

## COMMISSION REGULATION (EU) 2017/460 of 16 March 2017 establishing a network code on harmonised transmission tariff structures for gas

Incorporated and adapted by Permanent High Level Group Decision 2018/07/PHLG-EnC of 28 November 2018.

*The adaptations made by Permanent High Level Group Decision 2018/07/PHLG-EnC are highlighted in **bold and blue**.*

Whereas:

(1) In line with Regulation (EC) No 715/2009, it is necessary to establish a network code on harmonised transmission tariff structures for gas, and set out the Union-wide rules which have the objectives of contributing to market integration, enhancing security of supply and promoting the interconnection between gas networks.

(2) A crucial step in reaching these objectives is to increase the transparency of transmission tariff structures and procedures towards setting them. Therefore, it is necessary to set out the 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. These requirements should enable network users to understand better the tariffs set for both transmission services and non-transmission services, as well as how such tariffs have changed, are set and may change. Additionally, network users should be able to understand the costs underlying transmission tariffs and to forecast transmission tariffs to a reasonable extent. The transparency requirements set out in this Regulation further harmonise the rule laid down in point 3.1.2(a) of Annex I to Regulation (EC) No 715/2009.

(3) After the introduction of the concept of the entry-exit system by Regulation (EC) No 715/2009, transmission costs are no longer directly associated to one specific route as entry and exit capacity can be contracted separately, and network users can have gas transported from any entry to any exit point. Under this framework, the transmission system operator decides the most efficient way of flowing gas through the system.

Hence, in order to achieve and ensure a reasonable level of cost reflectivity and predictability in such a system, transmission tariffs need to be based on a reference price methodology using specific cost drivers. The guiding principles in order to apply a consistent and transparent reference price methodology should be set out. The obligation to consult on the proposed reference price methodology should be laid down. Where the proposed reference price methodology is other than the capacity weighted distance reference price methodology, the latter should serve as a counterfactual for comparison with the proposed reference price methodology.

(4) In order to avoid double charging for transmission to and from storage facilities, this Regulation should set a minimum discount acknowledging the general contribution to system flexibility and security of supply of such infrastructure. Storage facilities with direct access to the transmission systems of two or more transmission system operators in directly connected entry-exit systems, or simultaneously to a transmission system and a distribution system allow for transporting gas between directly connected systems. Applying a discount at entry points from or exit points to storage facilities

in cases where storage facilities are used to transport gas between directly connected systems would benefit these network users compared to other network users booking capacity products without a discount at interconnection points or using storage facilities to transport gas within the same system. This Regulation should introduce mechanisms to avoid such discrimination.

(5) 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.

(6) Transmission system operators in certain entry-exit systems transport significantly more gas into other systems than for consumption into their own entry-exit system. Consequently, reference price methodologies should include safeguards required to shelter such captive customers from risks related to large transit flows.

(7) In order to promote stability of transmission tariffs for network users, to foster financial stability and to avoid detrimental effects on the revenue and cash flow positions of transmission system operators, principles for revenue reconciliation should be set out.

(8) In addition, rules should be set out on tariff principles for incremental capacity realised in a market-based manner according to the process set out in Articles 26 to 30 of Commission Regulation (EU) 2017/459. In case realisation of incremental capacity leads to a level of cross-subsidisation that cannot be justified, as captive customers would be exposed to a large share of the volume risk, this Regulation should introduce mechanisms to alleviate such risks.

(9) This Regulation should be applicable to the non-exempted part of major new infrastructures which have received an exemption pursuant to Article 36 of Directive 2009/73/EC of the European Parliament and of the Council from Article 41(6), (8) and (10) of that Directive. In cases where the specific nature of interconnectors has been acknowledged at European level by an exemption in accordance with Article 36 of Directive 2009/73/EC or by other means, national regulatory authorities should have the power to grant a derogation from requirements of this Regulation which would jeopardise the efficient operation of such interconnectors.

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

(11) National regulatory authorities and transmission system operators should have regard to best practices and endeavours to harmonise processes for the implementation of this Regulation. Acting in accordance with Article 7 of Regulation (EC) No 713/2009 of the European Parliament and of the Council, the Agency for the Cooperation of Energy Regulators and the national regulatory authorities should ensure that rules on harmonised transmission tariff structures for gas are implemented across the Union in the most effective way.

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

## CHAPTER I GENERAL PROVISIONS

### *Article 1*

#### **Subject matter**

This Regulation establishes a network code setting out the rules on harmonised transmission tariff structures for gas, including rules on the application of a reference price methodology, the associated consultation and publication requirements as well as the calculation of reserve prices for standard capacity products.

### *Article 2*

#### **Scope**

1. This Regulation shall apply to all entry points and all exit points of gas transmission networks with the exception of Chapters III, V, VI, Article 28, Article 31(2) and (3) and Chapter IX which shall apply only to interconnection points. Chapters III, V, VI, Article 28 and Chapter IX shall apply to entry points from third countries or exit points to third countries, or both, where the national regulatory authority takes a decision to apply Regulation (EU) 2017/459 at those points.

2. <...>

### *Article 3*

#### **Definitions**

For the purposes of this Regulation, the definitions in Article 2 of Regulation (EC) No 715/2009, Article 3 of **Commission** Regulation (EU) 2017/459, <...> , Article 2 of Commission Regulation (EU) 2015/703 as well as Article 2 of Directive 2009/73/EC shall apply. In addition, the following definitions shall apply:

- (1) 'reference price' means the price for a capacity product for firm capacity with a duration of one year, which is applicable at entry and exit points and which is used to set capacity-based transmission tariffs;
- (2) 'reference price methodology' means the methodology applied to the part of the transmission services revenue to be recovered from capacity-based transmission tariffs with the aim of deriving reference prices;
- (3) 'non-price cap regime' means a regulatory regime, such as the revenue cap, rate of return and cost plus regime, under which the allowed revenue for the transmission system operator is set in accordance with Article 41(6)(a) of Directive 2009/73/EC;
- (4) 'non-transmission services revenue' means the part of the allowed or target revenue which is recovered by non-transmission tariffs;

- (5) 'regulatory period' means the time period for which the general rules for the allowed or target revenue are set in accordance with Article 41(6)(a) of Directive 2009/73/EC;
- (6) 'transmission services revenue' means the part of the allowed or target revenue which is recovered by transmission tariffs;
- (7) 'transmission tariffs' means the charges payable by network users for transmission services provided to them;
- (8) 'intra-system network use' means transporting gas within an entry-exit system to customers connected to that same entry-exit system;
- (9) 'cross-system network use' means transporting gas within an entry-exit system to customers connected to another entry-exit system;
- (10) 'homogeneous group of points' means a group of one of the following types of points: entry interconnection points, exit interconnection points, domestic entry points, domestic exit points, entry points from storage facilities, exit points to storage facilities, entry points from liquefied natural gas facilities (hereinafter, referred to as 'LNG facilities'), exit points to LNG facilities and entry points from production facilities;
- (11) 'allowed revenue' means the sum of transmission services revenue and non-transmission services revenue for the provision of services by the transmission system operator for a specific time period within a given regulatory period which such transmission system operator is entitled to obtain under a non-price cap regime and which is set in accordance with Article 41(6)(a) of Directive 2009/73/EC;
- (12) 'transmission services' means the regulated services that are provided by the transmission system operator within the entry-exit system for the purpose of transmission;
- (13) 'non-transmission tariffs' means the charges payable by network users for non-transmission services provided to them;
- (14) 'target revenue' means the sum of expected transmission services revenue calculated in accordance with the principles set out in Article 13(1) of Regulation (EC) No 715/2009 and expected non-transmission services revenue for the provision of services by the transmission system operator for a specific time period within a given regulatory period under a price cap regime;
- (15) 'non-transmission services' means the regulated services other than transmission services and other than services **related to the balancing of the transmission network** that are provided by the transmission system operator;
- (16) 'multiplier' means the factor applied to the respective proportion of the reference price in order to calculate the reserve price for a non-yearly standard capacity product;
- (17) 'price cap regime' means a regulatory regime under which a maximum transmission tariff based on the target revenue is set in accordance with Article 41(6)(a) of Directive 2009/73/EC;
- (18) 'cost driver' means a key determinant of the transmission system operator's activity which is correlated to the costs of that transmission system operator, such as distance or technical capacity;
- (19) 'cluster of entry or exit points' means a homogeneous group of points or group of entry points or of exit points located within the vicinity of each other and which are considered as, respectively, one entry point or one exit point for the application of the reference price methodology;
- (20) 'flow scenario' means a combination of an entry point and an exit point which reflects the use of

the transmission system according to likely supply and demand patterns and for which there is at least one pipeline route allowing to flow gas into the transmission network at that entry point and out of the transmission network at that exit point, irrespective of whether the capacity is contracted at that entry point and that exit point;

(21) 'seasonal factor' means the factor reflecting the variation of demand within the year which may be applied in combination with the relevant multiplier;

(22) 'fixed payable price' means a price calculated in accordance with Article 24(b) where the reserve price is not subject to any adjustments;

(23) 'tariff period' means the time period during which a particular level of reference price is applicable, which minimum duration is one year and maximum duration is the duration of the regulatory period;

(24) 'regulatory account' means the account aggregating at least under- and over-recovery of the transmission services revenue under a non-price cap regime;

(25) 'auction premium' means the difference between the clearing price and the reserve price in an auction;

(26) 'floating payable price' means a price calculated in accordance with Article 24(a) where the reserve price is subject to adjustments such as revenue reconciliation, adjustment of the allowed revenue or adjustment of the forecasted contracted capacity.

