 7 or 8 is less than the minimum amount of capacity according to point (e) of paragraph 3, the bid shall be considered unsuccessful, and a revised allocation shall be made between remaining equal price bid(s) under paragraph 8, or an allocation shall be made in respect of the next priced bid, pursuant to paragraph 6.
10. Where the remaining amount to be allocated in respect of any bid pursuant to paragraphs 6, 7, 8 or 9 is equal to zero, no further capacity shall be allocated to the remaining bids. Those bids shall be considered unsuccessful.
11. The clearing price shall be defined as the price of the lowest successful bid, if the demand exceeds the offer at the reserve price. In all other cases, the clearing price shall be equal to the reserve price. Successful network users shall pay the clearing price of the specific auction, which may be a fixed or floating payable price approach as set out in Article 24 of Regulation (EU) 2017/460 and any other possible charges applicable at the time when the capacity allocated to them can be used.

#### CHAPTER IV

#### BUNDLING OF CAPACITY AT INTERCONNECTION POINTS

##### *Article 19*

#### **Bundled capacity products**

Adjacent transmission system operators shall jointly offer bundled capacity products, according to the following principles:

1. on both sides of an interconnection point all firm capacity shall be offered as bundled capacity, in so far as there is available firm or incremental capacity on both sides of the interconnection point;

2. transmission system operators shall offer capacity for the relevant standard capacity product on a booking platform, in accordance with Article 37 and in accordance with the applicable allocation procedure, as set out in Chapter III;
3. the bundled capacity to be offered by the transmission system operators concerned at an interconnection point shall be contracted through a single allocation procedure;
4. network users shall comply with applicable terms and conditions of the transport contract(s) of the transmission system operators concerned as from the time the transport capacity is contracted;
5. where there is more available firm capacity on one side of an interconnection point than on the other side for any period considered, the transmission system operator with the most available firm capacity may offer such extra capacity to the network users as an unbundled product in accordance with the auction calendar and the following rules:
  - (a) where there is an existing unbundled transport contract at the other side of the interconnection point, capacity may be offered on an unbundled basis not exceeding the amount and duration of the existing transport contract at the other side;
  - (b) where such extra capacity does not fall under point (a) of paragraph 5, it may be offered for a maximum period of 1 year;
6. any unbundled capacity allocated in accordance with paragraph 5 may be used and nominated as such. It may also be traded on the secondary market;
7. adjacent transmission system operators shall establish a joint nomination procedure for bundled capacity, providing network users with the means to nominate the flows of their bundled capacity via a single nomination;
8. the obligations to offer bundled capacity also apply, to the extent that they are relevant, to secondary capacity markets. Without prejudice to paragraph 1, capacity originally allocated as bundled capacity can only be resold as bundled capacity on the secondary market;
9. where two or more interconnection points connect the same two adjacent entry-exit systems, the adjacent transmission system operators concerned shall offer the available capacities at the interconnection points at one virtual interconnection point. In case more than two transmission system operators are involved because capacity in one or both entry-exit systems is marketed by more than one transmission system operator, the virtual interconnection point shall include all of these transmission system operators, to the extent possible. In all cases a virtual interconnection point shall be established only if the following conditions are met:
  - (a) the total technical capacity at the virtual interconnection points shall be equal to or higher than the sum of the technical capacities at each of the interconnection points contributing to the virtual interconnection points;
  - (b) they facilitate the economic and efficient use of the system including but not limited to rules set out in Article 16 of Regulation (EC) No 715/2009.

Adjacent transmission system operators shall start the necessary analysis and shall establish functional virtual interconnection points no later than 1 November 2018.

#### Article 20

#### **Alignment of main terms and conditions for bundled capacity products**

1. Before 6 January 2018 ENTSOG shall, after consulting stakeholders, create a catalogue of the main terms and conditions in the transport contract(s) of the transmission system operators for bundled capacity products. ENTSOG shall analyse existing transport contracts, identifying and categorising differences in relation to the main terms and conditions and the reasons for such differences and publish its findings in a report.



2. On the basis of the report referred to in paragraph 1, ENTSOG, after consulting stakeholders, shall within 6 months after the publication of the report develop and publish a template for the main terms and conditions covering contractual provisions which are not affected by fundamental differences in principles of national law or jurisprudence, for the offer of bundled capacity products.

