

## REGULATION (EC) 715/2009 of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) 1775/2005

Incorporated and adapted by Permanent High Level Group Decision 2018/01/PHLG-EnC of 12 January 2018 and by Ministerial Council Decision 2011/02/MC-EnC of 6 October 2011 on the implementation of Directive 2009/72/EC, Directive 2009/73/EC, Regulation (EC) 714/2009 and Regulation (EC) 715/2009 and amending Articles 11 and 59 of the Energy Community Treaty.

*The adaptations made by by Permanent High Level Group Decision 2018/01/PHLG-EnC of 12 January 2018 and Ministerial Council Decision 2011/02/MC-EnC are highlighted in **bold and blue**.*

Whereas:

(1) The internal market in natural gas, which has been progressively implemented since 1999, aims to deliver real choice for all consumers in the Community, be they citizens or businesses, new business opportunities and more cross-border trade, so as to achieve efficiency gains, competitive prices and higher standards of service, and to contribute to security of supply and sustainability.

(2) Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas and Regulation (EC) No 1775/2005 of the European Parliament and of the Council of 28 September 2005 on conditions for access to the natural gas transmission networks have made significant contributions towards the creation of such an internal market in natural gas.

(3) Experience gained in the implementation and monitoring of a first set of Guidelines for Good Practice, adopted by the European Gas Regulatory Forum (the Madrid Forum) in 2002, demonstrates that in order to ensure the full implementation of the rules set out in those guidelines in all Member States, and in order to provide a minimum guarantee of equal market access conditions in practice, it is necessary to provide for them to become legally enforceable.

(4) A second set of common rules entitled “the Second Guidelines for Good Practice” was adopted at the meeting of the Madrid Forum on 24 and 25 September 2003 and the purpose of this Regulation is to lay down, on the basis of those guidelines, basic principles and rules regarding network access and third party access services, congestion management, transparency, balancing and the trading of capacity rights.

(5) 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 provides for the possibility of a combined transmission and distribution system operator. The rules set out in this Regulation do not therefore require modification of the organisation of national transmission and distribution systems that are consistent with the relevant provisions of that Directive.

(6) High-pressure pipelines linking up local distributors to the gas network which are not primarily used in the context of local distribution are included in the scope of this Regulation.

(7) It is necessary to specify the criteria according to which tariffs for access to the network are determined, in order to ensure that they fully comply with the principle of non-discrimination and the needs of a well-functioning internal market and take fully into account the need for system integrity and reflect the actual costs incurred, insofar as such costs correspond to those of an efficient and structurally comparable network operator and are transparent, whilst including appropriate return

on investments, and, where appropriate, taking account of the benchmarking of tariffs by the regulatory authorities.

(8) In calculating tariffs for access to networks, it is important to take account of the actual costs incurred, insofar as such costs correspond to those of an efficient and structurally comparable network operator, and are transparent, as well as of the need to provide appropriate return on investments and incentives to construct new infrastructure, including special regulatory treatment for new investments as provided for in Directive 2009/73/EC. In that respect, and in particular if effective pipeline-to-pipeline competition exists, the benchmarking of tariffs by the regulatory authorities will be a relevant consideration.

(9) The use of market-based arrangements, such as auctions, to determine tariffs has to be compatible with the provisions laid down in Directive 2009/73/EC.

(10) A common minimum set of third-party access services is necessary to provide a common minimum standard of access in practice throughout the Community, to ensure that third party access services are sufficiently compatible and to allow the benefits accruing from a well-functioning internal market in natural gas to be exploited.

(11) At present, there are obstacles to the sale of gas on equal terms, without discrimination or disadvantage in the Community. In particular, non-discriminatory network access and an equally effective level of regulatory supervision do not yet exist in each Member State, and isolated markets persist.

(12) A sufficient level of cross-border gas interconnection capacity should be achieved and market integration fostered in order to complete the internal market in natural gas.

(13) The Communication of the Commission of 10 January 2007 entitled "An Energy Policy for Europe" highlighted the importance of completing the internal market in natural gas and creating a level playing field for all natural gas undertakings in the Community. The Communications of the Commission of 10 January 2007 entitled "Prospects for the internal gas and electricity market" and "Inquiry pursuant to Article 17 of Regulation (EC) No 1/2003 into the European gas and electricity sectors (Final Report)" demonstrated that the present rules and measures neither provide the necessary framework nor provide for the creation of interconnection capacities to achieve the objective of a well-functioning, efficient and open internal market.

(14) In addition to thoroughly implementing the existing regulatory framework, the regulatory framework for the internal market in natural gas set out in Regulation (EC) No 1775/2005 should be adapted in line with those communications.

(15) In particular, increased cooperation and coordination among transmission system operators is required to create network codes for providing and managing effective and transparent access to the transmission networks across borders, and to ensure coordinated and sufficiently forward looking planning and sound technical evolution of the transmission system in the Community, including the creation of interconnection capacities, with due regard to the environment. The network codes should be in line with framework guidelines which are non-binding in nature (framework guidelines) and which are developed by the Agency for the Cooperation of Energy Regulators established by 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 (the Agency). The Agency should have a role in reviewing, based on matters of fact, draft network codes, including their compliance with the framework guidelines, and it should be enabled to recommend them for adoption by the

Commission. The Agency should assess proposed amendments to the network codes and it should be enabled to recommend them for adoption by the Commission. Transmission system operators should operate their networks in accordance with those network codes.

(16) In order to ensure optimal management of the gas transmission network in the Community a European Network of Transmission System Operators for Gas (the ENTSO for Gas), should be established. The tasks of the ENTSO for Gas should be carried out in compliance with Community competition rules which remain applicable to the decisions of the ENTSO for Gas. The tasks of the ENTSO for Gas should be well-defined and its working method should ensure efficiency, transparency and the representative nature of the ENTSO for Gas. The network codes prepared by the ENTSO for Gas are not intended to replace the necessary national network codes for non cross-border issues. Given that more effective progress may be achieved through an approach at regional level, transmission system operators should set up regional structures within the overall cooperation structure, whilst ensuring that results at regional level are compatible with network codes and non-binding ten-year network development plans at Community level. Cooperation within such regional structures presupposes effective unbundling of network activities from production and supply activities. In the absence of such unbundling, regional cooperation between transmission system operators gives rise to a risk of anti-competitive conduct. Member States should promote cooperation and monitor the effectiveness of the network operations at regional level. Cooperation at regional level should be compatible with progress towards a competitive and efficient internal market in gas.

(17) All market participants have an interest in the work expected of the ENTSO for Gas. An effective consultation process is therefore essential and existing structures set up to facilitate and streamline the consultation process, such as the European Association for the Streamlining of Energy Exchange, national regulators or the Agency should play an important role.

(18) In order to ensure greater transparency regarding the development of the gas transmission network in the Community, the ENTSO for Gas should draw up, publish and regularly update a non-binding Community-wide ten-year network development plan (Community-wide network development plan). Viable gas transmission networks and necessary regional interconnections, relevant from a commercial or security of supply point of view, should be included in that network development plan.

(19) To enhance competition through liquid wholesale markets for gas, it is vital that gas can be traded independently of its location in the system. The only way to do this is to give network users the freedom to book entry and exit capacity independently, thereby creating gas transport through zones instead of along contractual paths. The preference for entry-exit systems to facilitate the development of competition was already expressed by most stakeholders at the 6th Madrid Forum on 30 and 31 October 2002. Tariffs should not be dependent on the transport route. The tariff set for one or more entry points should therefore not be related to the tariff set for one or more exit points, and vice versa.

(20) References to harmonised transport contracts in the context of non-discriminatory access to the network of transmission system operators do not mean that the terms and conditions of the transport contracts of a particular system operator in a Member State must be the same as those of another transmission system operator in that Member State or in another Member State, unless minimum requirements are set which must be met by all transport contracts.

(21) There is substantial contractual congestion in the gas networks. The congestion-management

and capacity-allocation principles for new or newly negotiated contracts are therefore based on the freeing-up of unused capacity by enabling network users to sublet or resell their contracted capacities and the obligation of transmission system operators to offer unused capacity to the market, at least on a day-ahead and interruptible basis. Given the large proportion of existing contracts and the need to create a true level playing field between users of new and existing capacity, those principles should be applied to all contracted capacity, including existing contracts.