#### **Article 4**

#### **Transmission and non-transmission services and tariffs**

1. A given service shall be considered a transmission services where both of the following criteria are met:

(a) the costs of such service are caused by the cost drivers of both technical or forecasted contracted capacity and distance;

(b) the costs of such service are related to the investment in and operation of the infrastructure which is part of the regulated asset base for the provision of transmission services.

Where any of the criteria set out in points (a) and (b) are not complied with, a given service may be attributed to either transmission or non-transmission services subject to the findings of the periodic consultation by the transmission system operator(s) or the national regulatory authority and decision by the national regulatory authority, as set out in Articles 26 and 27.

2. Transmission tariffs may be set in a manner as to take into account the conditions for firm capacity products.

3. The transmission services revenue shall be recovered by capacity-based transmission tariffs.

As an exception, subject to the approval of the national regulatory authority, a part of the transmission services revenue may be recovered only by the following commodity-based transmission tariffs which are set separately from each other:

(a) a flow-based charge, which shall comply with all of the following criteria:

(i) levied for the purpose of covering the costs mainly driven by the quantity of the gas flow;

(ii) calculated on the basis of forecasted or historical flows, or both, and set in such a way that it

is the same at all entry points and the same at all exit points;

(iii) expressed in monetary terms or in kind.

(b) a complementary revenue recovery charge, which shall comply with all of the following criteria:

(i) evied for the purpose of managing revenue under- and over-recovery;

(ii) calculated on the basis of forecasted or historical capacity allocations and flows, or both;

(iii) applied at points other than interconnection points;

(iv) applied after the national regulatory authority has made an assessment of its cost-reflectivity and its impact on cross-subsidisation between interconnection points and points other than interconnection points.

4. The non-transmission services revenue shall be recovered by non-transmission tariffs applicable for a given non-transmission service. Such tariffs shall be as follows:

(a) cost-reflective, non-discriminatory, objective and transparent;

(b) charged to the beneficiaries of a given non-transmission service with the aim of minimising cross-subsidisation between network users within or outside a **Contracting Party**, or both.

Where according to the national regulatory authority a given non-transmission service benefits all network users, the costs for such service shall be recovered from all network users.

## **Article 5**

### **Cost allocation assessments**

1. The national regulatory authority or the transmission system operator, as decided by the national regulatory authority, shall perform the following assessments and shall publish them as part of the final consultation referred to in Article 26:

(a) a cost allocation assessment relating to the transmission services revenue to be recovered by capacity-based transmission tariffs and based exclusively on the cost drivers of

(i) technical capacity; or

(ii) forecasted contracted capacity; or

(iii) technical capacity and distance; or

(iv) forecasted contracted capacity and distance;

(b) a cost allocation assessment relating to the transmission services revenue to be recovered by commodity-based transmission tariffs, if any, and based exclusively on the cost drivers of:

(i) the amount of gas flows; or

(ii) the amount of gas flows and distance. 2. The cost allocation assessments shall indicate the degree of cross-subsidisation between intra-system and cross-system network use based on the proposed reference price methodology.

3. The cost allocation assessment referred to in paragraph 1(a) shall be carried out as follows:

(a) the transmission services capacity revenue to be obtained from intra-system network use at both all entry points and all exit points shall be divided by the value of the relevant capacity cost driver(s) for

intra-system network use in order to calculate the intra-system capacity ratio, which is defined as a monetary unit per measurement unit, such as in euro per MWh/day, in accordance with the following formula:

$$\text{Ratio}_{\text{cap}}^{\text{intra}} = \frac{\text{Revenue}_{\text{cap}}^{\text{intra}}}{\text{Driver}_{\text{cap}}^{\text{intra}}}$$

Where:

$\text{Revenue}_{\text{cap}}^{\text{intra}}$  is the revenue, defined in a monetary unit such as the euro, which is obtained from capacity tariffs and charged for intra-system network use;

$\text{Driver}_{\text{cap}}^{\text{intra}}$  is the value of capacity-related cost driver(s) for intra-system network use, such as the sum of the average daily forecasted capacities contracted at each intra-system entry point and intra-system exit point, or cluster of points, and is defined in a measurement unit such as MWh/day.

(b) the transmission services capacity revenue to be obtained from cross-system network use at both all entry points and all exit points shall be divided by the value of the relevant capacity cost driver(s) for cross-system network use in order to calculate the cross-system capacity ratio, which is defined as a monetary unit per measurement unit, such as in euro per MWh/day, in accordance with the following formula:

$$\text{Ratio}_{\text{cap}}^{\text{cross}} = \frac{\text{Revenue}_{\text{cap}}^{\text{cross}}}{\text{Driver}_{\text{cap}}^{\text{cross}}}$$

Where:

$\text{Revenue}_{\text{cap}}^{\text{cross}}$  is the revenue, defined in a monetary unit such as the euro, which is obtained from capacity tariffs and charged for cross-system network use;

$\text{Driver}_{\text{cap}}^{\text{cross}}$  is the value of capacity-related cost driver(s) for cross-system network use, such as the sum of the average daily forecasted capacities contracted at each cross-system entry and exit point, or cluster of points, and is defined in a measurement unit such as MWh/day.

(c) the capacity cost allocation comparison index between the ratios referred to in points (a) and (b), which is defined in percentage, shall be calculated in accordance with the following formula:

$$\text{Comp}_{\text{cap}} = \frac{2 \times \left| \text{Ratio}_{\text{cap}}^{\text{intra}} - \text{Ratio}_{\text{cap}}^{\text{cross}} \right|}{\text{Ratio}_{\text{cap}}^{\text{intra}} + \text{Ratio}_{\text{cap}}^{\text{cross}}} \times 100 \%$$

4. The cost allocation assessment referred to in paragraph 1(b) shall be carried out as follows:

(a) the transmission services commodity revenue to be obtained from intra-system network use at both all entry points and all exit points shall be divided by the value of the relevant commodity cost driver(s) for intra-system network use in order to calculate the intra-system commodity ratio, which is defined as a monetary unit per measurement unit, such as in euro per MWh, in accordance with the following formula:

$$\text{Ratio}_{\text{comm}}^{\text{intra}} = \frac{\text{Revenue}_{\text{comm}}^{\text{intra}}}{\text{Driver}_{\text{comm}}^{\text{intra}}}$$

Where:

$\text{Revenue}_{\text{comm}}^{\text{intra}}$  is the revenue, defined in a monetary unit such as the euro, which is obtained from commodity tariffs and charged for intra-system network use;

$\text{Driver}_{\text{comm}}^{\text{intra}}$  is the value of commodity-related cost driver(s) for intra-system network use, such as the sum of the average daily forecasted flows at each intra-system entry and exit point, or cluster of points, and is defined in a measurement unit such as MWh.

(b) the transmission services commodity revenue to be obtained from cross-system network use at both all entry points and all exit points shall be divided by the value of the relevant commodity cost driver(s) for cross-system network use in order to calculate the cross-system commodity ratio, which is defined as a monetary unit per measurement unit, such as in euro per MWh, in accordance with the following formula:

$$\text{Ratio}_{\text{comm}}^{\text{cross}} = \frac{\text{Revenue}_{\text{comm}}^{\text{cross}}}{\text{Driver}_{\text{comm}}^{\text{cross}}}$$

Where:

$\text{Revenue}_{\text{comm}}^{\text{cross}}$  is the revenue, defined in a monetary unit such as the euro, which is obtained from commodity tariffs and charged on cross-system network use;

$\text{Driver}_{\text{comm}}^{\text{cross}}$  is the value of commodity-related cost driver(s) for cross-system network use, such as the sum of the average daily forecasted flows at each cross-system entry and exit point, or cluster of points, and is defined in a measurement unit such as MWh.