3. The Agency, having due regard to the opinions of the national regulatory authorities, shall provide an opinion on the template for the main terms and conditions within a further 3 months. Taking into account the opinion provided by the Agency, ENTSOG shall publish on its website the final template for the main terms and conditions no later than 3 months after receiving the Agency's opinion.

4. After the publication of the final template for the main terms and conditions, transmission system operators, subject to the approval of national regulatory authority, may apply the terms and conditions set out in the template in the case of newly contracted bundled capacity products.

#### Article 21

#### **Bundling in case of existing transport contracts**

1. The network users who are parties to unbundled transport contracts at respective interconnection points, shall aim to reach an agreement on the bundling of the capacity via contractual arrangements ('bundling arrangement'), in compliance with the provisions set out in Article 19. These network users and transmission system operators shall report to the relevant national regulatory authorities of all bundling arrangements reached by all parties to existing transport contracts.

2. The transmission system operators who are parties to the existing transport contracts may participate in the discussions regarding the bundling arrangement at any time, upon invitation of the network users who are parties to the existing transport contracts.

3. As from 1 January 2018, transmission system operators shall offer network users holding mismatched unbundled capacity at one side of an interconnection point a free-of-charge capacity conversion service. Such a capacity conversion service shall apply to annual, quarterly or monthly capacity products for bundled firm capacity at that interconnection point which the network user had to acquire because insufficient unbundled capacity on the other side of the interconnection point was offered by an adjacent transmission system operator. This service shall be offered on a non-discriminatory basis and shall prevent additional charges from being applied to network users for capacity they already hold. In particular, payments for the part of the contracted bundled capacity which network users already hold as mismatched unbundled capacity shall be limited to a possible auction premium. This service shall be based on the conversion model under development by ENTSOG and to be finalised at the latest by 1 October 2017 after consulting stakeholders and the Agency. The implementation may be facilitated by the capacity booking platform(s) referred to in Article 37. The use of this service shall be reported annually to the respective national regulatory authorities.

4. Where a bundling arrangement is agreed upon between respective network users, the transmission system operators involved at the interconnection point shall be informed by the parties of such intended bundling arrangement without undue delay and the transfer of the concerned capacity shall be implemented. In any case, the bundling arrangement shall be implemented subject to the applicable terms and conditions of existing related transport contracts. Once the bundling arrangement is implemented, the relevant capacity shall be treated as bundled capacity.

5. In any case, the duration of the bundling arrangements regarding the capacity bundled under the amendment of the existing contracts shall not exceed the duration of the original transport contracts.

6. All capacity shall be bundled at the earliest opportunity. Existing transport contracts for unbundled capacity cannot be renewed, prolonged or rolled over after their expiration date. Such capacity shall become available capacity as of the expiration date of the transport contracts.

## CHAPTER V

## INCREMENTAL CAPACITY PROCESS

## Article 22

**Economic test**

1. The economic test set out in this Article shall be carried out by the transmission system operator(s) or by the national regulatory authority, as decided by the national regulatory authority, for each offer level of an incremental capacity project after binding commitments of network users for contracting capacity have been obtained by the involved transmission system operators and shall consist of the following parameters:

- (a) the present value of binding commitments of network users for contracting capacity, which is calculated as the discounted sum of the following parameters:
  - (i) the sum of the respective estimated reference prices and a potential auction premium and a potential mandatory minimum premium multiplied by the amount of contracted incremental capacity;
  - (ii) the sum of a potential auction premium and a potential mandatory minimum premium multiplied by the amount of available capacity that was contracted in combination with the incremental capacity;
- (b) the present value of the estimated increase in the allowed or target revenue of the transmission system operator associated with the incremental capacity included in the respective offer level, as approved by the relevant national regulatory authority in accordance with Article 28(2);
- (c) the f-factor.

2. The outcome of the economic test application shall be:

- (a) positive, where the value of the parameter set out in paragraph 1(a) is at least equal to the share of the parameter set out in paragraph 1(b) as defined by the f-factor;
- (b) negative, where the value of the parameter set out in paragraph 1(a) is lower than the share of the parameter set out in paragraph 1(b) as defined by the f-factor.

