



European Union Agency for the Cooperation
of Energy Regulators

Agency Report

Analysis of the consultation document on
the application of a commodity charge
(flow-based charge) in Austria

NRA: Energie-Control Austria

TSO: Gas Connect Austria & Trans Austria
Gasleitung

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1. ACER conclusion

- (1) The national regulatory authority ('NRA'), Energie-Control Austria ('E-Control'), is consulting on the application of a commodity charge (specifically, a flow-based charge) to allocate the increase of uncontrollable costs associated with the recent increases in electricity and gas prices (i.e. fuel costs for the network compression stations and allowances for CO₂ emissions). E-Control has conducted two consecutive consultations. A final consultation carried out between 14 January 2022 and 14 March 2022, and a second consultation carried out on 23 March 2022 with a duration of three weeks. This second consultation is a requirement of the Austrian national legislation¹ and provides updated values on the uncontrollable costs of the TSOs and, consequently, on the proposed flow-based charge.
- (2) In the Austrian transmission network, there are currently capacity tariffs that serve to allocate the uncontrollable costs that were forecasted in E-Control's 2020 Decisions on the allowed revenue of the TSOs². These costs amounted to EUR 79m, which represent 19% of the total allowed revenue of the transport system operators ('TSOs'), which in turn, amounts to EUR 404m. The current consultation proposes a top-up flow-based charge to allocate the increase in uncontrollable costs of +EUR 175m on top of the original forecast of EUR 79m for uncontrollable costs. This increase relates to the increase in energy prices in 2021 and 2022 and to the forecast made by E-Control for the remaining of the tariff period (2022-24). It represents a +221% increase in uncontrollable costs. These costs come to represent now 43% of the total allowed revenue of the TSOs, which rises up to EUR 580m in E-Control's 2022 update of the TSOs' allowed revenue³. The current capacity tariffs are applicable until 2024, and are not affected by the proposed introduction of a flow-based charge. As a result, the current consultation does not include any information on the reference price methodology ('RPM').
- (3) The proposed flow-based charge is applicable at all entry points and all exit points, with the exception of entries from storage. The entry dates discussed by E-Control are 1 October 2022 and 1 June 2022. E-Control proposes to allocate 75% of the increase in uncontrollable costs in this tariff period and 25% in the following one with the aim of limiting the level of the proposed flow-based charge.
- (4) The Commission Regulation (EU) 2017/460 of 16 March 2017 establishing a network code on harmonised transmission tariff structures for gas ('NC TAR') requires that reserve prices are applicable until the end of the tariff period. At the same time Article 12(3) of the NC TAR allows for changes in capacity tariffs before the end of the tariff period. These modifications should only happen in case of *exceptional circumstances under which the non-adjustment of tariff levels would jeopardise the operation of the TSO*. While this requirement applies only to capacity tariffs, the Agency considers that the introduction of changes to commodity tariffs should be subject to equal requirements and level of justification. In the consultation document, E-Control refers to the

¹ Section 70 para 3 Natural Gas Act 2011. "Prior to issuing the [gas system charges] ordinance, a consultation shall take place to enable particularly the concerned system operators, system users and the representative bodies listed in section 69 para. 3 to comment within an appropriate period of time."

² E-Control's decisions V MET G 01/17 and V MET G 02/17. These decisions are not public.

³ E-Control's decisions V MET G 02/21 and V MET G 03/21. These decisions are not public.

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increase in uncontrollable costs resulting from the increase in energy prices, but does not explain to what level this increase distresses the financial capacity of TSOs to operate the network. E-Control does not explain either why the existing regulatory account, foreseen to adapt to volatility in revenue recovery, is not sufficient to address the increase in energy prices.