(c) the commodity cost allocation comparison index between the ratios referred to in points (a) and (b), which is defined in percentage, shall be calculated in accordance with the following formula:

$$\text{Comp}_{\text{comm}} = \frac{2 \times |\text{Ratio}_{\text{comm}}^{\text{intra}} - \text{Ratio}_{\text{comm}}^{\text{cross}}|}{\text{Ratio}_{\text{comm}}^{\text{intra}} + \text{Ratio}_{\text{comm}}^{\text{cross}}} \times 100 \%$$

5. The transmission services revenue to be obtained from intra-system network use at entry points referred to in paragraphs 3(a) and 4(a) shall be calculated as follows:

(a) the amount of allocated capacity or, respectively, flows attributed to the provision of transmission services for cross-system network use at all entry points shall be deemed equal to the amount of capacity

or, respectively, flows attributed to the provision of transmission services for cross-system network use at all exit points;

(b) the capacity and, respectively, flows, determined as set out in point (a) of this paragraph shall be used to calculate the transmission services revenue to be obtained from cross-system network use at entry points;

(c) the difference between the overall transmission services revenue to be obtained at entry points and the resulting value referred to in point (b) of this paragraph shall be equal to the transmission services revenue to be obtained from intra-system network use at entry points.

6. Where distance is used as a cost driver in combination with technical or forecasted contracted capacity or flows, the capacity weighted average distance or, respectively, commodity weighted average distance shall be used. Where the results of the capacity, or respectively commodity cost allocation comparison indexes referred to in paragraph 3(c) or, respectively paragraph 4(c), exceed 10 percent, the national regulatory authority shall provide the justification for such results in the decision referred to in Article 27(4).

## **CHAPTER II**

### **REFERENCE PRICE METHODOLOGIES**

#### ***Article 6***

#### **Reference price methodology application**

1. The reference price methodology shall be set or approved by the national regulatory authority as set out in Article 27. The reference price methodology to be applied shall be subject to the findings of the periodic consultations carried out in accordance with Article 26 by the transmission system operator(s) or the national regulatory authority, as decided by the national regulatory authority.

2. The application of the reference price methodology shall provide a reference price.

3. The same reference price methodology shall be applied to all entry and exit points in a given entry-exit system subject to the exceptions set out in Articles 10 and 11.

4. Adjustments to the application of the reference price methodology to all entry and exit points may only be made in accordance with Article 9 or as a result of one or more of the following:

(a) benchmarking by the national regulatory authority, whereby reference prices at a given entry or exit point are adjusted so that the resulting values meet the competitive level of reference prices;

(b) equalisation by the transmission system operator(s) or the national regulatory authority, as decided by the national regulatory authority, whereby the same reference price is applied to some or all points within a homogeneous group of points;

(c) rescaling by the transmission system operator(s) or the national regulatory authority, as decided by the national regulatory authority, whereby the reference prices at all entry or all exit points, or both, are adjusted either by multiplying their values by a constant or by adding to or subtracting from their values a constant.

### **Article 7**

#### **Choice of a reference price methodology**

The reference price methodology shall comply with Article 13 of Regulation (EC) No 715/2009 and with the following requirements. It shall aim at:

- (a) enabling network users to reproduce the calculation of reference prices and their accurate forecast;
- (b) taking into account the actual costs incurred for the provision of transmission services considering the level of complexity of the transmission network;
- (c) ensuring non-discrimination and prevent undue cross-subsidisation including by taking into account the cost allocation assessments set out in Article 5;
- (d) ensuring that significant volume risk related particularly to transports across an entry-exit system is not assigned to final customers within that entry-exit system;
- (e) ensuring that the resulting reference prices do not distort cross-border trade.

### **Article 8**

#### **Capacity weighted distance reference price methodology**

1. The parameters for the capacity weighted distance reference price methodology shall be as follows:

- (a) the part of the transmission services revenue to be recovered from capacity-based transmission tariffs;
- (b) the forecasted contracted capacity at each entry point or a cluster of entry points and at each exit point or a cluster of exit points;
- (c) where entry points and exit points can be combined in a relevant flow scenario, the shortest distance of the pipeline routes between an entry point or a cluster of entry points and an exit point or a cluster of exit points;
- (d) the combinations of entry points and exit points, where some entry points and some exit points can be combined in a relevant flow scenario;
- (e) the entry-exit split referred to in Article 30(1)(b)(v)(2) shall be 50/50.

Where entry points and exit points cannot be combined in a flow scenario, this combination of entry and exit points shall not be taken into account.

2. The reference prices shall be derived in the following sequential steps:

- (a) the weighted average distance for each entry point or each cluster of entry points and for each exit point or each cluster of exit points shall be calculated, taking into account, where relevant, the combinations referred to in paragraph 1(d), in accordance with the following respective formulas:

- (i) for an entry point or cluster of entry points, as the sum of the products of capacity at each exit point or cluster of exit points and the distance from this entry point or cluster of entry points to each exit point or cluster of exit points, divided by the sum of capacities at each exit point or cluster of exit points:

$$AD_{En} = \frac{\sum_{\text{all Ex}} CAP_{Ex} \times D_{En,Ex}}{\sum_{\text{all Ex}} CAP_{Ex}}$$

Where:

$AD_{En}$  is the weighted average distance for an entry point or a cluster of entry points;

$CAP_{Ex}$  is the forecasted contracted capacity at an exit point or a cluster of exit points;

$D_{En,Ex}$  is the distance between a given entry point or a cluster of entry points and a given exit point or a cluster of exit points referred to in paragraph 1(c).

(ii) for an exit point or cluster of exit points, as the sum of the products of capacity at each entry point or cluster of entry points and the distance to this exit point or cluster of exit points from each entry point or cluster of entry points, divided by the sum of capacities at each entry point or cluster of entry points:

$$AD_{Ex} = \frac{\sum_{\text{all En}} CAP_{En} \times D_{En,Ex}}{\sum_{\text{all En}} CAP_{En}}$$

Where:

$AD_{Ex}$  is the weighted average distance for an exit point or a cluster of exit points;

$CAP_{En}$  is the forecasted contracted capacity at an entry point or a cluster of entry points;

$D_{En,Ex}$  is the distance between a given entry point or a cluster of entry points and a given exit point or a cluster of exit points referred to in paragraph 1(c).

(b) the weight of cost for each entry point or each cluster of entry points and for each exit point or each cluster of exit points shall be calculated in accordance with the following respective formulas:

$$W_{c,En} = \frac{CAP_{En} \times AD_{En}}{\sum_{\text{all En}} CAP_{En} \times AD_{En}}$$

$$W_{c,Ex} = \frac{CAP_{Ex} \times AD_{Ex}}{\sum_{\text{all Ex}} CAP_{Ex} \times AD_{Ex}}$$

Where:

$W_{c,En}$  is the weight of cost for a given entry point or a cluster of entry points;

$W_{c,Ex}$  is the weight of cost for a given exit point or a cluster of exit points;

$AD_{En}$  is the weighted average distance for an entry point or a cluster of entry points;

$AD_{Ex}$  is the weighted average distance for an exit point or a cluster of exit points;

$CAP_{En}$  is the forecasted contracted capacity at an entry point or a cluster of entry points;

$CAP_{Ex}$  is the forecasted contracted capacity at an exit point or a cluster of exit points.

(c) the part of the transmission services revenue to be recovered from capacity-based transmission tariffs at all entry points and the part of the transmission services revenue to be recovered from capacity-based transmission tariffs at all exit points shall be identified by applying the entry-exit split;

(d) the part of the transmission services revenue to be recovered from capacity-based transmission tariffs

at each entry point or each cluster of entry points and for each exit point or each cluster of exit points shall be calculated in accordance with the following respective formulas:

$$R_{En} = W_{c,En} \times R_{\Sigma En}$$

$$R_{Ex} = W_{c,Ex} \times R_{\Sigma Ex}$$

Where:

$W_{c,En}$  is the weight of cost for a given entry point or a cluster of entry points;

$W_{c,Ex}$  is the weight of cost for a given exit point or a cluster of exit points;

$R_{En}$  is the part of the transmission services revenue to be recovered from capacity-based transmission tariffs at an entry point or a cluster of entry points;

$R_{Ex}$  is the part of the transmission services revenue to be recovered from capacity-based transmission tariffs at an exit point or a cluster of exit points;

$R_{\Sigma En}$  is the part of the transmission services revenue to be recovered from capacity-based transmission tariffs at all entry points;

$R_{\Sigma Ex}$  is the part of the transmission services revenue to be recovered from capacity-based transmission tariffs at all exit points.”