3. An incremental capacity project shall be initiated if the economic test has a positive outcome on both sides of an interconnection point for at least one offer level that includes incremental capacity. In case more than one offer level results in a positive outcome of the economic test, the offer level with the largest amount of capacity that resulted in a positive outcome shall be used for proceeding with the incremental capacity project towards commissioning. In case no offer level results in a positive outcome, the specific incremental capacity process shall be terminated.

## Article 23

**The f-factor**

1. When applying the economic test referred to in Article 22, the national regulatory authority shall set the level of the f-factor for a given offer level, taking into account the following:

- (a) the amount of technical capacity set aside in accordance with Article 8(8) and (9);
- (b) positive externalities of the incremental capacity project on the market or the transmission network, or both;
- (c) the duration of binding commitments of network users for contracting capacity compared to the economic life of the asset;
- (d) the extent to which the demand for the capacity established in the incremental capacity project can be expected to continue after the end of the time horizon used in the economic test.

2. If the economic test has a positive outcome then the investment costs associated with the incremental capacity shall be reflected in an increase in the allowed or target revenue in accordance with the applicable national rules.

*Article 24***Combination into single economic test**

1. In order to facilitate the offer of bundled capacity products, individual economic test parameters of the involved transmission system operators for a given offer level shall be combined into a single economic test.
2. The single economic test shall consist of the following parameters:
  - (a) the present value of binding commitments of network users for contracting bundled capacity, which is the sum of the values according to Article 22(1)(a) of the involved transmission system operators;
  - (b) the sum of the individual present values of the estimated increase in the allowed or target revenue of the involved transmission system operators that is attributable to the incremental capacity of a respective offer level;
  - (c) the f-factor that defines the share of the parameter set out in point (b) that needs to be covered by the parameter set out in point (a) and allows all the involved transmission system operators individually to cover their upfront defined respective shares.
3. The outcome of the single economic test application shall be positive where all underlying economic tests result in positive outcomes as set out in Article 22(2)(a) taking into account a possible redistribution of revenues according to paragraphs 4 and 5. Otherwise, the outcome of the single economic test application shall be negative.
4. In case a redistribution of revenues could potentially lead to a decrease in the level of binding commitments of network users for contracting capacity required for a positive single economic test outcome, transmission system operators may submit to the relevant national regulatory authorities for coordinated approvals the mechanisms for a redistribution of revenues from incremental capacity.
5. A redistribution of revenues may be carried out as follows:
  - (a) during the process of integrating the individual economic test parameters into a single economic test;
  - (b) in case the single economic test has a negative outcome while at the same time the level of binding commitment of network users for contracting capacity exceeds the minimum required to cover the individual present value of the increase in the allowed or target revenue for at least one of the involved transmission system operators.

*Article 25***Publication requirements relating to the economic test**

1. For a given incremental capacity project, the transmission system operator(s) shall submit to the relevant national regulatory authority(-ies) for approval the following information for each offer level:
  - (a) the reference prices estimated for the time horizon of the initial offer of incremental capacity that are used for the calculation of the parameter set out in Article 22(1)(a) and 24(2)(a), respectively in case separate or a single economic test is applied;
  - (b) the parameters set out in Article 22(1)(b) to (c) and 24(2)(b) to (c), respectively in case separate or a single economic test is applied;
  - (c) if applicable, the range of the level for the mandatory minimum premium referred to in Article 33(4) of Regulation (EU) 2017/460 for each offer level and interconnection point applied in the first auction and possibly in subsequent auctions in which the incremental capacity is offered as defined in Article 33(3) of Regulation (EU) 2017/460.
2. Following the approval by the relevant national regulatory authority(-ies), the information set out in paragraph 1 shall be published by the involved transmission system operator(s) as set out in Article 28(3).

*Article 26***Market demand assessment**

1. Immediately after the start of the annual yearly capacity auction at least in each odd-numbered year, transmission system operators shall cooperate in the processes of assessing market demand for incremental capacity and of conducting technical studies for incremental capacity projects for their joint interconnection points. The first demand assessment shall be conducted in 2017 as from the entry into force of this Regulation.