(22) Although physical congestion of networks is, at present, rarely a problem in the Community, it may become one in the future. It is important, therefore, to provide the basic principle for the allocation of congested capacity in such circumstances.

(23) Market monitoring undertaken over recent years by the national regulatory authorities and by the Commission has shown that current transparency requirements and rules on access to infrastructure are not sufficient to secure a genuine, well-functioning, open and efficient internal market in gas.

(24) Equal access to information on the physical status and efficiency of the system is necessary to enable all market participants to assess the overall demand and supply situation and to identify the reasons for movements in the wholesale price. This includes more precise information on supply and demand, network capacity, flows and maintenance, balancing and availability and usage of storage. The importance of that information for the functioning of the market requires alleviating existing limitations to publication for confidentiality reasons.

(25) Confidentiality requirements for commercially sensitive information are, however, particularly relevant where data of a commercially strategic nature for the company are concerned, where there is only one single user for a storage facility, or where data are concerned regarding exit points within a system or subsystem that is not connected to another transmission or distribution system but to a single industrial final customer, where the publication of such data would reveal confidential information as to the production process of that customer.

(26) To enhance trust in the market, its participants need to be sure that those engaging in abusive behaviour can be subjected to effective, proportionate and dissuasive penalties. The competent authorities should be given the competence to investigate effectively allegations of market abuse. To that end, it is necessary that competent authorities have access to data that provides information on operational decisions made by supply undertakings. In the gas market, all those decisions are communicated to the system operators in the form of capacity reservations, nominations and realised flows. System operators should keep information in relation thereto available to and easily accessible by the competent authorities for a fixed period of time. The competent authorities should, furthermore, regularly monitor the compliance of the transmission system operators with the rules.

(27) Access to gas storage facilities and liquefied natural gas (LNG) facilities is insufficient in some Member States, and therefore the implementation of the existing rules needs to be improved. Monitoring by the European Regulators' Group for Electricity and Gas concluded that the voluntary guidelines for good third-party access practice for storage system operators, agreed by all stakeholders at the Madrid Forum, are being insufficiently applied and therefore need to be made binding.

(28) Non-discriminatory and transparent balancing systems for gas, operated by transmission system operators, are important mechanisms, particularly for new market entrants which may have more difficulty balancing their overall sales portfolio than companies already established within a relevant market. It is therefore necessary to lay down rules to ensure that transmission system operators op-

erate such mechanisms in a manner compatible with non-discriminatory, transparent and effective access conditions to the network.

(29) The trading of primary capacity rights is an important part of developing a competitive market and creating liquidity. This Regulation should therefore lay down basic rules relating to such trading.

(30) National regulatory authorities should ensure compliance with the rules contained in this Regulation and the Guidelines adopted pursuant thereto.

(31) In the Guidelines annexed to this Regulation, specific detailed implementing rules are defined on the basis of the Second Guidelines for Good Practice. Where appropriate, those rules will evolve over time, taking into account the differences of national gas systems.

(32) When proposing to amend the Guidelines annexed to this Regulation, the Commission should ensure prior consultation of all relevant parties concerned with the Guidelines, represented by the professional organisations, and of the Member States within the Madrid Forum.

(33) The Member States and the competent national authorities should be required to provide relevant information to the Commission. Such information should be treated confidentially by the Commission.

(34) This Regulation and the Guidelines adopted in accordance with it are without prejudice to the application of the Community rules on competition.

(35) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission.

(36) In particular, the Commission should be empowered to establish or adopt the Guidelines necessary for providing the minimum degree of harmonisation required to achieve the aims of this Regulation. Since those measures are of general scope and are designed to amend non-essential elements of this Regulation, *inter alia* by supplementing it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.

(37) Since the objective of this Regulation, namely the setting of fair rules for access conditions to natural gas transmission networks, storage and LNG facilities cannot be sufficiently achieved by the Member States and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity, as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

(38) Given the scope of the amendments that are being made herein to Regulation (EC) No 1775/2005, it is desirable, for reasons of clarity and rationalisation, that the provisions in question should be recast by bringing them all together in a single text in a new Regulation.

## **Article 1**

### **Subject matter and scope**

This Regulation aims at:

- (a) setting non-discriminatory rules for access conditions to natural gas transmission systems taking into account the special characteristics of national and regional markets with a view to ensuring the proper functioning of the internal market in gas;
- (b) setting non-discriminatory rules for access conditions to LNG facilities and storage facilities taking into account the special characteristics of national and regional markets; and
- (c) facilitating the emergence of a well-functioning and transparent wholesale market with a high level of security of supply in gas and providing mechanisms to harmonise the network access rules for cross-border exchanges in gas.

The objectives referred to in the first subparagraph shall include the setting of harmonised principles for tariffs, or the methodologies underlying their calculation, for access to the network, but not to storage facilities, the establishment of third-party access services and harmonised principles for capacity-allocation and congestion-management, the determination of transparency requirements, balancing rules and imbalance charges, and the facilitation of capacity trading.

This Regulation, with the exception of Article 19(4), shall apply only to storage facilities falling under Article 33(3) or (4) of Directive 2009/73/EC.

The **Contracting Parties** may establish an entity or body set up in compliance with Directive 2009/73/EC for the purpose of carrying out one or more functions typically attributed to the transmission system operator, which shall be subject to the requirements of this Regulation. That entity or body shall be subject to certification in accordance with Article 3 of this Regulation and shall be subject to designation in accordance with Article 10 of Directive 2009/73/EC.

## **Article 2**

### **Definitions**

1. For the purpose of this Regulation, the following definitions apply:

- (1) “transmission” means the transport of natural gas through a network, which mainly contains high-pressure pipelines, other than an upstream pipeline network and other than the part of high-pressure pipelines primarily used in the context of local distribution of natural gas, with a view to its delivery to customers, but not including supply;
- (2) “transport contract” means a contract which the transmission system operator has concluded with a network user with a view to carrying out transmission;
- (3) “capacity” means the maximum flow, expressed in normal cubic meters per time unit or in energy unit per time unit, to which the network user is entitled in accordance with the provisions of the transport contract;
- (4) “unused capacity” means firm capacity which a network user has acquired under a transport contract but which that user has not nominated by the deadline specified in the contract;

- (5) “congestion management” means management of the capacity portfolio of the transmission system operator with a view to optimal and maximum use of the technical capacity and the timely detection of future congestion and saturation points;
- (6) “secondary market” means the market of the capacity traded otherwise than on the primary market;
- (7) “nomination” means the prior reporting by the network user to the transmission system operator of the actual flow that the network user wishes to inject into or withdraw from the system;
- (8) “re-nomination” means the subsequent reporting of a corrected nomination;
- (9) “system integrity” means any situation in respect of a transmission network including necessary transmission facilities in which the pressure and the quality of the natural gas remain within the minimum and maximum limits laid down by the transmission system operator, so that the transmission of natural gas is guaranteed from a technical standpoint;
- (10) “balancing period” means the period within which the off-take of an amount of natural gas, expressed in units of energy, must be offset by every network user by means of the injection of the same amount of natural gas into the transmission network in accordance with the transport contract or the network code;
- (11) “network user” means a customer or a potential customer of a transmission system operator, and transmission system operators themselves in so far as it is necessary for them to carry out their functions in relation to transmission;
- (12) “interruptible services” means services offered by the transmission system operator in relation to interruptible capacity;
- (13) “interruptible capacity” means gas transmission capacity that may be interrupted by the transmission system operator in accordance with the conditions stipulated in the transport contract;
- (14) “long-term services” means services offered by the transmission system operator with a duration of one year or more;
- (15) “short-term services” means services offered by the transmission system operator with a duration of less than one year;
- (16) “firm capacity” means gas transmission capacity contractually guaranteed as uninterruptible by the transmission system operator;
- (17) “firm services” mean services offered by the transmission system operator in relation to firm capacity;
- (18) “technical capacity” means the maximum firm capacity that the transmission system operator can offer to the network users, taking account of system integrity and the operational requirements of the transmission network;
- (19) “contracted capacity” means capacity that the transmission system operator has allocated to a network user by means of a transport contract;
- (20) “available capacity” means the part of the technical capacity that is not allocated and is still available to the system at that moment;
- (21) “contractual congestion” means a situation where the level of firm capacity demand exceeds the technical capacity;
- (22) “primary market” means the market of the capacity traded directly by the transmission system

operator;

(23) “physical congestion” means a situation where the level of demand for actual deliveries exceeds the technical capacity at some point in time;

(24) “LNG facility capacity” means capacity at an LNG terminal for the liquefaction of natural gas or the importation, offloading, ancillary services, temporary storage and re-gasification of LNG;

(25) “space” means the volume of gas which a user of a storage facility is entitled to use for the storage of gas;

(26) “deliverability” means the rate at which the storage facility user is entitled to withdraw gas from the storage facility;

(27) “injectability” means the rate at which the storage facility user is entitled to inject gas into the storage facility;

(28) “storage capacity” means any combination of space, injectability and deliverability.

