

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)

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.

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### 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:

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- 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.

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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:

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- 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.

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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;

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- 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.

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## 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;

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- 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.

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**Changes and effects yet to be applied to the whole legislation item and associated provisions**

- Signature words omitted by [S.I. 2019/531 Sch. 4 para. 28](#)
- Art. 3(13) words substituted by [S.I. 2019/531 Sch. 4 para. 3\(3\)](#)
- Art. 3(15) words substituted by [S.I. 2019/531 Sch. 4 para. 3\(4\)](#)
- Art. 3(16) words substituted by [S.I. 2019/531 Sch. 4 para. 3\(5\)](#)
- Art. 3(26)(27) inserted by [S.I. 2019/531 Sch. 4 para. 3\(6\)](#)
- Art. 6(1)(a)(7) inserted by [S.I. 2019/531 Sch. 4 para. 6\(5\)](#)
- Art. 6(1)(a)(5) word omitted by [S.I. 2019/531 Sch. 4 para. 6\(4\)\(a\)](#)
- Art. 6(1)(a)(5) words inserted by [S.I. 2019/531 Sch. 4 para. 6\(4\)\(b\)](#)
- Art. 6(1)(a)(3) words omitted by [S.I. 2019/531 Sch. 4 para. 6\(3\)](#)
- Art. 6(1)(a)(1) words substituted by [S.I. 2019/531 Sch. 4 para. 6\(2\)](#)
- Art. 6(1A) inserted by [S.I. 2019/531 Sch. 4 para. 6\(6\)](#)
- Art. 19(10) inserted by [S.I. 2019/531 Sch. 4 para. 14\(4\)](#)
- Art. 26(12)(a) substituted by [S.I. 2019/531 Sch. 4 para. 18\(6\)](#)
- Art. 28(1A) inserted by [S.I. 2019/531 Sch. 4 para. 20\(3\)](#)
- Art. 29(3)(a) words inserted by [S.I. 2019/531 Sch. 4 para. 21\(3\)](#)