2. No later than 8 weeks after the start of the annual yearly capacity auction at least in each odd-numbered year, the concerned transmission system operators on each side of an entry-exit system border shall produce common market demand assessment reports, each covering all interconnection points of at least one entry-exit system border. The market assessment report shall evaluate the prospective demand for incremental capacity of all network users pursuant to paragraph 8 and shall state whether an incremental capacity project is initiated.
3. The market demand assessment report shall be published in one or more official languages of the Member State and to the extent possible in English on the websites of the concerned transmission system operators no later than 16 weeks after the start of the annual yearly capacity auction at least in each odd-numbered year.
4. ENTSOG shall coordinate and assist the completion of the demand assessment reports including by providing a standard template and publishing the reports on ENTSOG's website.
5. If demand for incremental capacity is expressed by network users no later than 8 weeks after the start of the annual yearly auction in even-numbered years, the concerned transmission system operators may agree to conduct a market demand assessment also in an even-numbered year, provided that:
  - (a) the process set out in Articles 26-30 can be concluded before the start of the next demand assessment cycle referred to in paragraph 1; and
  - (b) the auction calendar is respected.
6. Transmission system operators shall consider non-binding demand indications submitted no later than 8 weeks after the start of the annual yearly auction in the ongoing market demand assessment.
7. Transmission system operators may consider non-binding demand indications submitted after the deadline set out in paragraph 6 in the ongoing market demand assessment, or introduce them into the next market demand assessment.
8. The non-binding demand indications referred to in paragraphs 6 and 7 shall contain at least the following information:
  - (a) the two or more adjacent entry-exit systems between which demand for incremental capacity — on one or both sides of an interconnection point — 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 other transmission system operators, in case such indications are linked to each other, such as demand for capacities at several related interconnection points;
9. Network users shall indicate whether their demand is subject to any conditions in relation to points (a) to (d) of paragraph 8.
10. Transmission system operators shall respond to non-binding demand indications within 16 weeks after the start of the annual yearly auctions, or within 8 weeks of receipt of demand indications in accordance with paragraph 7. The response shall provide at least the following:
  - (a) whether the demand indicated can be considered by the transmission system operator in the ongoing process; or
  - (b) whether, in the case of demand indications in accordance with paragraph 7, they are sufficient to consider the initiation of an incremental capacity process according to paragraph 5; or
  - (c) in which market demand assessment report, according to paragraph 3, the indicated demand will be assessed, provided that the demand indicated cannot be considered under points (a) or (b), which is to be justified.
11. A transmission system operator may charge fees for activities resulting from the submission of non-binding demand indications. Such fees shall reflect the administrative costs for submitting demand indications, and shall be subject to approval by the relevant national regulatory authority and published on the transmission system operator's website. 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.

12. The market demand assessment report shall take into account all of the following criteria:
- (a) whether the Union-wide 10-year network development plan identifies a physical capacity gap whereby a specific region is undersupplied in a reasonable peak scenario and where 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 3 subsequent years, because all the capacity has been contracted;
  - (c) whether network users submitted non-binding demand indications requesting incremental capacity for a sustained number of years and all other economically efficient means for maximising the availability of existing capacity are exhausted.
13. The market demand assessment report shall include at least the following:
- (a) a conclusion on whether to initiate an incremental capacity project;
  - (b) the aggregated non-binding demand indications received 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;
  - (c) the aggregated non-binding demand indications submitted after the deadline referred to in paragraph 6 during the previous incremental capacity process in case these demand indications were not considered for the previous demand assessment;
  - (d) the aggregated non-binding demand indications submitted in accordance with paragraph 7 where the transmission system operators has decide to consider them in the ongoing market demand assessment;
  - (e) an assessment of the expected amount, direction and duration of demand for incremental capacity at the interconnection points with each adjacent entry-exit system or interconnectors;
  - (f) a conclusion on whether technical studies for incremental capacity projects will be conducted, specifying for which interconnection points and for which expected demand level;
  - (g) provisional timelines for the incremental capacity project, technical studies and the consultation referred to in Article 27(3);
  - (h) a conclusion on what fees, if any, will be introduced, according to paragraph 10;
  - (i) the types and, where available the aggregated size of conditional demand indications according to point paragraph 9;
  - (j) how transmission system operators intend to apply Article 11(3) with regards to limitation of the number of years being offered in the annual yearly capacity auctions during the incremental process.
14. Transmission system operators and the relevant national regulatory authorities shall publish respective points of contact for incremental capacity projects initiated at the publication of the market demand assessment report and update this information on a regular basis throughout the project.