2. Without prejudice to the definitions in paragraph 1 of this Article, the definitions contained in Article 2 of Directive 2009/73/EC which are relevant for the application of this Regulation, also apply, with the exception of the definition of transmission in point 3 of that Article.

The definitions in points 3 to 23 of paragraph 1 of this Article in relation to transmission apply by analogy in relation to storage and LNG facilities.

### Article 3

#### Certification of transmission system operators

1. The **Energy Community Secretariat** shall examine any notification of a decision on the certification of a transmission system operator as laid down in Article 10(6) of Directive 2009/73/EC as soon as it is received. Within **four months** of the day of receipt of such notification, the **Energy Community Secretariat** shall deliver its opinion to the relevant national regulatory authority in regard to its compatibility with Article 10(2) or Article 11, and Article 9 of Directive 2009/73/EC.

**When preparing the opinion referred to in the first subparagraph, the Energy Community Secretariat shall request the Energy Community Regulatory Board to provide its opinion on the national regulatory authority’s decision.**

In the absence of an opinion by the **Energy Community Secretariat** within the periods referred to in the first subparagraph, the **Energy Community Secretariat** shall be deemed not to raise objections against the regulatory authority’s decision.

2. Within two months of receiving an opinion of the **Energy Community Secretariat**, the national regulatory authority shall adopt its final decision regarding the certification of the transmission system operator, taking the utmost account of that opinion. The regulatory authority’s decision and the **Energy Community Secretariat’s** opinion shall be published together.

3. At any time during the procedure regulatory authorities and/or the **Energy Community Secretariat** may request from a transmission system operator and/or an undertaking performing any of the functions of production or supply any information relevant to the fulfillment of their tasks under this Article.

4. Regulatory authorities and the **Energy Community Secretariat** shall preserve the confidentiality



of commercially sensitive information.

5. <...>

6. Where the **Energy Community Secretariat** has received notification of the certification of a transmission system operator under Article 9(10) of Directive 2009/73/EC, the **Secretariat shall issue an opinion** relating to certification. **The regulatory authority shall take the utmost account of that opinion. Where the final decision diverges from the Secretariat's opinion, the regulatory authority concerned shall provide and publish, together with that decision, the reasoning underlying its decision. Diverting decisions shall be included in the agenda of the first meeting of the Ministerial Council following the date of the decision, for information and discussion.**

#### **Article 4**

#### **European network of transmission system operators for gas**

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#### **Article 5**

#### **Establishment of the ENTSO for Gas**

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#### **Article 6**

#### **Establishment of network codes<sup>1</sup>**

1. **The Energy Community shall endeavour to apply the network codes developed at European Union level <...>.**
2. **The relevant network codes shall be adopted by the Permanent High Level Group, following the procedure laid down in Article 79 of the Treaty. Before taking a decision, the Permanent High Level Group shall seek the opinion of the Energy Community Regulatory Board.**
3. **The Permanent High Level Group shall adopt a procedural act on application of this Article.<sup>2</sup>**

#### **Article 7**

#### **Amendments of network codes**

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<sup>1</sup> The following text corresponds to Article 28 of Decision 2011/02/MC-EnC.

<sup>2</sup> Procedural Act 01/2012/PHLG-EnC of Permanent High Level Group of 21 June 2012 laying down the rules governing the adoption of Guidelines and Network Codes in the Energy Community was adopted on 21 June 2012, see page 803.

**Article 8**

**Tasks of the ENTSO for Gas**

<...>

**Article 9**

**Monitoring by the Agency**

<...>

**Article 10**

**Consultations**

<...>

**Article 11**

**Costs**

<...>

**Article 12<sup>3</sup>**

**Regional cooperation of transmission system operators**

**Transmission system operators shall promote operational arrangements in order to ensure the optimum management of the Energy Community network and shall promote the development of energy exchanges, the coordinated allocation of cross-border capacity through non-discriminatory market-based solutions, paying due attention to the specific merits of implicit auctions for short-term allocations, and the integration of balancing and reserve power mechanisms.**

**Article 13**

**Tariffs for access to networks**

1. Tariffs, or the methodologies used to calculate them, applied by the transmission system operators and approved by the regulatory authorities pursuant to Article 41(6) of Directive 2009/73/EC, as well as tariffs published pursuant to Article 32(1) of that Directive, shall be transparent, take into account the need for system integrity and its improvement and reflect the actual costs incurred, insofar as such costs correspond to those of an efficient and structurally comparable network operator and are transparent, whilst including an appropriate return on investments, and, where appropriate, taking account of the benchmarking of tariffs by the regulatory authorities. Tariffs, or the methodologies used to calculate them, shall be applied in a non-discriminatory manner.

**Contracting Parties** may decide that tariffs may also be determined through market-based arrange-

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<sup>3</sup> In accordance with Article 7(3) of Decision 2011/02/MC-EnC, Article 25 of that Decision is displayed here.

ments, such as auctions, provided that such arrangements and the revenues arising there from are approved by the regulatory authority.

Tariffs, or the methodologies used to calculate them, shall facilitate efficient gas trade and competition, while at the same time avoiding cross-subsidies between network users and providing incentives for investment and maintaining or creating interoperability for transmission networks.

Tariffs for network users shall be non-discriminatory and set separately for every entry point into or exit point out of the transmission system. Cost-allocation mechanisms and rate setting methodology regarding entry points and exit points shall be approved by the national regulatory authorities. By 3 September 2011, the **Contracting Parties** shall ensure that, after a transitional period, network charges shall not be calculated on the basis of contract paths.

2. Tariffs for network access shall neither restrict market liquidity nor distort trade across borders of different transmission systems. Where differences in tariff structures or balancing mechanisms would hamper trade across transmission systems, and notwithstanding Article 41(6) of Directive 2009/73/EC, transmission system operators shall, in close cooperation with the relevant national authorities, actively pursue convergence of tariff structures and charging principles, including in relation to balancing.

#### **Article 14**

##### **Third-party access services concerning transmission system operators**

1. Transmission system operators shall:

- (a) ensure that they offer services on a non-discriminatory basis to all network users;
- (b) provide both firm and interruptible third-party access services. The price of interruptible capacity shall reflect the probability of interruption;
- (c) offer to network users both long and short-term services.

In regard to point (a) of the first subparagraph, where a transmission system operator offers the same service to different customers, it shall do so under equivalent contractual terms and conditions, either using harmonised transport contracts or a common network code approved by the competent authority in accordance with the procedure laid down in Article 41 of Directive 2009/73/EC.

2. Transport contracts signed with non-standard start dates or with a shorter duration than a standard annual transport contract shall not result in arbitrarily higher or lower tariffs that do not reflect the market value of the service, in accordance with the principles laid down in Article 13(1).

3. Where appropriate, third-party access services may be granted subject to appropriate guarantees from network users with respect to the creditworthiness of such users. Such guarantees shall not constitute undue market-entry barriers and shall be non-discriminatory, transparent and proportionate.

### **Article 15**

#### **Third-party access services concerning storage and LNG facilities**

1. LNG and storage system operators shall:

(a) offer services on a non-discriminatory basis to all network users that accommodate market demand; in particular, where an LNG or storage system operator offers the same service to different customers, it shall do so under equivalent contractual terms and conditions;

(b) offer services that are compatible with the use of the interconnected gas transport systems and facilitate access through cooperation with the transmission system operator; and

(c) make relevant information public, in particular data on the use and availability of services, in a time-frame compatible with the LNG or storage facility users' reasonable commercial needs, subject to the monitoring of such publication by the national regulatory authority.