(e) the resulting values referred to in point (d) shall be divided by the forecasted contracted capacity at each entry point or each cluster of entry points and at each exit point or each cluster of exit points in accordance with the following respective formulas:

$$T_{En} = \frac{R_{En}}{CAP_{En}}$$

$$T_{Ex} = \frac{R_{Ex}}{CAP_{Ex}}$$

Where:

$T_{En}$  is the reference price at an entry point or each entry point within a cluster of entry points;

$T_{Ex}$  is the reference price at an exit point or each exit point within a cluster of exit points;

$CAP_{En}$  is the forecasted contracted capacity at an entry point or a cluster of entry points;

$CAP_{Ex}$  is the forecasted contracted capacity at an exit point or a cluster of exit points.

## Article 9

### Adjustments of tariffs at entry points from and exit points to storage facilities and at entry points from LNG facilities and infrastructure ending isolation

1. A discount of at least 50% shall be applied to capacity-based transmission tariffs at entry points from and exit points to storage facilities, unless and to the extent a storage facility which is connected to more than one transmission or distribution network is used to compete with an interconnection point.
2. At entry points from LNG facilities, and at entry points from and exit points to infrastructure developed

with the purpose of ending the isolation of **Contracting Parties** in respect of their gas transmission systems, a discount may be applied to the respective capacity-based transmission tariffs for the purposes of increasing security of supply.

### **Article 10**

#### **Rules for entry-exit systems within a Contracting Party where more than one transmission system operator is active**

1. In accordance with Article 6(3), the same reference price methodology shall be applied jointly by all transmission system operators within an entry-exit system within a **Contracting Party**.

2. As an exception to paragraph 1 and subject to paragraph 3, the national regulatory authority may decide:

(a) that the same reference price methodology is applied separately by each transmission system operator within an entry-exit system;

(b) as an exception to Article 6(3), when planning entry-exit system mergers, on intermediate steps allowing for different reference price methodologies to be applied separately by each transmission system operator within the entry-exit systems concerned. Such a decision shall set out the time period for the application of the intermediate steps. The national regulatory authority or the transmission system operators, as decided by the national regulatory authority, shall carry out an impact assessment and a cost benefit analysis prior to implementing such intermediate steps.

As a result of applying different reference price methodologies separately, the transmission services revenue of the transmission system operators involved shall be adjusted accordingly.

3. In order to allow for the proper application of the same reference price methodology jointly, an effective inter-transmission system operator compensation mechanism shall be established.

The decision referred to in paragraph 2(a) or, respectively, paragraph 2(b) may be taken where the following conditions are complied with:

(a) an effective inter-transmission system operator compensation mechanism is established with the aim to:

(i) prevent detrimental effects on the transmission services revenue of the transmission system operators involved;

(ii) avoid cross-subsidisation between intra-system and cross-system network use;

(b) such separate application ensures that the costs correspond to those of an efficient transmission system operator.

4. The maximum time period set out in the decision referred to in paragraph 2(a) or, respectively, paragraph 2(b) shall be no later than five years as from the date referred to in Article 38(2). Sufficiently in advance of the date set out in that decision, the national regulatory authority may decide to postpone this date.

5. At the same time as the final consultation in accordance with Article 26, the national regulatory authority shall conduct a consultation on the principles of an effective inter-transmission system operator compensation mechanism referred to in paragraph 3 and its consequences on the tariff levels. The inter-transmission system operator compensation mechanism shall be applied in accordance with Article

41(6)(a) of Directive 2009/73/EC and published together with the consultation responses received.

6. The reserve price referred to in Article 22(1) shall be calculated as set out therein. Where paragraph 2 is applied, the following two calculations shall be carried out:

(a) the calculation set out in Article 22(1) shall be carried out by each transmission system operator involved;

(b) the weighted average of the resulting values referred to in point (a) shall be calculated in accordance with the formula set out in Article 22(1)(b), *mutatis mutandis*.

7. The final consultation referred to in Article 26 shall be conducted by all transmission system operators jointly or by the national regulatory authority. Where paragraph 2 is applied, such consultation shall be conducted by each transmission system operator separately or by the national regulatory authority, as decided by the national regulatory authority.

8. The information referred to in Articles 29 and 30 shall be published on an aggregated level for all transmission system operators involved. Where paragraph 2 is applied, the following two actions shall be carried out:

(a) such information shall be published individually for each transmission system operator involved;

(b) the information on the entry-exit split referred to in Article 30(1)(b)(v)(2) for the entry-exit system shall be published by the national regulatory authority.

### **Article 11**

#### **Rules for entry-exit systems covering more than one Contracting Party or covering Contracting Party(-ies) and Member State(s) where more than one transmission system operator is active**

The same reference price methodology may be applied jointly or separately or different reference price methodologies may be applied separately where more than one transmission system operator is active in an entry-exit system covering more than one **Contracting Party or** Member State.

## **CHAPTER III RESERVE PRICES**

### **Article 12**

#### **General provisions**

1. For yearly standard capacity products for firm capacity, the reference prices shall be used as reserve prices. For non-yearly standard capacity products for firm capacity, the reserve prices shall be calculated as set out in this Chapter. For both yearly and non-yearly standard capacity products for interruptible capacity, the reserve prices shall be calculated as set out in this Chapter. The level of multipliers and of seasonal factors, set out in accordance with Article 13, and the level of discounts for the standard capacity products for interruptible capacity, set out in accordance with Article 16, may be different at

interconnection points.

2. Where the tariff period and gas year do not coincide, separate reserve prices may be applied respectively:

(a) for the time period from 1 October to the end of the prevailing tariff period; and

(b) for the time period from the beginning of the tariff period following the prevailing tariff period to 30 September.

3. The respective reserve prices published according to Article 29 shall be binding for the subsequent gas year or beyond the subsequent gas year in case of fixed payable price, beginning after the annual yearly capacity auction, unless:

(a) the discounts for monthly and daily standard capacity products for interruptible capacity are recalculated within the tariff period if the probability of interruption referred to in Article 16 changes by more than twenty percent;

(b) the reference price is recalculated within the tariff period due to exceptional circumstances under which the non-adjustment of tariff levels would jeopardise the operation of the transmission system operator.

### **Article 13**

#### **Level of multipliers and seasonal factors**

1. The level of multipliers shall fall within the following ranges:

(a) for quarterly standard capacity products and for monthly standard capacity products, the level of the respective multiplier shall be no less than 1 and no more than 1,5;

(b) for daily standard capacity products and for within-day standard capacity products, the level of the respective multiplier shall be no less than 1 and no more than 3. In duly justified cases, the level of the respective multipliers may be less than 1, but higher than 0, or higher than 3.

2. Where seasonal factors are applied, the arithmetic mean over the gas year of the product of the multiplier applicable for the respective standard capacity product and the relevant seasonal factors shall be within the same range as for the level of the respective multipliers set out in paragraph 1.

3. By 1 **October 2025**, the maximum level of multipliers for daily standard capacity products and for within-day standard capacity products shall be no more than 1,5, if by 1 **October 2023** the **Energy Community Regulatory Board** issues a recommendation <...> that the maximum level of multipliers should be reduced to this level. This recommendation shall take into account the following aspects related to the use of multipliers and seasonal factors before and as from 31 May **2021**:

(a) changes in booking behaviour;

(b) impact on the transmission services revenue and its recovery;

(c) differences between the level of transmission tariffs applicable for two consecutive tariff periods;

(d) cross-subsidisation between network users having contracted yearly and non-yearly standard capacity products;

(e) impact on cross-border flows.

### **Article 14**

#### **Calculation of reserve prices for non-yearly standard capacity products for firm capacity in absence of seasonal factors**

The reserve prices for non-yearly standard capacity products for firm capacity shall be calculated as follows:

(a) for quarterly standard capacity products, for monthly standard capacity products and for daily standard capacity products, in accordance with the following formula:

$$P_{st} = (M \times T / 365) \times D$$

Where:

$P_{st}$  is the reserve price for the respective standard capacity product;

$M$  is the level of the multiplier corresponding to the respective standard capacity product;

$T$  is the reference price;

$D$  is the duration of the respective standard capacity product expressed in gas days. For leap years, the formula shall be adjusted so that the figure 365 is substituted with the figure 366.

(b) for within-day standard capacity products, in accordance with the following formula:

$$P_{st} = (M \times T / 8760) \times H$$

Where:

$P_{st}$  is the reserve price for the within-day standard capacity product;

$M$  is the level of the corresponding multiplier;

$T$  is the reference price;

$H$  is the duration of the within-day standard capacity product expressed in hours. For leap years, the formula shall be adjusted so that the figure 8760 is substituted with the figure 8784.

### **Article 15**

#### **Calculation of reserve prices for non-yearly standard capacity products for firm capacity with seasonal factors**

1. Where seasonal factors are applied, the reserve prices for non-yearly standard capacity products for firm capacity shall be calculated in accordance with the relevant formulas set out in Article 14 which shall be then multiplied by the respective seasonal factor calculated as set out in paragraphs 2 to 6.