- (5) As part of the consultation, the NRA has calculated the cost allocation assessment ('CAA'), which is an instrument foreseen in Article 5 of the NC TAR, to assess the degree of cross-subsidies resulting from the application of tariffs. The results are 1%, in the 11 January 2022 consultation, and 6% in the 23 March 2022 consultation. These values remain within the 10% threshold laid out in Article 5(6) of the NC TAR and do not require further justification. At the same time, the Agency remarks that the proposed flow-based charge results in cross-subsidisation between the users of the infrastructure of the TSOs of the network, Gas Connect Austria ('GCA') and Trans Austria Gasleitung ('TAG'). This results from the application of a single flow-based charge for the entry-exit zone while the compression costs of each of the TSOs operating the network are different. The Agency remarks that this effect results from a correct application of the NC TAR.
- (6) An inter-TSO compensation mechanism ('ITC') is proposed to redistribute the revenue between the two TSOs operating in the entry-exit zone. This is because the proposed flow-based charge is the same for both TSOs, while their compression costs are different. The Agency considers the mechanism necessary to ensure the cost recovery of the TSOs.
- (7) The Agency notes that, at the time of writing this Report, E-Control has not followed ACER's recommendation in the 2020 Report on the Austrian final consultation on transmission tariffs⁴, to publish the 2020 allowed revenue decisions⁵ applicable to the TSOs, GCA and TAG⁶. In addition, E-Control has not published the 2022 decisions updating the uncontrollable costs of the TSOs which are the basis for calculating the proposed flow-based charge.
- (8) The Agency concludes, after having completed the analysis of the consultation document pursuant to Article 27(2) of the NC TAR, that:
 - The consultation document contains most of the required information listed in Article 26(1). Additional information could be provided as pointed out under Table 1 and in paragraph (10) below.
 - The compliance of the RPM with Article 7 of the NC TAR is not applicable to the consultation.
 - The proposed application of the flow-based charge is not fully compliant with the NC TAR. According to Article 4(3)(a)(ii) of the NC TAR, the flow-based charge should be set in such a way that it is the same at all entry points and/or the same at all exit points. E-Control proposes not to apply the charge at entry points from storage. The flow-based charge is compliant with the remaining requirements laid out under Article 4(3)(a) of the NC TAR.
 - The compliance of non-transmission charges is not applicable to the consultation.

⁴ https://documents.acer.europa.eu/Official_documents/Acts_of_the_Agency/Publication/Agency%20report%20-%20analysis%20of%20the%20consultation%20document%20for%20Austria.pdf

⁵ See footnote 2.

⁶ See footnote 2.

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- (9) Pursuant to Article 27(4) of the NC TAR the Agency recommends that E-Control take into account the following points in its motivated decision:
- (10) First, justify the exceptional circumstances that require the introduction of the proposed flow-based charge. In addition to describing the increases in uncontrollable costs, E-Control should provide additional information on:
- The financial capacity or incapacity of the TSO to continue operating the network in the context of high energy prices.
 - The possibility to use the regulatory account as a buffer absorbing the increase in energy prices.
 - The details on the energy consumption of the network compressors leading to increases in the fuel costs of the TSOs.
 - The split of uncontrollable costs to be allocated in the current tariff period and in the forthcoming tariff period. E-Control should additionally provide the rationale for such split.
 - The forecasted energy prices used to calculate the fuel costs of the TSOs for the remainder of the current tariff period, as laid out in Table 6 below.
- (11) Second, justify the entry date of the proposed flow-based based on the capacity or incapacity of the TSOs to continue the operation of the networks. The NRA should minimise, to the extent possible, the burden imposed on network users when introducing the proposed flow-based charge, for example, by providing the longest possible lead time for the application of the charge. The Agency considers that, in the absence of an appropriate justification, the default entry date of the flow-based charge should be the beginning of the new gas year, 1 October 2022.
- (12) Third, on the application of the flow-based charge at entry-points from storage, the Agency points to the NC TAR rule that requires that the charge be set in such a way that it is the same at all entry points and/or the same at all exit points. Should E-Control deviate from the rule, the Agency recommends that the NRA clearly justify the exceptionality for supporting such an approach.
- (13) Forth, publish the information and the links to the TSO procurement tenders for electricity and gas. E-Control should ensure that the tenders were carried out following a transparent, competitive and non-discriminatory procedure.
- (14) Fifth, provide additional details related to any potential revision and/or reconciliation of the proposed flow-based charge within the current regulatory period. This should include an explanation on whether the forecast for the next tariff period could be used to reconcile revenue related to fuel costs.
- (15) Sixth, review the reconciliation mechanism with a view to ensuring a symmetric approach to under- and over- recoveries. The Agency understood from E-Control that this mechanism is not symmetrical and does not foresee any corrections to be applied in the case of significant TSO over-recoveries, while significant under-recoveries can trigger a review of the tariff or allowed revenue methodologies.
- (16) Finally, The Agency recommends that E-Control publish the decisions related to the allowed revenue of the TSOs. This applies to the initial decision applicable for the current tariff period and to the recently adopted amendments in 2022 to update the uncontrollable costs of the TSOs. The