2. Each storage system operator shall:

(a) provide both firm and interruptible third-party access services; the price of interruptible capacity shall reflect the probability of interruption;

(b) offer to storage facility users both long and short-term services; and

(c) offer to storage facility users both bundled and unbundled services of storage space, injectability and deliverability.

3. LNG and storage facility contracts shall not result in arbitrarily higher tariffs in cases in which they are signed:

(a) outside a natural gas year with non-standard start dates; or

(b) with a shorter duration than a standard LNG and storage facility contract on an annual basis.

5. Contractual limits on the required minimum size of LNG facility capacity and storage capacity shall be justified on the basis of technical constraints and shall permit smaller storage users to gain access to storage services.

4. Where appropriate, third-party access services may be granted subject to appropriate guarantees from network users with respect to the creditworthiness of such users. Such guarantees shall not constitute undue market-entry barriers and shall be non-discriminatory, transparent and proportionate.

### **Article 16**

#### **Principles of capacity-allocation mechanisms and congestion-management procedures concerning transmission system operators**

1. The maximum capacity at all relevant points referred to in Article 18(3) shall be made available to market participants, taking into account system integrity and efficient network operation.

2. The transmission system operator shall implement and publish non-discriminatory and transparent capacity-allocation mechanisms, which shall:

(a) provide appropriate economic signals for the efficient and maximum use of technical capacity, facilitate investment in new infrastructure and facilitate cross-border exchanges in natural gas;

(b) be compatible with the market mechanisms including spot markets and trading hubs, while being flexible and capable of adapting to evolving market circumstances; and

(c) be compatible with the network access systems of the **Contracting Parties**.

3. The transmission system operator shall implement and publish non-discriminatory and transparent congestion-management procedures which facilitate cross-border exchanges in natural gas on a non-discriminatory basis and which shall be based on the following principles:

(a) in the event of contractual congestion, the transmission system operator shall offer unused capacity on the primary market at least on a day-ahead and interruptible basis; and

(b) network users who wish to re-sell or sublet their unused contracted capacity on the secondary market shall be entitled to do so.

In regard to point (b) of the first subparagraph, a **Contracting Party** may require notification or information of the transmission system operator by network users.

4. In the event that physical congestion exists, non-discriminatory, transparent capacity-allocation mechanisms shall be applied by the transmission system operator or, as appropriate, by the regulatory authorities.

5. Transmission system operators shall regularly assess market demand for new investment. When planning new investments, transmission system operators shall assess market demand and take into account security of supply.

### **Article 17**

#### **Principles of capacity-allocation mechanisms and congestion-management procedures concerning storage and LNG facilities**

1. The maximum storage and LNG facility capacity shall be made available to market participants, taking into account system integrity and operation.

2. LNG and storage system operators shall implement and publish non-discriminatory and transparent capacity-allocation mechanisms which shall:

(a) provide appropriate economic signals for the efficient and maximum use of capacity and facilitate investment in new infrastructure;

(b) be compatible with the market mechanism including spot markets and trading hubs, while being flexible and capable of adapting to evolving market circumstances; and

(c) be compatible with the connected network access systems.

3. LNG and storage facility contracts shall include measures to prevent capacity-hoarding, by taking into account the following principles, which shall apply in cases of contractual congestion:

(a) the system operator must offer unused LNG facility and storage capacity on the primary market without delay; for storage facilities this must be at least on a day-ahead and interruptible basis;

(b) LNG and storage facility users who wish to re-sell their contracted capacity on the secondary market must be entitled to do so.

### **Article 18**

#### **Transparency requirements concerning transmission system operators**

1. The transmission system operator shall make public detailed information regarding the services it offers and the relevant conditions applied, together with the technical information necessary for network users to gain effective network access.
2. In order to ensure transparent, objective and non-discriminatory tariffs and facilitate efficient utilisation of the gas network, transmission system operators or relevant national authorities shall publish reasonably and sufficiently detailed information on tariff derivation, methodology and structure.
3. For the services provided, each transmission system operator shall make public information on technical, contracted and available capacities on a numerical basis for all relevant points including entry and exit points on a regular and rolling basis and in a user-friendly and standardised manner.
4. The relevant points of a transmission system on which the information is to be made public shall be approved by the competent authorities after consultation with network users.
5. The transmission system operator shall always disclose the information required by this Regulation in a meaningful, quantifiably clear and easily accessible manner and on a non-discriminatory basis.
6. The transmission system operator shall make public *ex-ante* and *ex-post* supply and demand information, based on nominations, forecasts and realised flows in and out of the system. The national regulatory authority shall ensure that all such information is made public. The level of detail of the information that is made public shall reflect the information available to the transmission system operator.

The transmission system operator shall make public measures taken as well as costs incurred and revenue generated to balance the system.

The market participants concerned shall provide the transmission system operator with the data referred to in this Article.

### **Article 19**

#### **Transparency requirements concerning storage facilities and LNG facilities**

1. LNG and storage system operators shall make public detailed information regarding the services it offers and the relevant conditions applied, together with the technical information necessary for LNG and storage facility users to gain effective access to the LNG and storage facilities.
2. For the services provided, LNG and storage system operators shall make public information on contracted and available storage and LNG facility capacities on a numerical basis on a regular and rolling basis and in a user-friendly standardised manner.
3. LNG and storage system operators shall always disclose the information required by this Regulation in a meaningful, quantifiably clear and easily accessible way and on a non-discriminatory basis.
4. LNG and storage system operators shall make public the amount of gas in each storage or LNG facility, or group of storage facilities if that corresponds to the way in which the access is offered to system users, inflows and outflows, and the available storage and LNG facility capacities, including for those facilities exempted from third-party access. That information shall also be communicated

to the transmission system operator, which shall make it public on an aggregated level per system or subsystem defined by the relevant points. The information shall be updated at least daily.

In cases in which a storage system user is the only user of a storage facility, the storage system user may submit to the national regulatory authority a reasoned request for confidential treatment of the data referred to in the first subparagraph. Where the national regulatory authority comes to the conclusion that such a request is justified, taking into account, in particular, the need to balance the interest of legitimate protection of business secrets, the disclosure of which would negatively affect the overall commercial strategy of the storage user, with the objective of creating a competitive internal gas market, it may allow the storage system operator not to make public the data referred to in the first subparagraph, for a duration of up to one year.

The second subparagraph shall apply without prejudice to the obligations of communication to and publication by the transmission system operator referred to in the first subparagraph, unless the aggregated data are identical to the individual storage system data for which the national regulatory authority has approved non-publication.

5. In order to ensure transparent, objective and non-discriminatory tariffs and facilitate efficient utilisation of the infrastructures, the LNG and storage facility operators or relevant regulatory authorities shall make public sufficiently detailed information on tariff derivation, the methodologies and the structure of tariffs for infrastructure under regulated third-party access.

### **Article 20**

#### **Record keeping by system operators**

Transmission system operators, storage system operators and LNG system operators shall keep at the disposal of the national authorities, including the national regulatory authority, the national competition authority and of the **Energy Community Secretariat**, all information referred to in Articles 18 and 19, and in Part 3 of Annex I for a period of five years.

### **Article 21**

#### **Balancing rules and imbalance charges**

1. Balancing rules shall be designed in a fair, non-discriminatory and transparent manner and shall be based on objective criteria. Balancing rules shall reflect genuine system needs taking into account the resources available to the transmission system operator. Balancing rules shall be market-based.

2. In order to enable network users to take timely corrective action, the transmission system operator shall provide sufficient, well-timed and reliable on-line based information on the balancing status of network users.

The information provided shall reflect the level of information available to the transmission system operator and the settlement period for which imbalance charges are calculated.

No charge shall be made for the provision of information under this paragraph.

3. Imbalance charges shall be cost-reflective to the extent possible, whilst providing appropriate incentives on network users to balance their input and off-take of gas. They shall avoid cross-subsidi-

sation between network users and shall not hamper the entry of new market entrants.

Any calculation methodology for imbalance charges as well as the final tariffs shall be made public by the competent authorities or the transmission system operator, as appropriate.