2. The methodology set out in paragraph 3 shall be based on the forecasted flows, unless the quantity of the gas flow at least for one month is equal to 0. In such case, the methodology shall be based on the forecasted contracted capacity.

3. For monthly standard capacity products for firm capacity, the seasonal factors shall be calculated in the following sequential steps:

(a) for each month within a given gas year the usage of the transmission system shall be calculated on the basis of forecasted flows or forecasted contracted capacity using:

- (i) the data for the individual interconnection point, where the seasonal factors are calculated for each interconnection point;
  - (ii) the average data on the forecasted flows or the forecasted contracted capacity, where the seasonal factors are calculated for some or all of the interconnection points.
- (b) the resulting values referred to in point (a) shall be summed up;
- (c) the usage rate shall be calculated by dividing each of the resulting values referred to in point (a) by the resulting value referred to in point (b);
- (d) each of the resulting values referred to in point (c) shall be multiplied by 12. Where the resulting values are equal to 0, these values shall be adjusted to whichever of the following is the lower: 0,1 or the lowest of the resulting values other than 0;
- (e) the initial level of the respective seasonal factors shall be calculated by raising each of the resulting values referred to in point (d) to the same power which is no less than 0 and no more than 2;
- (f) the arithmetic mean of the products of the resulting values referred to in point (e) and the multiplier for monthly standard capacity products shall be calculated;
- (g) the resulting value referred to in point (f) shall be compared with the range referred to in Article 13(1), as follows:
- (i) if this value falls within this range then the level of seasonal factors shall be equal to with the respective resulting values referred to in point (e);
  - (ii) if this value falls outside of this range then point (h) shall apply.
- (h) the level of seasonal factors shall be calculated as the product of the respective resulting values referred to in point (e) and the correction factor calculated as follows:
- (i) where the resulting value referred to in point (f) is more than 1,5, the correction factor shall be calculated as 1,5 divided by this value;
  - (ii) where the resulting value referred to in point (f) is less than 1, the correction factor shall be calculated as 1 divided by this value.
4. For daily standard capacity products for firm capacity and within-day standard capacity products for firm capacity, the seasonal factors shall be calculated by carrying out the steps set out in paragraph 3(f) to (h), *mutatis mutandis*.
5. For quarterly standard capacity products for firm capacity, the seasonal factors shall be calculated in sequential steps as follows:
- (a) the initial level of the respective seasonal factors shall be calculated as either of the following:
- (i) equal to the arithmetic mean of the respective seasonal factors applicable for the three relevant months;
  - (ii) no less than the lowest and no more than the highest level of the respective seasonal factors applicable for the three relevant months.
- (b) the steps set out in paragraph 3(f) to (h) shall be carried out, using the resulting values referred to in point (a), *mutatis mutandis*.
6. For all non-yearly standard capacity products for firm capacity, the values resulting from the calculation referred to in paragraphs 3 to 5 may be rounded up or down.

## Article 16

### Calculation of reserve prices for standard capacity products for interruptible capacity

1. The reserve prices for standard capacity products for interruptible capacity shall be calculated by multiplying the reserve prices for the respective standard capacity products for firm capacity calculated as set out in Articles 14 or 15, as relevant, by the difference between 100% and the level of an *ex-ante* discount calculated as set out in paragraphs 2 and 3.

2. An *ex-ante* discount shall be calculated in accordance with the following formula:

$$D_{i_{\text{ex-ante}}} = \text{Pro} \times A \times 100 \%$$

Where:

$D_{i_{\text{ex-ante}}}$  is the level of an *ex-ante* discount;

**Pro factor** is the probability of interruption which is set or approved in accordance with Article 41(6) (a) of Directive 2009/73/EC pursuant to Article 28, and which refers to the type of standard capacity product for interruptible capacity;

**A** is the adjustment factor which is set or approved in accordance with Article 41(6)(a) of Directive 2009/73/EC pursuant to Article 28, applied to reflect the estimated economic value of the type of standard capacity product for interruptible capacity, calculated for each, some or all interconnection points, which shall be no less than 1.

3. The Pro factor referred to in paragraph 2 shall be calculated for each, some or all interconnection points per type of standard capacity product for interruptible capacity offered in accordance with the following formula on the basis of forecasted information related to the components of this formula:

$$\text{Pro} = \frac{N \times D_{\text{int}}}{D} \times \frac{\text{CAP}_{\text{av. int}}}{\text{CAP}}$$

Where:

**N** is the expectation of the number of interruptions over D;

$D_{\text{int}}$  is the average duration of the expected interruptions expressed in hours;

**D** is the total duration of the respective type of standard capacity product for interruptible capacity expressed in hours;

$\text{CAP}_{\text{av. int}}$  is the expected average amount of interrupted capacity for each interruption where such amount is related to the respective type of standard capacity product for interruptible capacity;

**CAP** is the total amount of interruptible capacity for the respective type of standard capacity product for interruptible capacity.

4. As an alternative to applying *ex-ante* discounts in accordance with paragraph 1, the national regulatory authority may decide to apply an *ex-post* discount, whereby network users are compensated after the actual interruptions incurred. Such *ex-post* discount may only be used at interconnection points where there was no interruption of capacity due to physical congestion in the preceding gas year.

The *ex-post* compensation paid for each day on which an interruption occurred shall be equal to three times the reserve price for daily standard capacity products for firm capacity.

## CHAPTER IV RECONCILIATION OF REVENUE

### *Article 17*

#### General provisions

1. Where and to the extent that the transmission system operator functions under a non-price cap regime, the following principles shall apply:

(a) the under- or over-recovery of the transmission services revenue shall be minimised having due regard to necessary investments;

(b) the level of transmission tariffs shall ensure that the transmission services revenue is recovered by the transmission system operator in a timely manner;

(c) significant differences between the levels of transmission tariffs applicable for two consecutive tariff periods shall be avoided to the extent possible.

2. Where and to the extent that the transmission system operator functions under a price cap regime or applies a fixed payable price approach set out in Article 24(b), no revenue reconciliation shall occur and all risks related to under- or over-recovery shall be covered exclusively by the risk premium. In such case Articles 18, 19(1) to (4) and 20 shall not apply.

3. Subject to the requirements of periodic consultations pursuant to Article 26 and subject to approval in accordance with Article 41(6)(a) of Directive 2009/73/EC, non-transmission services revenue may be reconciled as set out in this Chapter, *mutatis mutandis*.

### *Article 18*

#### Under- and over-recovery

The under- or over-recovery of the transmission services revenue shall be equal to:

$$R_A - R$$

Where:

$R_A$  is the actually obtained revenue related to the provision of transmission services;

$R$  is the transmission services revenue. The values of  $R_A$  and  $R$  shall be attributed to the same tariff period and, where an effective inter-transmission system operator compensation mechanism referred to in Article 10(3) is established, shall take such mechanism into account.

Where the difference calculated in accordance with paragraph 1 is positive, it shall indicate an over-recovery of the transmission services revenue. Where such difference is negative, it shall indicate an under-recovery of the transmission services revenue.

**Article 19****Regulatory account**

1. The regulatory account shall indicate the information referred to in Article 18(1) for a given tariff period and may include other information, such as the difference between the anticipated and the actual cost components.
2. The transmission system operator's under- or over-recovered transmission services revenue shall be attributed to the regulatory account, unless other rules have been enacted in accordance with Article 41(6)(a) of Directive 2009/73/EC.
3. Where incentive mechanisms for capacity sales are implemented, subject to a decision in accordance with Article 41(6)(a) of Directive 2009/73/EC, only a part of the transmission system operator's under- or over-recovery shall be attributed to the regulatory account. In such case, the residual part thereof shall be kept or paid, as relevant, by the transmission system operator.
4. Each transmission system operator shall use one regulatory account.
5. Subject to a decision in accordance with Article 41(6)(a) of Directive 2009/73/EC, the earned auction premium, if any, may be attributed to a specific account separate from the regulatory account referred to in paragraph 4. The national regulatory authority may decide to use this auction premium for reducing physical congestion or, where the transmission system operator functions only under a non-price cap regime, to decrease the transmission tariffs for the next tariff period(s) as set out in Article 20.

**Article 20****Reconciliation of regulatory account**

1. The full or partial reconciliation of the regulatory account shall be carried out in accordance with the applied reference price methodology and, in addition, by using the charge referred to in Article 4(3)(b), if applied.
2. The reconciliation of the regulatory account shall be carried out pursuant to the rules enacted in accordance with Article 41(6)(a) of Directive 2009/73/EC over a given reconciliation period, meaning the time period over which the regulatory account referred to in Article 19 shall be reconciled.
3. The regulatory account shall be reconciled with the aim of reimbursing to the transmission system operator the under-recovery and of returning to the network users the over-recovery.