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publication of the NRA decision on the allowed revenue of the TSOs is a requirement set in Article 41(16) of Directive 2009/73/EC⁷, which established that NRAs decisions *shall be fully reasoned and justified to allow for judicial review. The decisions shall be available to the public while preserving the confidentiality of commercially sensitive information.* The Agency recommends that E-Control adopt the highest standards of transparency and justification on these decisions.

⁷ Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC

2. Introduction

- (17) Commission Regulation (EU) 2017/460 of 16 March 2017 establishes a network code on harmonised transmission tariff structures for gas.
- (18) Article 27 of the NC TAR requires the Agency to analyse the consultation documents on the reference price methodology and the commodity and non-transmission tariff.⁸ This Report presents the analysis of the Agency for the commodity tariffs proposed for the Austrian entry-exit system, in particular, for the proposed flow-based charge.

2.1 Process: two consecutive consultations on the introduction of a commodity charge

- (19) E-Control has launched two consecutive consultations on the application of commodity charges with two different application dates: 1 June 2022 and 1 October 2022⁹. A decision on the application of the RPM and the resulting reference prices was published by E-Control on 3 June 2020 and is valid until 2024¹⁰. E-Control does not propose changes to reference prices. Consistent with this approach, E-Control consults on the application of the flow-based charges with no information on the RPM or on capacity tariffs.
- (20) A first consultation was launched on 14 January 2022 and remained open for a duration of two months until 14 March 2022¹¹. The proposed flow-based charge was based on gas and electricity prices available as of December 2021. E-Control forwarded the consultation documents to the Agency on 17 January 2022. On 24 March 2022, the consultation responses and their summary were submitted to the Agency. These have been taken into consideration for this analysis
- (21) A second consultation was launched on 23 March 2022 with a duration of three weeks until 14 April¹². This second consultation is required by Austrian law¹³ for adapting the national legislation on tariffs. This second consultation provides an update on the electricity and gas prices and on the resulting flow-based charge. On 20 April 2022, the consultation responses and their summary were published. The Agency has taken these into consideration for this analysis
- (22) The Agency considers the 14 January 2022 consultation to be the final consultation and follows this timeline to publish this Report no later than two months following the end of the consultation, that is, by 14 May 2022). At the same time, the Agency takes into account in this Report the updated data provided by E-Control in the 23 March consultation.

⁸ With the exception of Article 10(2)(b), when different RPMs may be applied by the TSOs within an entry-exit zone.

⁹ E-Control has issued the official decisions V MET G 02/21 and V MET G 03/21 to adjust the TSOs' preliminary allowed cost for the remaining time of the 2021-2024 regulatory period. These decisions are, however, not public.

¹⁰ See E-Control Regulation Commission Ordinance Amending the Gas System Charges Ordinance 2013 (2nd Gas System Charges [Amendment] Ordinance 3 June 2020). See link:

https://www.e-control.at/documents/1785851/1811597/01_GSNE-VO+2nd+Amendment+2020+2020-06-03_en.pdf/40c9432d-ca4f-6ade-1ca3-323b024958b9?t=1593170716743

¹¹ <https://www.e-control.at/en/marktteilnehmer/gas/tarif-network-code>

¹² See the link in the previous footnote.

¹³ See footnote 1.