#### Article 27

#### **Design phase**

1. The day after the publication of the market demand assessment report, the design phase shall start, if the demand assessment report identifies demand for incremental capacity projects.
2. Transmission system operators active at the respective interconnection point shall conduct technical studies for incremental capacity projects in order to design the incremental capacity project and coordinated offer levels based on technical feasibility and the market demand assessment reports.

3. No later than 12 weeks after the start of the design phase, the concerned transmission system operators shall conduct a joint public consultation on the draft project proposal in one or more official languages of the Member State and to the extent possible in English for a minimum of 1 month and no longer than 2 months. These operators shall take all reasonable steps to ensure cross-border coordination.

The consultation shall cover at least the following elements:

- (a) a description of the incremental capacity project, including a cost estimate;
- (b) the offer levels for bundled capacity products at the interconnection point;
- (c) where relevant, based on conditional demand indications received, the transmission system operators' proposed alternative allocation mechanism including its justification;
- (d) provisional timelines of the incremental capacity project;
- (e) general rules and conditions that a network users must accept to participate and access capacity in the binding capacity allocation phase of the incremental capacity process, including any collateral to be provided by network users and how possible delays in the provision of capacity or the event of a disruption to the project are dealt with contractually;
- (f) where a fixed price approach is followed for the incremental capacity project, the elements IND and RP described in Article 24(b) of Regulation (EU) 2017/460;
- (g) the level of user commitments, expressed as an estimate of the f-factor as applied in accordance with Article 23, which, after having consulted with the transmission system operators, is proposed and subsequently approved by the concerned national regulatory authorities;
- (h) any additional demand indications received in accordance with Article 26(7);
- (i) whether the incremental capacity is likely to result in a sustained, significant decrease in the utilisation of other non-depreciated gas infrastructure in the same and adjacent entry-exit systems or along the same gas transport route.

4. In the process of designing coordinated offer levels, the transmission system operators shall closely cooperate with the involved national regulatory authorities and coordinate across borders in order to enable offers of incremental capacity as bundled products. The project proposal and design of coordinated offer levels shall take into account the results of the consultation provided for in paragraph 3.

#### Article 28

### Approval and publication

1. Following the consultation and finalisation of the design phase for an incremental capacity project in accordance with Article 27, the involved transmission system operators shall submit the project proposal for an incremental capacity project to the relevant national regulatory authorities for coordinated approvals. The project proposal shall also be published by the involved transmission system operators in one or more official languages of the Member State and to the extent possible in English and shall include at least the following information:

- (a) all offer levels, reflecting the range of expected demand for incremental capacity at the relevant interconnection points as a result of the processes provided for in paragraph 3 of Article 27 and Article 26;
- (b) the general rules and conditions that a network user must accept to participate and access capacity in the binding capacity allocation phase of the incremental capacity process, including any collaterals to be provided by network users and how possible delays in the provision of capacity or the event of a disruption to the project are dealt with contractually;
- (c) timelines of the incremental capacity project, including any changes since the consultation described in paragraph 3 of Article 27, and measures to prevent delays and minimise the impact of delays;
- (d) the parameters defined in Article 22(1);

- (e) whether an exceptionally extended time horizon for contracting capacity for an additional period of up to 5 years beyond the allocation of up to 15 years after the start of the operational use may be required, in accordance with Article 30;
- (f) where applicable, the proposed alternative allocation mechanism including its justification pursuant to Article 30(2) as well as the conditions approved by the transmission system operator for the binding phase pursuant to Article 30(3);
- (g) where a fixed price approach is followed for the incremental capacity project, the elements described in Article 24(b) of Regulation (EU) 2017/460.

2. Within 6 months of receipt of the complete project proposal by the last of the relevant regulatory authorities, those national regulatory authorities shall publish coordinated decisions on the project proposal defined in paragraph 1 in one or more official languages of the Member State and to the extent possible in English. The decisions shall include justifications. National regulatory authorities shall inform each other of the receipt of the project proposal and its completeness in order to determine the start of the 6 months period.