4. **Contracting Parties** shall ensure that transmission system operators endeavour to harmonise balancing regimes and streamline structures and levels of balancing charges in order to facilitate gas trade.

### **Article 22**

#### **Trading of capacity rights**

Each transmission, storage and LNG system operator shall take reasonable steps to allow capacity rights to be freely tradable and to facilitate such trade in a transparent and non-discriminatory manner. Every such operator shall develop harmonised transport, LNG facility and storage contracts and procedures on the primary market to facilitate secondary trade of capacity and shall recognise the transfer of primary capacity rights where notified by system users.

The harmonised transport, LNG facility and storage contracts and procedures shall be notified to the regulatory authorities.

### **Article 23**

#### **Guidelines<sup>4</sup>**

**1. The Energy Community shall endeavour to apply the Guidelines adopted by the European Commission under <...> Regulation (EC) No 715/2009.**

**2. These Guidelines, which may need to be adapted to the institutional framework of the Energy Community, shall be adopted by the Permanent High Level Group, following the procedure laid down in Article 79 of the Treaty.**

**3. The Permanent High Level Group shall adopt a Procedural Act on application of this article.<sup>5</sup>**

### **Article 24**

#### **Regulatory authorities**

When carrying out their responsibilities under this Regulation, the regulatory authorities shall ensure compliance with this Regulation and the Guidelines adopted pursuant to Article 18.<sup>6</sup>

Where appropriate, they shall cooperate with each other, **with the Energy Community Secretariat and the Energy Community Regulatory Board** in compliance with Chapter VIII of Directive

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<sup>4</sup> The text displayed here corresponds to Article 27 of Decision 2011/02/MC-EnC.

<sup>5</sup> Procedural Act 01/2012/PHLG-EnC of Permanent High Level Group of 21 June 2012 laying down the rules governing the adoption of Guidelines and Network Codes in the Energy Community was adopted on 21 June 2012, see page 803.

<sup>6</sup> As adopted by the Permanent High Level Group under Procedural Act 01/2012/PHLG-EnC.



2009/73/EC.

### **Article 25**

#### **Provision of information**

**Contracting Parties** and the regulatory authorities shall, on request, provide to the **Energy Community Secretariat** all information necessary for the purposes of Article 23.<sup>7</sup>

The **Energy Community Secretariat** shall set a reasonable time limit within which the information is to be provided, taking into account the complexity of the information required and the urgency with which the information is needed.

### **Article 26**

#### **Right of Contracting Parties to provide for more detailed measures**

This Regulation shall be without prejudice to the rights of **Contracting Parties** to maintain or introduce measures that contain more detailed provisions than those set out herein or in the Guidelines referred to in Article 23.<sup>8</sup>

### **Article 27**

#### **Penalties<sup>9</sup>**

**1. Contracting Parties shall lay down rules on penalties applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that those provisions are implemented. The penalties provided for must be effective, proportionate and dissuasive. Contracting Parties shall notify these provisions to the Secretariat by 1 January 2015 and shall notify the Secretariat without delay of any subsequent amendment affecting them.**

2. Penalties provided for pursuant to paragraph 1 shall not be of a criminal law nature.

### **Article 28**

#### **Committee procedure**

<...>

<sup>7</sup> As adopted by the Permanent High Level Group under Procedural Act 01/2012/PHLG-EnC.

<sup>8</sup> As adopted by the Permanent High Level Group under Procedural Act 01/2012/PHLG-EnC.

<sup>9</sup> As adapted by Article 19 of Decision 2011/02/MC-EnC.

## **Article 29**

### **Secretariat report<sup>10</sup>**

**1. The Secretariat shall monitor and review application of this Decision in the Contracting Parties.**

**2. The Secretariat shall submit an overall progress report to the Ministerial Council for the first time by 30 June 2012, and thereafter on an annual basis. The progress report shall reflect the progress made on creating a complete and fully operational internal market in electricity and gas and the obstacles that remain in this respect, including aspects of market dominance, market concentration, predatory or anti-competitive behaviour and the effect thereof in terms of market distortion. It shall in particular consider:**

- the implementation by each Contracting Party of the provisions on unbundling, certification and on independence of the national regulatory authorities and application of these provisions in practice,**
- the existence of non-discriminatory network access,**
- effective regulation,**
- the development of interconnection infrastructure and the security of supply situation in the Energy Community,**
- the extent to which the full benefits of the opening of markets are accruing to small enterprises and household customers, notably with respect to public service and universal service standards,**
- the extent to which markets are in practice open to effective competition, including aspects of market dominance, market concentration and predatory or anti-competitive behaviour,**
- the extent to which customers are actually switching suppliers and renegotiating tariffs,**
- price developments, including supply prices, in relation to the degree of opening of the markets, and**
- the experience gained from application of this Decision as far as effective independence of system operators in vertically integrated undertakings is concerned and whether other measures in addition to functional independence and separation of accounts have been developed which have effects equivalent to legal unbundling.**

**3. The Secretariat shall present a report to the Ministerial Council for the first time by 30 June 2012, and thereafter on an annual basis, summarising the opinions issued by the Secretariat in application of the acts referred to in Article 1, as adapted by this Decision.**

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<sup>10</sup> The text displayed here corresponds to Article 31 of Decision 2011/02/MC-EnC.

### **Article 30**

#### **Derogations and exemptions**

This Regulation shall not apply to:

(a) <...><sup>11</sup>

(b) major new infrastructure, i.e. interconnectors, LNG and storage facilities, and significant increases of capacity in existing infrastructure and modifications of such infrastructure which enable the development of new sources of gas supply referred to in Article 36(1) and (2) of Directive 2009/73/EC which are exempt from the provisions of Articles 9, 14, 32, 33, 34 or Article 41(6), (8) and (10) of that Directive as long as they are exempt from the provisions referred to in this subparagraph, with the exception of Article 19(4) of this Regulation; or

(c) natural gas transmission systems which have been granted derogations under Article 48 of Directive 2009/73/EC.

<...><sup>12</sup>

### **Article 31**

#### **Repeal**

<...>

### **Article 32<sup>13</sup>**

#### **Entry into force**

**This Decision [2011/02/MC-EnC] enters into force upon its adoption and is addressed to the Contracting Parties.**

#### **Article 3 of Decision 2011/02/MC-EnC**

**Each Contracting Party shall bring into force the laws, regulations and administrative provisions necessary to comply with <...> Regulation (EC) 715/2009, as adapted by this Decision, by 1 January 2015.<sup>14</sup> They shall forthwith inform the Energy Community Secretariat thereof.**

<...>

**The Contracting Parties shall communicate to the Energy Community Secretariat the text of the main provisions of national law which they adopt in the field covered by this Decision.**

<sup>11</sup> Not applicable in accordance with Article 24(4) of Decision 2011/02/MC-EnC.

<sup>12</sup> Not applicable in accordance with Article 24(4) of Decision 2011/02/MC-EnC.

<sup>13</sup> The text displayed here corresponds to Article 32 of Decision 2011/02/MC-EnC.

<sup>14</sup> In accordance with the Accession Protocol, the corresponding date for Georgia, is 31 December 2020.

## **ANNEX I TO REGULATION (EC) NO 715/2009 ON CONDITIONS FOR ACCESS TO THE NATURAL GAS TRANSMISSION NETWORKS AS AMENDED BY COMMISSION DECISION (EU) 2012/490 OF 24 AUGUST 2012 AND COMMISSION DECISION (EU) 2015/715 OF 30 APRIL 2015**

Incorporated and adapted by Ministerial Council Decision 2011/02/MC-EnC of 6 October 2011 and Permanent High Level Group Decision 2018/01/PHLG-EnC of 12 January 2018

Amendments to Annex I to Regulation (EC) No 715/2009 incorporated by Permanent High Level Group Decision 2018/01/PHLG-EnC are highlighted in **bold**. The adaptations made by to Annex I to Regulation 715/ 2009 by Decision 2018/01/PHLG-EnC are highlighted in **bold and blue**.<sup>15</sup>

### GUIDELINES ON

#### 1. THIRD-PARTY ACCESS SERVICES CONCERNING TRANSMISSION SYSTEM OPERATORS

1. Transmission system operators shall offer firm and interruptible services down to a minimum period of one day.
2. Harmonised transport contracts and common network codes shall be designed in a manner that facilitates trading and re-utilisation of capacity contracted by network users without hampering capacity release.
3. Transmission system operators shall develop network codes and harmonised contracts following proper consultation with network users.
4. Transmission system operators shall implement standardised nomination and re-nomination procedures. They shall develop information systems and electronic communication means to provide adequate data to network users and to simplify transactions, such as nominations, capacity contracting and transfer of capacity rights between network users.
5. Transmission system operators shall harmonise formalised request procedures and response times according to best industry practice with the aim of minimising response times. They shall provide for online screen-based capacity booking and confirmation systems and nomination and re-nomination procedures no later than 1 January 2010 after consultation with the relevant network users.
6. Transmission system operators shall not separately charge network users for information requests and transactions associated with their transport contracts and which are carried out according to standard rules and procedures.
7. Information requests that require extraordinary or excessive expenses such as feasibility studies may be charged separately, provided the charges can be duly substantiated.
8. Transmission system operators shall cooperate with other transmission system operators in coordinating the maintenance of their respective networks in order to minimise any disruption of transmission services to network users and transmission system operators in other areas and in order to ensure equal benefits with respect to security of supply including in relation to transit.