- (23) Within five months following the end of the first consultation, and pursuant to Article 27(4) of the NC TAR, E-Control shall take and publish a motivated decision on the relevant items set out in Article 26(1).

2.2 Rationale for consulting of commodity charges

- (24) E-Control explains in the consultation document that due to the current sharp rise in the price of the energy used to power network compressors (see Figure 1 below), the operation of the network would be jeopardized should a flow-based charge not be immediately introduced to cover the increase in energy costs. The current tariffs are based on the allowed revenue set to recover non-controllable costs that result from much lower energy prices. They, therefore, don't allow TSOs to continue financing the purchase of the necessary energy to run the compressor stations of the Austrian network.
- (25) The regulatory period applicable in Austria lasts from 2021 to 2024 and encompasses a single four year tariff period. According to Article 12(3) of the NC TAR, reserve prices shall be binding for the subsequent gas year. The consultation carried out by E-Control proposes to introduce a top-up flow-based charge to allocate the additional fuel costs of compressors that are above the costs already estimated for this period. This tariff, however, is not a reserve price. The proposed flow-based charge comes on top of the capacity tariffs that serve to recover the fuel costs estimated prior to the increase of energy prices that has taken place in 2021.

2.3 Consultation requirements for the introduction of a flow-based charge

- (26) The Agency remarks that the NC TAR establishes consultation requirements for the RPM, for transmission tariffs (capacity and commodity tariffs) and for non-transmission tariffs as per Article 26(1) of the NC TAR.
- (27) At the same time, the Agency notes that the current consultation on the application of flow-based charges does not propose any changes to the capacity tariffs that are already applicable until the end of 2024. For this reason, the Agency foresees no need consult on the RPM when consulting on the introduction of an additional flow-based charge.
- (28) The requirements for the analysis of the final consultation to be performed by the Agency are laid out in Article 27(2) of the NC TAR. These consist of an analysis of the compliance of the proposed RPM with the requirements laid out in Article 7, the compliance of non-transmission tariffs with Article 4(4) of the NC TAR, and the compliance of commodity charges with Article (4)(3) of the NC TAR. The Agency considers that only the following requirements should be analysed in the current consultation:
- whether all the information referred to in Article 26(1) that is relevant to the setting of a flow-based charge has been published, pursuant to Article 27(2)(a) of the NC TAR.
 - whether the criteria for setting commodity-based transmission tariffs as set out in Article 4(3) are met, pursuant to Article 27(2)(b)(2) of the NC TAR.

3. Completeness

3.1 Has all the information referred to in Article 26(1) been published?

- (29) Article 27(2)(a) of the NC TAR requires the Agency to analyse whether all the information referred to in Article 26(1) of the NC TAR has been published.
- (30) Article 26(1) of the NC TAR requires that the consultation document should be published in the English language, to the extent possible. The Agency remarks that the consultation document has been published in English.
- (31) Overall, the relevant information in Article 26(1) of the NC TAR has been properly published with the exception of the points detailed in Table 1 below.

Table 1 Checklist information Article 26(1)

Article	Information	Published: Y/N/NA
26(1)(a)	the description of the proposed reference price methodology	Not applicable
26(1)(a)(i) 26(1)(a)(i)(1) 26(1)(a)(i)(2)	the indicative information set out in Article 30(1)(a), including: <ul style="list-style-type: none"> the justification of the parameters used that are related to the technical characteristics of the system the corresponding information on the respective values of such parameters and the assumptions applied 	Partially. The consultation does not include information on the energy consumption of the network compressors. The consultation does not include the forecasted energy prices used to calculate the uncontrollable costs for the remainder of the period.
26(1)(a)(ii)	the value of the proposed adjustments for capacity-based transmission tariffs pursuant to Article 9	Not applicable
26(1)(a)(iii)	the indicative reference prices subject to consultation	Not applicable
26(1)(a)(iv)	the results, the components and the details of these components for the cost allocation assessments set out in Article 5	Yes
26(1)(a)(v)	the assessment of the proposed reference price methodology in accordance with Article 7	Not applicable
26(1)(a)(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)	Not applicable
26(1)(b)	the indicative information set out in Article 30(1)(b)(i), (iv), (v)	Yes
26(1)(c)(i) 26(1)(c)(i)(1) 26(1)(c)(i)(2) 26(1)(c)(i)(3)	where commodity-based transmission tariffs referred to in Article 4(3) are proposed <ul style="list-style-type: none"> the manner in which they are set the share of the allowed or target revenue forecasted to be recovered from such tariffs the indicative commodity-based transmission tariffs 	Yes