## CHAPTER V

### PRICING OF BUNDLED CAPACITY AND CAPACITY AT VIRTUAL INTERCONNECTION POINTS

#### *Article 21*

#### **Pricing of bundled capacity**

1. The reserve price for a bundled capacity product shall be equal to the sum of the reserve prices for the capacities contributing to such product. The reserve prices for corresponding entry and exit capacities shall be made available when the bundled capacity product is offered and allocated by means of a joint booking platform referred to in Article 37 of Regulation (EU) 2017/459.
2. The revenue originating from the bundled capacity product sales corresponding to the reserve price for such product shall be attributed to the respective transmission system operators as follows:
  - (a) after each transaction for a bundled capacity product;
  - (b) in proportion to the reserve prices for the capacities contributing to such product.
3. The auction premium originating from the bundled capacity product sales shall be attributed in accordance with the agreement between the respective transmission system operators which is subject to the approval by the national regulatory authority or authorities to be granted no later than three months before the start of the annual yearly capacity auctions. In absence of such approval by all national regulatory authorities involved, the auction premium shall be attributed to the respective transmission system operators equally.
4. Where the interconnection point concerned connects adjacent entry-exit systems of two **Contracting Parties**, the respective national regulatory authorities shall submit the agreement referred to in paragraph 3 to the **Energy Community Regulatory Board** for information.

#### *Article 22*

#### **Pricing of capacity at a virtual interconnection point**

1. The reserve price for an unbundled standard capacity product offered at a virtual interconnection point shall be calculated in accordance with either of the following approaches:
  - (a) calculated on the basis of the reference price, where the applied reference price methodology allows for taking into account the established virtual interconnection point;
  - (b) equal to the weighted average of the reserve prices, where such average is calculated on the basis of the reference prices for each interconnection point contributing to such virtual interconnection point, where the applied reference price methodology does not allow for taking into account the established virtual interconnection point, in accordance with the following formula:

$$P_{st, VIP} = \frac{\sum_i^n (P_{st, i} \times CAP_i)}{\sum_i^n CAP_i}$$

Where:

$P_{st, VIP}$  is the reserve price for a given unbundled standard capacity product at the virtual interconnection point;

$i$  is an interconnection point contributing to the virtual interconnection point;

$n$  is the number of interconnection points contributing to the virtual interconnection point;

$P_{st, i}$  is the reserve price for a given unbundled standard capacity product at interconnection point  $i$ ;

$CAP_i$  is technical capacity or forecasted contracted capacity, as relevant, at interconnection point  $i$ .

2. The reserve price for a bundled standard capacity product offered at a virtual interconnection point shall be calculated as set out in Article 21(1).

## CHAPTER VI CLEARING PRICE AND PAYABLE PRICE

### Article 23

#### Calculation of clearing price at interconnection points

The clearing price for a given standard capacity product at an interconnection point shall be calculated in accordance with the following formula:

$$P_{cl} = P_{R, au} + AP$$

Where:

$P_{cl}$  is the clearing price;

$P_{R, au}$  is the applicable reserve price for a standard capacity product which is published at the time when this product is auctioned;

$AP$  is the auction premium, if any.

### Article 24

#### Calculation of payable price at interconnection points

The payable price for a given standard capacity product at an interconnection point shall be calculated in accordance with either of the following formulas:

(a) where the floating payable price approach is applied:

$$P_{flo} = P_{R, flo} + AP$$

Where:

$P_{flo}$  is the floating payable price;

$P_{R, flo}$  is the reserve price for a standard capacity product applicable at the time when this product may be used;

$AP$  is the auction premium, if any.

(b) where the fixed payable price approach is applied:

$$P_{\text{fix}} = (P_{R,y} \times \text{IND}) + \text{RP} + \text{AP}$$

Where:

$P_{\text{fix}}$  is the fixed payable price;

$P_{R,y}$  is the applicable reserve price for a yearly standard capacity product which is published at the time when this product is auctioned;

**IND** is the ratio between the chosen index at the time of use and the same index at the time the product was auctioned;

**RP** is the risk premium reflecting the benefits of certainty regarding the level of transmission tariff, where such premium shall be no less than 0;

**AP** is the auction premium, if any.

### Article 25

#### Conditions for offering payable price approaches

1. Where and to the extent that the transmission system operator functions under a non-price cap regime, the conditions for offering payable price approaches shall be as follows:

(a) for cases where only existing capacity is offered:

- (i) the floating payable price approach shall be offered;
- (ii) the fixed payable price approach shall not be allowed.

(b) for incremental capacity and existing capacity offered in the same auction or same alternative allocation mechanism:

- (i) the floating payable price approach may be offered;
- (ii) the fixed payable price approach may be offered where one of the following conditions is met:

(1) an alternative allocation mechanism set out in Article 30 of Regulation (EU) 2017/459 is used;

(2) a project is included in the **list of Projects of Energy Community Interest or Projects of Mutual Interest** as set out in Article 3 of Regulation (EU) No 347/2013 **as adopted and adapted by Ministerial Council Decision 2015/09/MC-Enc.**

2. Where and to the extent that the transmission system operator functions under a price cap regime, the floating payable price approach or the fixed payable price approach, or both, may be offered.

## CHAPTER VII

### CONSULTATION REQUIREMENTS

#### *Article 26*

#### **Periodic consultation**

1. One or more consultations shall be carried out by the national regulatory authority or the transmission system operator(s), as decided by the national regulatory authority. To the extent possible and in order to render more effective the consultation process, the consultation document should be published in the English language. The final consultation prior to the decision referred to in Article 27(4) shall comply with the requirements set out in this Article and Article 27, and shall include the following information:

(a) the description of the proposed reference price methodology as well as the following items:

(i) the indicative information set out in Article 30(1)(a), including:

(1) the justification of the parameters used that are related to the technical characteristics of the system;

(2) the corresponding information on the respective values of such parameters and the assumptions applied.

(ii) the value of the proposed adjustments for capacity-based transmission tariffs pursuant to Article 9;

(iii) the indicative reference prices subject to consultation;

(iv) the results, the components and the details of these components for the cost allocation assessments set out in Article 5;

(v) the assessment of the proposed reference price methodology in accordance with Article 7;

(vi) where the proposed reference price methodology is other than the capacity weighted distance reference price methodology detailed in Article 8, its comparison against the latter accompanied by the information set out in point (iii);

(b) the indicative information set out in Article 30(1)(b)(i), (iv), (v);

(c) the following information on transmission and non-transmission tariffs:

(i) where commodity-based transmission tariffs referred to in Article 4(3) are proposed:

(1) the manner in which they are set;

(2) the share of the allowed or target revenue forecasted to be recovered from such tariffs;

(3) the indicative commodity-based transmission tariffs;

(ii) where non-transmission services provided to network users are proposed:

(1) the non-transmission service tariff methodology therefor;

(2) the share of the allowed or target revenue forecasted to be recovered from such tariffs;

(3) the manner in which the associated non-transmission services revenue is reconciled as referred to in Article 17(3);

- (4) the indicative non-transmission tariffs for non-transmission services provided to network users;
- (d) the indicative information set out in Article 30(2);
- (e) where the fixed payable price approach referred to in Article 24(b) is considered to be offered under a price cap regime for existing capacity:
- (i) the proposed index;
  - (ii) the proposed calculation and how the revenue derived from the risk premium is used;
  - (iii) at which interconnection point(s) and for which tariff period(s) such approach is proposed;
  - (iv) the process of offering capacity at an interconnection point where both fixed and floating payable price approaches referred to in Article 24 are proposed.
2. The final consultation prior to the decision referred to in Article 27(4) shall be open for at least two months. Consultation documents for any of the consultations referred to in paragraph 1 may require that replies submitted in response to the consultation shall include a non-confidential version suitable for publication.
3. Within one month following the end of the consultation, the transmission system operator(s) or the national regulatory authority, depending on the entity that publishes the consultation document referred to in paragraph 1, shall publish the consultation responses received and their summary. To the extent possible and in order to render more effective the consultation process, the summary should be provided in the English language.
4. The subsequent periodic consultations shall be conducted in accordance with Article 27(5).
5. <...> **For the consultation document referred to in paragraph 1, the template developed by Agency for Cooperation of European Regulators may be used. <...>**

### **Article 27**

#### **Periodic national regulatory authority decision-making**

1. Upon launching the final consultation pursuant to Article 26 prior to the decision referred to in Article 27(4), the national regulatory authority or the transmission system operator(s), as decided by the national regulatory authority, shall forward the consultation documents to the **Energy Community Regulatory Board**.
2. The **Energy Community Regulatory Board** shall analyse the following aspects of the consultation document:
- (a) whether all the information referred to in Article 26(1) has been published;
  - (b) whether the elements consulted on in accordance with Article 26 comply with the following requirements:
    - (i) whether the proposed reference price methodology complies with the requirements set out in Article 7;
    - (ii) whether the criteria for setting commodity-based transmission tariffs as set out in Article 4(3) are met;

(iii) whether the criteria for setting non-transmission tariffs as set out in Article 4(4) are met. 3. Within two months following the end of the consultation referred to in paragraph 1, the **Energy Community Regulatory Board** shall publish and send to the national regulatory authority or transmission system operator, depending on which entity published the consultation document, and the **Energy Community Secretariat** the conclusion of its analysis in accordance with paragraph 2 in English.