When preparing the national regulatory authority's decision, each national regulatory authority shall consider the views of the other national regulatory authorities involved. In any case national regulatory authorities shall take into account any detrimental effects on competition or the effective functioning of the internal gas market associated with the incremental capacity projects concerned.

If a relevant national regulatory authority objects to the submitted project proposal, it shall inform the other involved national regulatory authorities as soon as possible. In such a situation, all the national regulatory authorities involved shall take all reasonable steps to work together and reach a common agreement.

Where the relevant national regulatory authorities cannot reach an agreement on the proposed alternative allocation mechanism within the 6 months period referred to in the first subparagraph, the Agency shall decide on the alternative allocation mechanism to be implemented, following the process set out in Article 8(1) of Regulation (EC) No 713/2009.

3. Upon the publication of the decisions of the relevant national regulatory authorities pursuant to paragraph 2 and no later than 2 months before the offer of incremental capacity in the annual yearly capacity auction, the transmission system operators shall publish jointly a notice in one or more official languages of the Member State and to the extent possible in English including the following minimum information

- (a) the information defined in paragraph 1 as approved by the national regulatory authorities;
- (b) a template of the contract(s) related to the capacity offered.

#### Article 29

### **Auctioning of incremental capacity**

1. Subject to the completion of the steps provided for in Article 27, the involved transmission system operators shall offer the incremental capacity together with the respective available capacity in the annual yearly capacity auction as standard bundled products in ascending clock auctions according to Article 17 as a default and in accordance with Article 8(8) and (9) and Article 19.

2. The auctions for the respective offer levels shall be conducted in parallel and independently from each other in accordance with Article 17 and subject to Article 8(2). Only coordinated offer levels shall be auctioned.

3. In order to minimise potential auction premia and to achieve a positive economic test outcome for the highest possible offer level, a new auction may be initiated once and only if:

- (a) there were at least two offer levels set by the transmission system operators before the start of the auctions described in paragraph 2; and

- (b) at least one offer level was unsuccessful and resulted in a negative economic test; and
- (c) the next smaller offer level of the lowest unsuccessful offer level resulted in a positive economic test, and cleared with an auction premium for at least one yearly standard capacity product.

If these conditions are met, the new auction may be initiated for the lowest unsuccessful offer level referred in point (b).

4. If the new auction does not result in a positive economic test outcome, the allocation results of the original auction referred to in point (c) shall prevail in accordance with Articles 17(20) and (21).

#### *Article 30*

### **Principles for alternative allocation mechanisms**

1. An alternative allocation mechanism covers a maximum of 15 years after the start of operational use. If the economic test could not be passed based on the 15 years' bookings, national regulatory authorities may exceptionally extend the time horizon by up to 5 additional years.

2. An alternative capacity allocation mechanism can be used, subject to national regulatory authorities' approval, where it is reasonable to conclude from the market demand assessment pursuant to Article 26 or the consultation defined in Article 27(3) that the ascending clock auction is not suitable and that the incremental capacity project fulfils both of the following conditions:

- (a) it involves more than two entry-exit systems and bids are requested along several interconnection points during the allocation procedure;
- (b) bids with a duration of more than 1 year are requested.

3. In an alternative allocation mechanism network users may submit binding conditional bids for contracting capacity subject to one or more of the following conditions specified by the transmission system operators in the approved project proposal pursuant to Article 28(1):

- (a) commitments linking or excluding commitments at other interconnection points;
- (b) commitments across a number of different yearly standard capacity products at an interconnection point;
- (c) commitments conditional on the allocation of a specific or minimum amount of capacity.

4. The alternative allocation mechanism is subject to approvals by the concerned national regulatory authorities according to Article 28(2). The mechanism shall be transparent and non-discriminatory but may allow for the prioritisation of booking duration or bids for higher amounts of capacity for a yearly standard capacity product.

5. If either booking duration or bids for higher amounts of capacity are prioritised, national regulatory authorities shall decide on setting aside an amount of at least 10 % and up to 20 % of the technical capacity at each interconnection point when applying Article 8(8). Capacity set aside in this manner shall be offered in accordance with Article 8(7).