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<sup>15</sup> According to Article 1(1) of Decision 2018/01/PHLG-EnC each Contracting Party shall transpose the amendments into national legislation no later than 1 October 2018.

9. Transmission system operators shall publish at least annually, by a predetermined deadline, all planned maintenance periods that might affect network users' rights from transport contracts and corresponding operational information with adequate advance notice. This shall include publishing on a prompt and non-discriminatory basis any changes to planned maintenance periods and notification of unplanned maintenance, as soon as that information becomes available to the transmission system operator. During maintenance periods, transmission system operators shall publish regularly updated information on the details of and expected duration and effect of the maintenance.

10. Transmission system operators shall maintain and make available to the competent authority upon request a daily log of the actual maintenance and flow disruptions that have occurred. Information shall also be made available on request to those affected by any disruption.

## 2. PRINCIPLES OF CAPACITY-ALLOCATION MECHANISMS AND CONGESTION-MANAGEMENT PROCEDURES CONCERNING TRANSMISSION SYSTEM OPERATORS AND THEIR APPLICATION IN THE EVENT OF CONTRACTUAL CONGESTION

### 2.1. Principles of capacity-allocation mechanisms and congestion-management procedures concerning transmission system operators

1. Capacity-allocation mechanisms and congestion-management procedures shall facilitate the development of competition and liquid trading of capacity and shall be compatible with market mechanisms including spot markets and trading hubs. They shall be flexible and capable of adapting to evolving market circumstances.

2. Those mechanisms and procedures shall take into account the integrity of the system concerned as well as security of supply.

3. Those mechanisms and procedures shall neither hamper the entry of new market participants nor create undue barriers to market entry. They shall not prevent market participants, including new market entrants and companies with a small market share, from competing effectively.

4. Those mechanisms and procedures shall provide appropriate economic signals for efficient and maximum use of technical capacity and facilitate investment in new infrastructure.

5. Network users shall be advised about the type of circumstance that could affect the availability of contracted capacity. Information on interruption should reflect the level of information available to the transmission system operator.

6. Should difficulties in meeting contractual delivery obligations arise due to system integrity reasons, transmission system operators should notify network users and seek a non-discriminatory solution without delay.

Transmission system operators shall consult network users regarding procedures prior to their implementation and agree them with the regulatory authority.

### 2.2. Congestion management procedures in the event of contractual congestion

#### **2.2.1. General Provisions**

**1. The provisions of point 2.2 shall apply to interconnection points between adjacent entry-exit systems, irrespective of whether they are physical or virtual, between two or more**

**Contracting Parties** or within the same **Contracting Party** in so far as the points are subject to booking procedures by users **and subject to the decision of the relevant Contracting Party's national regulatory authority**. They may also apply to entry points from and exit points to third countries, subject to the decision of the relevant national regulatory authority. Exit points to end-consumers and distribution networks, entry points from LNG terminals and production facilities, and entry-exit points from and to storage facilities are not subject to the provisions of point 2.2.<sup>16</sup>

2. On the basis of the information published by the transmission system operators pursuant to Section 3 of this Annex and, where appropriate, validated by national regulatory authorities, **the Energy Community Regulatory Board** shall publish by **1 June** of every year, commencing with the year **2020**, a monitoring report on congestion at interconnection points with respect to firm capacity products sold in the preceding year, taking into consideration to the extent possible capacity trading on the secondary market and the use of interruptible capacity.<sup>17</sup>

3. Any additional capacity made available through the application of one of the congestion-management procedures as provided for in points 2.2.2, 2.2.3, 2.2.4 and 2.2.5 shall be offered by the respective transmission system operator(s) in the regular allocation process.

4. The measures provided for in points 2.2.2, 2.2.4 and 2.2.5 shall be implemented as of 1 October **2018**. Points 2.2.3(1) to 2.2.3(5) shall apply as of 1 July **2020**.<sup>18</sup>

### *2.2.2. Capacity increase through oversubscription and buy-back scheme*

1. Transmission system operators shall propose and, after approval by the national regulatory authority, implement an incentive-based oversubscription and buy-back scheme in order to offer additional capacity on a firm basis. Before implementation, the national regulatory authority shall consult with the national regulatory authorities of adjacent **Contracting Parties and the Member States of the European Union** and take account of the adjacent national regulatory authorities' opinions. Additional capacity is defined as the firm capacity offered in addition to the technical capacity of an interconnection point calculated on the basis of Article 16(1) of this Regulation.<sup>19</sup>

2. The oversubscription and buy-back scheme shall provide transmission system operators with an incentive to make available additional capacity, taking account of the technical conditions, such as the calorific value, temperature and expected consumption, of the relevant entry-exit system and the capacities in adjacent networks. Transmission system operators shall apply a dynamic approach with regard to the recalculation of the technical or additional capacity of the entry-exit system.

3. The oversubscription and buy-back scheme shall be based on an incentive regime reflecting the risks of transmission system operators in offering additional capacity. The scheme shall

<sup>16</sup> As adapted by Article 3(1) of Decision 2018/01/PHLG-EnC.

<sup>17</sup> As adapted by Article 3(2) of Decision 2018/01/PHLG-EnC.

<sup>18</sup> As adapted by Article 3(3) and (4) of Decision 2018/01/PHLG-EnC.

<sup>19</sup> As adapted by Article 3(5) of Decision 2018/01/PHLG-EnC.

be structured in such a way that revenues from selling additional capacity and costs arising from the buy-back scheme or measures pursuant to paragraph 6 are shared between the transmission system operators and the network users. National regulatory authorities shall decide on the distribution of revenues and costs between the transmission system operator and the network user.

4. For the purpose of determining transmission system operators' revenues, technical capacity, in particular surrendered capacity as well as, where relevant, capacity arising from the application of firm day-ahead use-it-or-lose-it and long term use-it-or-lose-it mechanisms, shall be considered to be allocated prior to any additional capacity.

5. In determining the additional capacity, the transmission system operator shall take into account statistical scenarios for the likely amount of physically unused capacity at any given time at interconnection points. It shall also take into account a risk profile for offering additional capacity which does not lead to excessive buy-back obligation. The oversubscription and buy-back scheme shall also estimate the likelihood and the costs of buying back capacity on the market and reflect this in the amount of additional capacity to be made available.

6. Where necessary to maintain system integrity, transmission system operators shall apply a market-based buy-back procedure in which network users can offer capacity. Network users shall be informed about the applicable buy-back procedure. The application of a buy-back procedure is without prejudice to the applicable emergency measures.

7. Transmission system operators shall, before applying a buy-back procedure, verify whether alternative technical and commercial measures can maintain system integrity in a more cost-efficient manner.

8. When proposing the oversubscription and buy-back scheme the transmission system operator shall provide all relevant data, estimates, and models to the national regulatory authority in order for the latter to assess the scheme. The transmission system operator shall regularly report to the national regulatory authority on the functioning of the scheme and, upon request of the national regulatory authority, provide all relevant data. The national regulatory authority may request the transmission system operator to revise the scheme.