The **Energy Community Regulatory Board** shall preserve the confidentiality of any commercially sensitive information.

4. Within five months following the end of the final consultation, the national regulatory authority, acting in accordance with Article 41(6)(a) of Directive 2009/73/EC, shall take and publish a motivated decision on all items set out in Article 26(1). Upon publication, the national regulatory authority shall send to the **Energy Community Regulatory Board** and the **Energy Community Secretariat** its decision.

5. The procedure consisting of the final consultation on the reference price methodology in accordance with Article 26, the decision by the national regulatory authority in accordance with paragraph 4, the calculation of tariffs on the basis of this decision, and the publication of the tariffs in accordance with Chapter VIII may be initiated as from the entry into force of this Regulation and shall be concluded no later than 31 May 2021. The requirements set out in Chapters II, III and IV shall be taken into account in this procedure. The tariffs applicable for the prevailing tariff period at 31 May 2021 will be applicable until the end thereof. This procedure shall be repeated at least every five years starting from 31 May 2021.

## *Article 28*

### **Consultation on discounts, multipliers and seasonal factors**

1. At the same time as the final consultation carried out in accordance with Article 26(1), the national regulatory authority shall conduct a consultation with the national regulatory authorities of all directly connected Member States **and Contracting Parties** and the relevant stakeholders on the following:

- (a) the level of multipliers;
- (b) if applicable, the level of seasonal factors and the calculations set out in Article 15;
- (c) the levels of discounts set out in Articles 9(2) and 16.

After the end of the consultation a motivated decision shall be taken in accordance with Article 41(6)(a) of Directive 2009/73/EC on the aspects referred to in points (a) to (c) of this paragraph. Each national regulatory authority shall consider the positions of national regulatory authorities of directly connected Member States **and Contracting Parties**.

2. The subsequent consultations shall be conducted every tariff period as from the date of the decision referred to in paragraph 1. After each consultation and as set out in Article 32(a), the national regulatory authority shall take and publish a motivated decision on the aspects referred to in paragraph 1(a), (b) and (c).

3. When adopting the decision referred to in paragraphs 1 and 2, the national regulatory authority shall take into account the consultation responses received and the following aspects:

- (a) for multipliers:
  - (i) the balance between facilitating short-term gas trade and providing long-term signals for efficient

- investment in the transmission system;
- (ii) the impact on the transmission services revenue and its recovery;
- (iii) the need to avoid cross-subsidisation between network users and to enhance cost-reflectivity of reserve prices;
- (iv) situations of physical and contractual congestion;
- (v) the impact on cross-border flows;
- (b) for seasonal factors:
  - (i) the impact on facilitating the economic and efficient utilisation of the infrastructure;
  - (ii) the need to improve the cost-reflectivity of reserve prices.

## CHAPTER VIII

### PUBLICATION REQUIREMENTS

#### *Article 29*

#### **Information to be published before the annual yearly capacity auction**

For interconnection points and, where the national regulatory authority takes a decision to apply Regulation (EU) 2017/459, points other than interconnection points, the following information shall be published before the annual yearly capacity auction in accordance with the requirements set out in Articles 31 and 32 by the national regulatory authority or the transmission system operator(s), as decided by the national regulatory authority:

- (a) for standard capacity products for firm capacity:
  - (i) the reserve prices applicable until at least the end of the gas year beginning after the annual yearly capacity auction;
  - (ii) the multipliers and seasonal factors applied to reserve prices for non-yearly standard capacity products;
  - (iii) the justification of the national regulatory authority for the level of multipliers;
  - (iv) where seasonal factors are applied, the justification for their application.
- (b) for standard capacity products for interruptible capacity:
  - (i) the reserve prices applicable until at least the end of the gas year beginning after the annual yearly capacity auction;
  - (ii) an assessment of the probability of interruption including:
    - (1) the list of all types of standard capacity products for interruptible capacity offered including the respective probability of interruption and the level of discount applied;
    - (2) the explanation of how the probability of interruption is calculated for each type of product referred to in point (1);
    - (3) the historical or forecasted data, or both, used for the estimation of the probability of interruption referred to in point (2).

**Article 30****Information to be published before the tariff period**

1. The following information shall be published before the tariff period in accordance with the requirements set out in Articles 31 and 32 by the national regulatory authority or the transmission system operator(s), as decided by the national regulatory authority:

(a) information on parameters used in the applied reference price methodology that are related to the technical characteristics of the transmission system, such as:

- (i) technical capacity at entry and exit points and associated assumptions;
- (ii) forecasted contracted capacity at entry and exit points and associated assumptions;
- (iii) the quantity and the direction of the gas flow for entry and exit points and associated assumptions, such as demand and supply scenarios for the gas flow under peak conditions;
- (iv) the structural representation of the transmission network with an appropriate level of detail;
- (v) additional technical information about the transmission network, such as the length and the diameter of pipelines and the power of compressor stations.

(b) the following information:

- (i) the allowed or target revenue, or both, of the transmission system operator;
- (ii) the information related to changes in the revenue referred to in point (i) from one year to the next year;
- (iii) the following parameters:
  - (1) types of assets included in the regulated asset base and their aggregated value;
  - (2) cost of capital and its calculation methodology;
  - (3) capital expenditures, including:
    - (a) methodologies to determine the initial value of the assets;
    - (b) methodologies to re-evaluate the assets;
    - (c) explanations of the evolution of the value of the assets;
    - (d) depreciation periods and amounts per asset type.
  - (4) operational expenditures;
  - (5) incentive mechanisms and efficiency targets;
  - (6) inflation indices.
- (iv) the transmission services revenue;
- (v) the following ratios for the revenue referred to in point (iv):
  - (1) capacity-commodity split, meaning the breakdown between the revenue from capacity-based transmission tariffs and the revenue from commodity-based transmission tariffs;
  - (2) entry-exit split, meaning the breakdown between the revenue from capacity-based transmission tariffs at all entry points and the revenue from capacity-based transmission tariffs at all exit points;

(3) intra-system/cross-system split, meaning the breakdown between the revenue from intra-system network use at both entry points and exit points and the revenue from cross-system network use at both entry points and exit points calculated as set out in Article 5.

(vi) where and to the extent that the transmission system operator functions under a non-price cap regime, the following information related to the previous tariff period on regarding the reconciliation of the regulatory account:

(1) the actually obtained revenue, the under- or over-recovery of the allowed revenue and the part thereof attributed to the regulatory account and, if applicable, sub-accounts within such regulatory account;

(2) the reconciliation period and the incentive mechanisms implemented.

(vii) the intended use of the auction premium.

(c) the following information on transmission and non-transmission tariffs, accompanied by the relevant information related to their derivation:

(i) where applied, commodity-based transmission tariffs referred to in Article 4(3);

(ii) where applied, non-transmission tariffs for non-transmission services referred to in Article 4(4);

(iii) the reference prices and other prices applicable at points other than those referred to in Article 29.

2. In addition, the following information shall be published with regard to transmission tariffs:

(a) explanation of the following:

(i) the difference in the level of transmission tariffs for the same type of transmission service applicable for the prevailing tariff period and for the tariff period for which the information is published;

(ii) the estimated difference in the level of transmission tariffs for the same type of transmission service applicable for the tariff period for which the information is published and for each tariff period within the remainder of the regulatory period.

(b) at least a simplified tariff model, updated regularly, accompanied by the explanation of how to use it, enabling network users to calculate the transmission tariffs applicable for the prevailing tariff period and to estimate their possible evolution beyond such tariff period.

3. For the points excluded from the definition of relevant points referred to in point 3.2(1)(a) of Annex I to Regulation (EC) No 715/2009, the information on the amount of forecasted contracted capacity and the forecasted quantity of the gas flow shall be published as set out in point 3.2(2) of Annex I to Regulation (EC) No 715/2009.