#### *Article 31*

### **Transitional arrangements**

In the case of incremental capacity projects initiated before the entry into force of this Regulation, Articles 26 to 30 shall apply unless such projects have been granted the applicable approvals for capacity allocation by the respective national regulatory authorities before 1 August 2017.



## CHAPTER VI

**INTERRUPTIBLE CAPACITY***Article 32***Allocation of interruptible services**

1. As from 1 January 2018, transmission system operators may only offer standard capacity products for interruptible capacity of a duration longer than one day if the corresponding monthly, quarterly or yearly standard capacity product for firm capacity was sold at an auction premium, was sold out, or was not offered.
2. Transmission system operators shall offer a daily capacity product for interruptible capacity in both directions at interconnection points where the respective standard capacity product for firm capacity was sold out day-ahead or was not offered. At unidirectional interconnection points where firm capacity is offered only in one direction, transmission system operators shall offer at least a daily product for interruptible capacity in the other direction.
3. If interruptible capacity is offered, this shall not be detrimental to the amount of firm capacity on offer. Transmission system operators shall not set aside capacity that can be offered as firm capacity in order to offer it as interruptible capacity.
4. To the extent interruptible capacity products other than daily products are offered, the same standard capacity products for firm capacity shall also apply for interruptible capacity, in terms of duration of the products.
5. To the extent interruptible capacity is offered, it shall be allocated via an auction process with the exception of within-day interruptible capacity.
6. Within-day interruptible capacity shall be allocated by means of an over-nomination procedure.
7. Within-day interruptible capacity shall only be allocated when firm capacity, whether technical capacity or additional capacity, is sold out.
8. Where auctions are held for any interruptible products longer than within-day transmission system operators shall, if known, publish the amounts of interruptible capacity on offer before the start of the auction process.
9. If offered, interruptible capacity shall be allocated by means of a separate auction after firm capacity of equal duration has been allocated, but before the auction of firm capacity with a shorter duration starts, with the exception of within-day interruptible capacity.
10. If offered, interruptible capacity auctions shall be conducted in accordance with the same design principles and timescales as applied for firm capacity. The exact auction dates to be used for the interruptible capacity auctions shall be detailed within the auction calendar with the exception of within-day interruptible capacity. For the annual yearly, all annual quarterly and all rolling monthly capacity auctions, the transmission system operators shall notify network users about the amount of interruptible capacity to be offered one week before the auction starts. Where an auction of firm capacity has not closed on the scheduled start day for the interruptible auctions, the interruptible auctions shall open no later than the next business day after the closing of the respective auctions of firm capacity. In such cases, any change in the offered amounts shall be notified at least 12 hours before the start of the respective interruptible capacity auction.

*Article 33***Minimum interruption lead times**

1. Interruptible capacities shall have minimum interruption lead times, which shall be decided jointly by adjacent transmission system operators.
2. The default minimum interruption lead time for a given gas hour shall be 45 minutes after the start of the re-nomination cycle for that gas hour. Where two transmission system operators wish to shorten the lead time for interruptions, any related agreement entered into between the transmission system operators shall be subject to competent national regulatory authority approval.

*Article 34***Coordination of interruption process**

The transmission system operator that initiates the interruption shall notify the relevant adjacent transmission system operator. Adjacent transmission system operators shall notify their respective affected network users as soon as possible, but with due regard to the reliability of the information.

*Article 35***Defined sequence of interruptions**

1. The order in which interruptions shall be performed, if the total of nominations exceeds the quantity of gas that can flow at a certain interconnection point, shall be determined based on the contractual time stamp of the respective transport contracts on an interruptible basis. In case of an interruption, transport contract coming into force earlier shall prevail over transport contract coming into force later.
2. If, after applying the procedure provided for in paragraph 1, two or more nominations are ranked at the same position within the interruption order and the transmission system operator does not interrupt all of them, a pro rata reduction of these specific nominations shall apply.
3. To accommodate the differences between the various interruptible capacity services within the Union, the adjacent transmission system operators shall implement and coordinate the joint procedures provided for in this Article on an interconnection point by interconnection point basis.

*Article 36***Reasons for interruptions**

Transmission system operators shall include reasons for interruptions either directly in their interruptible transport contracts or in the general terms and conditions that govern these contracts. Reasons for interruptions can include but are not limited to gas quality, pressure, temperature, flow patterns, use of firm contracts, maintenance, up- or downstream constraints, public service obligations and capacity management deriving from congestion management procedures.