### *2.2.3. Firm day-ahead use-it-or-lose-it mechanism*

1. National regulatory authorities shall require transmission system operators to apply at least the rules laid down in paragraph 3 per network user at interconnection points with respect to altering the initial nomination if, on the basis of the yearly monitoring report of the Energy Community Regulatory Board in accordance with point 2.2.1(2), it is shown that at interconnection points demand exceeded offer, at the reserve price when auctions are used, in the course of capacity allocation procedures in the year covered by the monitoring report for products for use in either that year or in one of the subsequent two years,

- (a) for at least three firm capacity products with a duration of one month or
- (b) for at least two firm capacity products with a duration of one quarter or
- (c) for at least one firm capacity product with a duration of one year or more or
- (d) where no firm capacity product with a duration of one month or more has been offered.

2. If, on the basis of the yearly monitoring report, it is shown that a situation as defined in paragraph 1 is unlikely to reoccur in the following three years, for example as a result of capacity becoming available from physical expansion of the network or termination of long-term contracts, the relevant national regulatory authorities may decide to terminate the firm day-ahead use-it-or-lose-it mechanism.

3. Firm renomination is permitted up to 90% and down to 10% of the contracted capacity by the network user at the interconnection point. However, if the nomination exceeds 80% of the contracted capacity, half of the non-nominated volume may be renominated upwards. If the nomination does not exceed 20% of the contracted capacity, half of the nominated volume may be renominated downwards. The application of this paragraph is without prejudice to the applicable emergency measures.

4. The original holder of the contracted capacity may renominate the restricted part of its contracted firm capacity on an interruptible basis.

5. Paragraph 3 shall not apply to network users - persons or undertakings and the undertakings they control pursuant to Article 3 of Regulation (EC) No 139/2004 - holding less than 10% of the average technical capacity in the preceding year at the interconnection point.

6. On interconnection points where a firm day-ahead use-it-or-lose-it mechanism in accordance with paragraph 3 is applied, an evaluation of the relationship with the oversubscription and buy-back scheme pursuant to point 2.2.2 shall be carried out by the national regulatory authority, which may result in a decision by the national regulatory authority not to apply the provisions of point 2.2.2 at those interconnection points. Such a decision shall be notified, without delay, to the [Energy Community Regulatory Board](#).

7. A national regulatory authority may decide to implement a firm day-ahead use-it-or-lose-it mechanism pursuant to paragraph 3 on an interconnection point. Before adopting its decision, the national regulatory authority shall consult with the national regulatory authorities of adjacent [Contracting Parties and the Member States of the European Union](#). In adopting its decision the national regulatory authority shall take account of the adjacent national regulatory authorities' opinions.<sup>20</sup>

#### **2.2.4. Surrender of contracted capacity**

Transmission system operators shall accept any surrender of firm capacity which is contracted by the network user at an interconnection point, with the exception of capacity products with a duration of a day and shorter. The network user shall retain its rights and obligations under the capacity contract until the capacity is reallocated by the transmission system operator and to the extent the capacity is not reallocated by the transmission system operator. Surrendered capacity shall be considered to be reallocated only after all the available capacity has been allocated. The transmission system operator shall notify the network user without delay of any reallocation of its surrendered capacity. Specific terms and conditions for surrendering capacity, in particular for cases where several network users surrender their capacity, shall be approved by the national regulatory authority.

<sup>20</sup> As adapted by Article 3(6) of Decision 2018/01/PHLG-EnC.



### **2.2.5. Long-term use-it-or-lose-it mechanism**

1. National regulatory authorities shall require transmission system operators to partially or fully withdraw systematically underutilised contracted capacity on an interconnection point by a network user where that user has not sold or offered under reasonable conditions its unused capacity and where other network users request firm capacity. Contracted capacity is considered to be systematically underutilised in particular if:

(a) the network user uses less than on average 80% of its contracted capacity both from 1 April until 30 September and from 1 October until 31 March with an effective contract duration of more than one year for which no proper justification could be provided; or

(b) the network user systematically nominates close to 100% of its contracted capacity and renominates downwards with a view to circumventing the rules laid down in point 2.2.3(3).

2. The application of a firm day-ahead use-it-or-lose-it mechanism shall not be regarded as justification to prevent the application of paragraph 1.

3. Withdrawal shall result in the network user losing its contracted capacity partially or completely for a given period or for the remaining effective contractual term. The network user shall retain its rights and obligations under the capacity contract until the capacity is reallocated by the transmission system operator and to the extent the capacity is not reallocated by the transmission system operator.

4. Transmission system operators shall regularly provide national regulatory authorities with all the data necessary to monitor the extent to which contracted capacities with effective contract duration of more than one year or recurring quarters covering at least two years are used.

3. DEFINITION OF THE TECHNICAL INFORMATION NECESSARY FOR NETWORK USERS TO GAIN EFFECTIVE ACCESS TO THE SYSTEM, THE DEFINITION OF ALL RELEVANT POINTS FOR TRANSPARENCY REQUIREMENTS AND THE INFORMATION TO BE PUBLISHED AT ALL RELEVANT POINTS AND THE TIME SCHEDULE ACCORDING TO WHICH THAT INFORMATION SHALL BE PUBLISHED

3.1. Definition of the technical information necessary for network users to gain effective access to the system

#### **3.1.1. Form of publication**

(1) Transmission system operators (TSOs) shall provide all information referred to under paragraph 3.1.2 and paragraph 3.3(1) to 3.3(5) in the following manner:

(a) on a website accessible to the public, free of charge and without any need to register or otherwise sign on with the transmission system operator;

(b) on a regular/rolling basis; the frequency shall be according to the changes that take place and the duration of the service;

(c) in a user-friendly manner;

(d) in a clear, quantifiable, easily accessible way and on a non-discriminatory basis;

(e) in a downloadable format that **has been agreed between transmission system operators and the national regulatory authorities on the basis of an opinion on a harmonised format**

that shall be provided by the **Energy Community Regulatory Board** and that allows for quantitative analyses;

(f) in consistent units, in particular kWh (with a combustion reference temperature of 298,15 K) shall be the unit for energy content and m<sup>3</sup> (at 273,15 K and 1,01325 bar) shall be the unit for volume. The constant conversion factor to energy content shall be provided. In addition to the format above, publication in other units is also possible;

(g) in the official language(s) of the Energy Community Contracting Party and in English.<sup>21</sup>

**(h) all data shall be made available as of 1 October 2018 on the <...> central platform, established by ENTSOG on a cost-efficient basis.**<sup>22</sup>

(2) Transmission system operators shall provide details on actual changes to all information referred to under paragraph 3.1.2 and paragraph 3.3(1) to 3.3(5) in a timely manner as soon as available to them.

### 3.1.2. Content of publication

Transmission system operators shall publish at least the following information about their systems and services:

(a) a detailed and comprehensive description of the different services offered and their charges;

(b) the different types of transportation contracts available for these services;

(c) the network code and/or the standard conditions outlining the rights and responsibilities of all network users including:

1. harmonised transportation contracts and other relevant documents;

2. if relevant for access to the system, for all relevant points as defined in paragraph 3.2 of this Annex, a specification of relevant gas quality parameters, including at least the gross calorific value and the Wobbe index, and the liability or costs of conversion for network users in case gas is outside these specifications;

3. if relevant for access to the system, for all relevant points information on pressure requirements;

4. the procedure in the event of an interruption of interruptible capacity, including, where applicable, the timing, extent, and ranking of individual interruptions (for example pro-rata or first-come-last-interrupted);

(d) the harmonised procedures applied when using the transmission system, including the definition of key terms;

(e) provisions on capacity allocation, congestion management and anti-hoarding and reutilisation procedures;

(f) the rules applicable for capacity trade on the secondary market vis-à-vis the transmission system operator;

(g) rules on balancing and methodology for the calculation of imbalance charges;

(h) if applicable, the flexibility and tolerance levels included in transportation and other services without

<sup>21</sup> As adapted by Article 4(1) litera (a) of Decision 2011/02/MC-EnC.