### **Article 31**

#### **Form of publication**

1. **For the Contracting Parties whose TSOs are members or observers of ENTSO for Gas** the information referred to in Articles 29 and 30 shall be published as set out in Article 32 via a link on the platform referred to in point 3.1.1(1)(h) of Annex I to Regulation (EC) No 715/2009 to the website of the respective entity.

Such information shall be accessible to the public, free of charge and of any limitations as to its use. It shall be published:

- (a) in a user-friendly manner;
- (b) in a clear, easily accessible way and on a non-discriminatory basis;
- (c) in a downloadable format;
- (d) in one or more of the official languages of the **Contracting Party** and, <...> to the extent possible, in English.

**2. For the Contracting Parties whose TSOs are members or observers of ENTSO for Gas** the following information shall be published for interconnection points on the platform referred to in point 3.1.1(1)(h) of Annex I to Regulation (EC) No 715/2009:

- (a) at the same time as set out in Article 29, the reserve prices for standard capacity products for firm capacity and for standard capacity products for interruptible capacity;
- (b) at the same time as set out in Article 30, a flow-based charge referred to in Article 4(3)(a), where applied.

**For other Contracting Parties such information shall be published on the website of the national transmission system operator(s) for gas.**

3. The information referred to in paragraph 2 shall be published in the following manner:

- (a) as set out in paragraph 1(a) to (c);
- (b) in English;
- (c) in a standardised table which shall include at least the following information:
  - (i) the interconnection point;
  - (ii) the direction of the gas flow;
  - (iii) the names of the relevant transmission system operators;
  - (iv) the start and the end time of the product;
  - (v) whether the capacity is firm or interruptible;
  - (vi) the indication of the standard capacity product;
  - (vii) the applicable tariff per kWh/h and per kWh/d in the local currency and in the euro taking into account the following:
    - (1) where the applied capacity unit is kWh/h, the information on the applicable tariff per kWh/d shall be non-binding, and vice versa;
    - (2) where the local currency is other than the euro, the information on the applicable tariff in euro shall be non-binding.

In addition, at the same time as set out in Article 30, such standardised table shall include the simulation of all the costs for flowing 1 GWh/day/year for each interconnection point in the local currency and in the euro subject to point vii(2).

4. Where the information referred to in paragraph 2 is different from the respective information referred to in paragraph 1, the respective information referred to in paragraph 1 shall prevail.

**Article 32****Publication notice period**

The deadline for the publication of the information set out in Articles 29 and 30 shall be as follows:

- (a) for the information set out in Article 29, no later than thirty days before the annual yearly capacity auction;
- (b) for the information set out in Article 30, no later than thirty days before the respective tariff period;
- (c) for the respective transmission tariffs updated within the tariff period as set out in Article 12(3), immediately after the approval in accordance with Article 41(6)(a) of Directive 2009/73/EC.

Each update of the transmission tariffs shall be accompanied by information indicating the reasons for the changes in their level. Where Article 12(3)(b) is applied, it shall also be accompanied by the updated report referred to in Article 29(b) for the respective types of standard capacity products for interruptible capacity.

## CHAPTER IX INCREMENTAL CAPACITY

**Article 33****Tariff principles for incremental capacity**

1. The minimum price at which transmission system operators shall accept a request for incremental capacity is the reference price. For the calculation of the economic test, reference prices shall be derived by including into the reference price methodology the relevant assumptions related to the offer of incremental capacity.
2. Where the fixed payable price approach set out in Article 24(b) is considered to be offered for incremental capacity, the reserve price referred to in Article 24(b) shall be based on projected investment and operating costs. Once the incremental capacity is commissioned, such reserve price shall be adjusted proportionally to the difference, irrespective whether positive or negative, between the projected investment costs and the actual investment costs.
3. In case the allocation of all incremental capacity at the reference price would not generate sufficient revenues for a positive economic test outcome, a mandatory minimum premium may be applied in the first auction or alternative allocation mechanism in which the incremental capacity is offered. The mandatory minimum premium may also be applied in subsequent auctions when the capacity is offered that initially remained unsold or when capacity is offered that was initially set aside according to Article 8(8) and (9) of Regulation (EU) 2017/459. The decision on whether and in which auctions to apply a mandatory minimum premium shall be taken in accordance with Article 41(6)(a) of Directive 2009/73/EC.
4. The level of the mandatory minimum premium shall enable a positive economic test outcome with the revenues generated by the offered capacity in the first auction or alternative allocation mechanism in which the incremental capacity is on offer. The range of the level for the mandatory minimum premium, depending on the expected allocated capacity, shall be submitted to the relevant national regulatory

authorities for approval in accordance with Article 25(1)(c) of Regulation (EU) 2017/459.

5. A mandatory minimum premium approved by the national regulatory authority shall be added to the reference price for the bundled capacity products at the respective interconnection point and shall exclusively be attributed to the transmission system operators for which the mandatory minimum premium was approved by the respective national regulatory authority. This default principle for the attribution of a mandatory minimum premium is without prejudice to the split of a possible additional auction premium according to Article 21(3) or an alternative agreement between the involved national regulatory authorities.

## CHAPTER X FINAL AND TRANSITIONAL PROVISIONS

### *Article 34*

#### **Methodologies and parameters used to determine the allowed or target revenue of transmission system operators**

1. Before **1 October 2021**, the **Energy Community Regulatory Board** shall publish a report on the methodologies and parameters used to determine the allowed or target revenue of transmission system operators. The report shall be based on at least the parameters referred to in Article 30(1)(b)(iii).
2. National regulatory authorities shall submit to the **Energy Community Regulatory Board**, in accordance with the process defined by the **Energy Community Regulatory Board**, all necessary information related to the methodologies and parameters used to determine the allowed or target revenue of transmission system operators.

### *Article 35*

#### **Existing contracts**

1. This Regulation shall not affect the levels of transmission tariffs resulting from contracts or capacity bookings concluded before **1 October 2019** where such contracts or capacity bookings foresee no change in the levels of the capacity- and/or commodity-based transmission tariffs except for indexation, if any.
2. The contract provisions related to transmission tariffs and capacity bookings referred to in paragraph 1 shall not be renewed, prolonged or rolled over after their expiration date.
3. Before **1 November 2019**, a transmission system operator shall send the contracts or the information on capacity bookings, if any, referred to in paragraph 1 to the national regulatory authority for information.

**Article 36****Implementation monitoring**

1. <...> **In context of its implementation monitoring responsibilities, the Energy Community Secretariat** shall monitor and analyse <...> how transmission system operators have implemented this Regulation. <...>
2. Transmission system operators shall submit to **the Energy Community Secretariat** all information required by **the Energy Community Secretariat** to comply with its obligations pursuant to paragraph 1, in accordance with the following deadlines:
  - (a) **1 July 2020** as regards the requirements under Chapter VIII;
  - (b) 31 December **2021** as regards all other provisions of this Regulation.
3. <...>
4. The confidentiality of commercially sensitive information shall be preserved by **the Energy Community Secretariat**.
5. Within three years as from the **deadline for transposition** of this Regulation **in the Energy Community**, the **Energy Community Regulatory Board** shall publish a report on the application of reference price methodologies in **Contracting Parties**.

**Article 37****Power to grant derogations**

1. National regulatory authorities may, at the request of an entity which operates an interconnector that has benefited from an exemption from Article 41(6), (8) and (10) of Directive 2009/73/EC in accordance with Article 36 of that Directive or a similar exemption, jointly grant such entity a derogation from the application of one or more Articles of this Regulation in accordance with paragraphs 2 to 6 of this Article where the application of those Articles to such entity would have one or several of the following negative consequences. It would:
  - (a) not facilitate efficient gas trade and competition;
  - (b) not provide incentives for investment for new capacity or to maintain existing levels of capacity;
  - (c) unreasonably distort cross-border trade;
  - (d) distort competition with other infrastructure operators that offer services of a similar nature to those of the interconnector;
  - (e) not be implementable when taking into account the specific nature of interconnectors.
2. The entity requesting a derogation under paragraph 1 shall include in its request a detailed reasoning, with all supporting documents, including, where appropriate, a cost-benefit analysis, demonstrating that one or more of the conditions in paragraph 1(a) to (e) are complied with.
3. The national regulatory authorities concerned shall jointly assess the request for a derogation and deal with it in close cooperation. Where the relevant national regulatory authorities grant a derogation, they shall specify its duration in their decisions.

4. The national regulatory authorities shall notify their decisions granting such derogations to the **Energy Community Regulatory Board** and the **Energy Community Secretariat**.
5. The national regulatory authorities may revoke a derogation if the circumstances or underlying reasons, or both, no longer apply or upon a reasoned recommendation of the **Energy Community Regulatory Board** or the **Energy Community Secretariat** to revoke a derogation due to a lack of justification.

**Article 38**

<...>