## CHAPTER VII

**CAPACITY BOOKING PLATFORMS***Article 37***Capacity booking platforms**

1. Transmission system operators shall apply this Regulation by offering capacity by means of one or a limited number of joint web-based booking platforms. Transmission system operators can operate such platforms themselves or via an agreed party that, where necessary, acts on behalf of them towards the network users.
2. Joint booking platforms shall apply the following rules:
  - (a) the rules and procedures for the offer and allocation of all capacity in accordance with Chapter III shall apply;
  - (b) the establishment of a process to offer firm bundled capacity in accordance with Chapter IV shall have priority;
  - (c) functionalities for network users to offer and obtain secondary capacity shall be provided;
  - (d) in order to use the services of the booking platforms network users shall accede to and be compliant with all applicable legal and contractual requirements that enable them to book and use capacity on the relevant transmission system operators' network under a transport contract;
  - (e) capacity at any single interconnection point or virtual interconnection point shall be offered at not more than one booking platform but a transmission system operator may offer capacity at different interconnection or virtual interconnection points through different booking platforms.

3. Within 6 months from entry into force of this Regulation all transmission system operators shall reach a contractual agreement to use a single booking platform to offer capacity on the two sides of their respective interconnection points or virtual interconnection points. If no agreement is reached by the transmission system operators within that period, the matter shall be referred immediately by the transmission system operators to the respective national regulatory authorities. The national regulatory authorities shall then, within a period of a further 6 months from the date of referral, jointly select the single booking platform for a period not longer than 3 years. If the national regulatory authorities are not able to jointly select a single booking platform within 6 months from the date of referral, Article 8(1) of the Regulation (EC) No 713/2009 shall apply. The Agency shall decide on the booking platform to be used, for a period not longer than 3 years, at the specific interconnection point or virtual interconnection point.
4. In case the selection of the booking platform at an interconnection point or virtual interconnection point was made either by the national regulatory authorities or by the Agency, the transmission system operators shall reach a contractual agreement on the use of a booking platform at the latest by the end of the period referred to in the last sentence of paragraph 3, for which the selection was made by the national regulatory authorities or the Agency. If no contractual agreement is reached, the procedure set out in paragraph 3 shall be resumed.
5. The establishment of one or a limited number of joint booking platforms shall facilitate and simplify capacity booking at interconnection points across the Union for the benefit of network users. Where appropriate, ENTSOG and the Agency shall facilitate this process.
6. For increases in technical capacity, the allocation results shall be published on the booking platform which is used for auctioning existing capacity, and for new capacity created where none currently exists, on a joint booking platform agreed by the relevant transmission system operators.

## CHAPTER VIII

### FINAL PROVISIONS

#### *Article 38*

#### **Implementation monitoring**

1. In order to assist the Agency in its monitoring duties pursuant to Article 9(1) of Regulation (EC) No 715/2009, ENTSOG shall monitor and analyse how transmission system operators have implemented this Regulation in accordance with Article 8(8) and (9) of Regulation (EC) No 715/2009. In particular, ENTSOG shall ensure the completeness and correctness of all relevant information from transmission system operators. ENTSOG shall submit to the Agency that information by 31 March 2019.
2. Transmission system operators shall submit to ENTSOG all information required by ENTSOG to comply with its obligations pursuant to paragraph 1 by 31 December 2018.
3. The confidentiality of commercially sensitive information shall be preserved by ENTSOG and the Agency.
4. Before 6 April 2019, the Agency shall, in the framework of its monitoring tasks, report on the conditionalities stipulated in contracts for standard capacity products for firm capacity, having regard to their effect on efficient network use and the integration of the Union gas markets. The Agency shall be supported in its assessment by the relevant national regulatory authorities and transmission system operators.

#### *Article 39*

#### **Repeal**

Regulation (EU) No 984/2013 is repealed.

References made to the repealed Regulation shall be construed as references to this Regulation.

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*Article 40***Entry into force**

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply as from entry into force.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 16 March 2017.

*For the Commission*  
*The President*  
Jean-Claude JUNCKER

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