<sup>22</sup> As adapted by Article 3(7) and (8) of Decision 2018/01/PHLG-EnC.

separate charge, as well as any flexibility offered in addition to this and the corresponding charges;

(i) a detailed description of the gas system of the transmission system operator and its relevant points of interconnection as defined in paragraph 3.2 of this Annex as well as the names of the operators of the interconnected systems or facilities;

(j) the rules applicable for connection to the system operated by the transmission system operator;

(k) information on emergency mechanisms, as far as it is the responsibility of the transmission system operator, such as measures that can lead to the disconnection of customers groups and other general liability rules that apply to the transmission system operator;

(l) procedures agreed upon by transmission system operators at interconnection points, of relevance for access of network users to the transmission systems concerned, relating to interoperability of the network, agreed procedures on nomination and matching procedures and other agreed procedures that set out provisions in relation to gas flow allocations and balancing, including the methods used;

(m) transmission system operators shall publish a detailed and comprehensive description of the methodology and process, including information on the parameters employed and the key assumptions, used to calculate the technical capacity.

### 3.2. Definition of all relevant points for transparency requirements

(1) Relevant points shall include at least:

(a) all entry and exit points to and from a transmission network operated by a transmission system operator with the exception of exit points connected to a single final customer, and with the exception of entry points linked directly to a production facility of a single producer that is located within the Energy Community;

(b) all entry and exit points connecting balancing zones of transmission system operators;

(c) all points connecting the network of a transmission system operator with an LNG terminal, physical gas hubs, storage and production facilities, unless these production facilities are exempted under (a);

(d) all points connecting the network of a given transmission system operator to infrastructure necessary for providing ancillary services as defined by Article 2(14) of Directive 2009/73/EC.

(2) Information for single final customers and for production facilities, that is excluded from the definition of relevant points as described under 3.2(1)(a), shall be published in aggregate format, at least per balancing zone. The aggregation of single final customers and of production facilities, excluded from the definition of relevant points as described under 3.2(1)(a), shall for the application of this Annex be considered as one relevant point.

(3) Where points between two or more transmission operators are managed solely by the transmission operators concerned, with no contractual or operational involvement of system users whatsoever, or where points connect a transmission system to a distribution system and there is no contractual congestion at these points, transmission system operators shall be exempted for these points from the obligation to publish the requirements under paragraph 3.3 of this Annex. The national regulatory authority may require the transmission system operators to publish the requirements under paragraph 3.3 of this Annex for groups or all of the exempted points. In such case, the information, if available to the TSO, shall be published in an aggregated form at a meaningful level, at least per

balancing zone. This aggregation of these points shall for the application of this annex be considered as one relevant point.

3.3. Information to be published at all relevant points and the time schedule according to which that information should be published

(1) At all relevant points, transmission system operators shall publish the information as listed in paragraphs (a) to (g), for all services and ancillary services provided (in particular information on blending, ballasting and conversion). This information shall be published on a numerical basis, in hourly or daily periods, equal to the smallest reference period for capacity booking and (re-)nomination and the smallest settlement period for which imbalance charges are calculated. If the smallest reference period is different from a daily period, information as listed in paragraphs (a) to (g) shall be made available also for the daily period. This information and updates shall be published as soon as available to the system operator ("near real time").

(a) the maximum technical capacity for flows in both directions;

(b) the total contracted firm and interruptible capacity in both directions;

(c) the nominations and re-nominations in both directions;

(d) the available firm and interruptible capacity in both directions;

(e) actual physical flows;

(f) planned and actual interruption of interruptible capacity;

(g) planned and unplanned interruptions to firm services as well as the information on restoration of the firm services (in particular, maintenance of the system and the likely duration of any interruption due to maintenance). Planned interruptions shall be published at least 42 days in advance.

**(h) occurrence of unsuccessful, legally valid requests for firm capacity products with a duration of one month or longer including the number and volume of the unsuccessful requests; and**

**(i) in the case of auctions, where and when firm capacity products with a duration of one month or longer have cleared at prices higher than the reserve price;**

**(j) where and when no firm capacity product with a duration of one month or longer has been offered in the regular allocation process;**

**(k) total capacity made available through the application of the congestion-management procedures laid down in points 2.2.2, 2.2.3, 2.2.4 and 2.2.5 per applied congestion-management procedure;**

**(l) points (h) to (k) shall apply from 1 October 2018.**<sup>23</sup>

(2) At all relevant points, the information under paragraph 3.3(1)(a), (b) and (d) shall be published for a period of at least 24 months ahead.

(3) At all relevant points, transmission system operators shall publish historical information on the requirements of paragraph 3.3(1)(a) to (g) for the past 5 years on a rolling basis.

<sup>23</sup> As adapted by Article 3(9) of Decision 2018/01/PHLG-EnC.

(4) Transmission system operators shall publish measured values of the gross calorific value or the Wobbe index at all relevant points, on a daily basis. Preliminary figures shall be published at the latest 3 days following the respective gas day. Final figures shall be published within 3 months after the end of the respective month.

(5) For all relevant points, transmission system operators shall publish available capacities, booked and technical capacities, on an annual basis over all years where capacity is contracted plus 1 year, and at least for the next 10 years. This information shall be updated at least every month or more frequently, if new information becomes available. The publication shall reflect the period for which capacity is offered to the market.

### 3.4. Information to be published regarding the transmission system and the time schedule according to which this information should be published

(1) Transmission system operators shall ensure the publication on a daily basis and updated every day the aggregated amounts of capacities offered, and contracted on the secondary market (i.e. sold from one network user to another network user), where the information is available to the TSO. This information shall include the following specifications:

- (a) interconnection point where the capacity is sold;
- (b) type of capacity, i.e. entry, exit, firm, interruptible;
- (c) quantity and duration of the capacity usage rights;
- (d) type of sale, e.g. transfer or assignment;
- (e) the total number of trades/transfers;
- (f) any other conditions known to the transmission system operator as mentioned in 3.3.

In so far such information is provided by a third party, transmission system operators shall be exempted from this provision.

(2) Transmission system operators shall publish harmonised conditions under which capacity transactions (e.g. transfers and assignments) will be accepted by them. These conditions must at least include:

- (a) a description of standardised products which can be sold on the secondary market;
- (b) lead time for the implementation/acceptation/registration of secondary trades. In case of delays the reasons have to be published;
- (c) the notification to the transmission system operator by the seller or the third party as referred to under 3.4(1) about name of seller and buyer and capacity specifications as outlined in 3.4(1).

In so far such information is provided by a third party, transmission system operators shall be exempted from this provision.

(3) Regarding the balancing service of its system, each transmission system operator shall provide to each network user, for each balancing period, its specific preliminary imbalance volumes and cost data per individual network user, at the latest 1 month after the end of the balancing period. Final data of customers supplied according to standardised load profiles may be provided up to 14 months later. In so far such information is provided by a third party, transmission system operators shall be exempted from this provision. The provision of this information shall respect confidentiality of commercially sensitive information.

(4) Where flexibility services, other than tolerances, are offered for third party access, transmission system operators shall publish daily forecasts on a day-ahead basis of the maximum amount of flexibility, the booked level of flexibility and the availability of flexibility for the market for the next gas day. The transmission system operator shall also publish *ex-post* information on the aggregate utilisation of every flexibility service at the end of each gas day. If the national regulatory authority is satisfied that such information could give room to potential abuse by network users, it may decide to exempt the transmission system operator from this obligation.

(5) Transmission system operators shall publish, per balancing zone, the amount of gas in the transmission system at the start of each gas day and the forecast of the amount of gas in the transmission system at the end of each gas day. The forecast amount of gas for the end of the gas day shall be updated on an hourly basis throughout the gas day. If imbalance charges are calculated on an hourly basis, the transmission system operator shall publish the amount of gas in the transmission system on an hourly basis. Alternatively, transmission system operators shall publish, per balancing zone, the aggregate imbalance position of all users at the start of each balancing period and the forecast of the aggregated imbalance position of all users at the end of each gas day. If the national regulatory authority is satisfied that such information could give room to potential abuse by network users, it may decide to exempt the transmission system operator from this obligation.

(6) Transmission system operators shall provide user-friendly instruments for calculating tariffs.

(7) Transmission system operators shall keep at the disposal of the relevant national authorities, for at least 5 years, effective records of all capacity contracts and all other relevant information in relation to calculating and providing access to available capacities, in particular individual nominations and interruptions. Transmission system operators must keep documentation of all relevant information under point 3.3(4) and (5) for at least 5 years and make them available to the regulatory authority upon request. Both parties shall respect commercial confidentiality.

