

S T A R L I N G E R . M A Y E R

Rechtsanwälte . Attorneys at Law

5th Vienna Forum on European Energy Law
Roundtable Discussion Gas Market Developments

Gas Network Codes

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Our Firm at a Glance

- Modern, service-oriented business law firm
- Focus on energy, competition and dispute resolution
- More than 20 years of direct insights into the energy industry
- Efficient team of senior experts who have worked together for more than 10 years; junior staff is added where helpful and efficient
- Extensive experience: in EU-energy law and in the gas sector as both external lawyer and in-house counsel with disputes related to long-term contracts (transportation, storage, supply)
- Numerous ICC and VIAC arbitrations in the energy sector along the entire supply chain
- Experts in regulatory issues
- Excellent network in the Austrian and European energy landscape

Network Codes Gas

Agenda:

- Short overview on legal basis
- Current Status of Network Codes Gas
- Implementation of Network Codes Gas – are the objectives already achieved?
- Implementation of Network Codes Gas – possible obstacles
- Latest developments, new requirements
 - NC CAM (2017)
 - NC TAR (2017)

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Short overview on legal basis:

- **Long list of possible network codes** included in Art. 8 Regulation (EU) 715/2009:
 - network security and reliability rules; network connection rules; third-party access rules; data exchange and settlement rules; interoperability rules; operational procedures in an emergency; capacity-allocation and congestion-management rules; rules for trading related to technical and operational provision of network access services and system balancing; transparency rules; balancing rules including network-related rules on nominations procedure, rules for imbalance charges and rules for operational balancing between transmission system operators' systems; rules regarding harmonised transmission tariff structures; and energy efficiency regarding gas networks
- The network codes shall be developed for cross-border network and market integration issues taking, if appropriate, regional special characteristics into account and **shall be without prejudice to the Member States' right to establish national network codes which do not affect cross-border trade.**
- Network codes should contribute to non-discrimination, effective competition and the efficient functioning of the market.
- Network codes are to be developed by ENTSOG as per priority list of the EU Commission, adhering to guidelines of the EU Commission, checked by ACER and – as experience shows – very much revised by the EU Commission after receipt of the draft codes and afterwards approved and passed by way of the comitology procedure.

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Current Status of Network Codes Gas:

- Commission Regulation (EU) 312/2014 of 26 March 2014 establishing a **Network Code on Gas Balancing of Transmission Networks**, OJ L 2014/91, 15.
- Commission Regulation (EU) 2015/703 of 30 April 2015 establishing a **Network Code on Interoperability and Data Exchange Rules**, OJ L 2015/113, 13.
- Commission Regulation (EU) 2017/460 of 16 March 2017 establishing a **Network Code on Harmonized Transmission Tariff Structures** for gas, OJ L 2017/72, 29.
- 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) 984/2013, OJ L 2017/72, 1.
- According to the Commission Implementing Decision (EU) 2017/89 of 17 January 2017 on the establishment of the annual priority lists for 2017 for the development of network codes and guidelines **no new network codes are in the pipeline.**

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Implementation of Network Codes Gas – are the objectives already achieved?

- ACER report on “Barriers to gas wholesale trading” published on 10 April 2017 finds that **market participants are still experiencing barriers to EU gas wholesale market trading**:
 - Identified significant barriers include:
 - The lack or weak harmonisation between adjacent systems, particularly in relation to the level of technical capacity, the bundled and unbundled capacity on offer, the capacity contracts and tariffs up- and downstream of the border as well as some operational issues (e.g. gas day definition).
- Implementation is mainly the obligation of the TSOs under the monitoring and subject to decisions of national regulatory authorities:
 - Under the existing Network Codes Gas **national regulatory authorities** have been entrusted with **more than 70 different decision making powers** regarding implementation.

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Implementation of Network Codes Gas – possible obstacles:

- Implementation often takes needs and objectives of individual Member States into account:
 - Example recent resolution of Hungarian Regulatory Authority, dated 3 March 2017, No. 1858/2017:
 - With this resolution the authority prohibited the Hungarian TSOs to offer capacities on booking platforms concerning to the certain interconnection points for the gas year starting on 1st October 2019 and the following years, on the capacity auction due on 6 March 2017 based on Article 8 (9) of NC CAM which - according to the reasoning of this resolution - allows the authority to set aside higher shares of capacity with a shorter duration to avoid foreclosure of downstream supply markets.
 - Market participants had to adapt to this new situation on very short notice (3 days !!!!!).
 - no prior consultation with adjacent TSOs or regulatory authorities of adjacent Member States.
- Possible remedies are limited:
 - Pursuant to Article 7 paragraph 4 Regulation (EC) 713/2009 a regulatory authority may ask ACER for an opinion, based on matters of fact, on whether a decision taken by another regulatory authority complies with the guidelines referred to in Directive 2009/72/EC, Directive 2009/73/EC, Regulation (EC) 714/2009, and Regulation (EC) 715/2009 or with other relevant provisions of those Directives or Regulations or may inform the European Commission when it considers that a decision concerning cross-border trade issued by another regulatory authority is not in line with the aforementioned guidelines.

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Implementation of Network Codes Gas – possible obstacles:

- Implementation of Network Codes **require** in numerous cases an **agreement between TSOs active in different Member States**, who are subject to different national laws and under the supervision of different **national regulatory authorities** and **take also national needs and objectives into account** .
- Example Auctioning Platforms:
 - PRISMA was agreed as joint platform by almost any TSO; the Polish and the Hungarian TSOs established their own independent platforms in line with the respective obligations under the NC CAM.
- Example Bundled Capacities:
 - Network Access Contracts are governed by the respective national laws also in case of auctioning of cross-border capacities in a bundled way.
 - Due to different regulatory requirements or different civil laws, the contracts to be concluded between the shipper and the respective up- and downstream TSO at a cross-border interconnection point may develop differently over time .

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Latest developments, new requirements:

- NC CAM (2017) What is new?
 - Establishment of principles based on which market participants can request **incremental capacity** and apply for its allocation.
 - Amendments to rules of allocating existing capacities:
 - **New dates** of annual and quarterly **auctions**.
 - **Interruptible capacity** shall only be allocated if no firm capacity is available.
 - Clarifications regarding offering of bundled capacity:
 - Start of **project to harmonise**, if possible, the **important terms and conditions** in network access contracts for bundled capacity products.

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Latest developments, new requirements:

- NC TAR (2017)
 - Increased **transparency** of transmission tariff structures and the procedures of establishing them.
 - Requirements for **publishing the information** related to the determination of the revenues of transmission system operators and to the derivation of different transmission and non-transmission tariffs.
 - A consistent and transparent reference price methodology should be set out and should undergo a **consultation** process.
 - Charging for transmission to and from **storage facilities** should be set with a discount acknowledging the general contribution to **system flexibility and security of supply** of such infrastructure.
 - In order to promote **security of supply**, the granting of discounts should be considered for entry points from **LNG facilities** and at entry points from and exit points to infrastructure developed with the purpose of ending the isolation of Member States in respect of their gas transmission systems.

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