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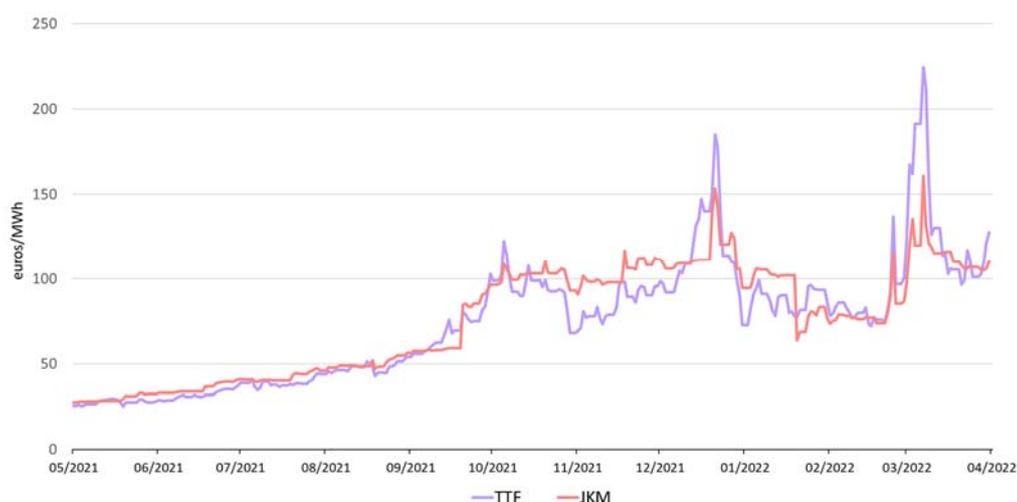
<p>26(1)(c)(ii) 26(1)(c)(ii)(1) 26(1)(c)(ii)(2) 26(1)(c)(ii)(3) 26(1)(c)(ii)(4)</p>	<p>where non-transmission services provided to network users are proposed:</p> <ul style="list-style-type: none"> the non-transmission service tariff methodology therefor the share of the allowed or target revenue forecasted to be recovered from such tariffs the manner in which the associated non-transmission services revenue is reconciled as referred to in Article 17(3) the indicative non-transmission tariffs for non-transmission services provided to network users 	<p>Not applicable</p>
<p>26(1)(d)</p>	<p>the indicative information set out in Article 30(2);</p>	<p>Yes</p>
<p>26(1)(e) 26(1)(e)(i) 26(1)(e)(ii) 26(1)(e)(iii) 26(1)(e)(iv)</p>	<p>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:</p> <ul style="list-style-type: none"> the proposed index; the proposed calculation and how the revenue derived from the risk premium is used at which interconnection point(s) and for which tariff period(s) such approach is proposed the process of offering capacity at an interconnection point where both fixed and floating payable price approaches referred to in Article 24 are proposed 	<p>Not applicable</p>

4. Description of the proposed flow-based charge

4.1 Increases in gas and electricity prices have triggered increases in the fuel costs of TSOs

- (32) E-Control refers in the consultation document to the increase in the prices of both electricity and gas in 2021 and 2022. This increase affects the operating costs of compressors, some of which function based on gas and others on electricity. Figure 1 below represents the evolution of gas prices that has taken place in the course of the current tariff period.

Figure 1: Evolution of TTF and JKM gas prices 2021-22 (EUR/MWh). Source: ICIS



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- (33) Prior to the application of the proposed fuel-based charge, fuel costs were allocated using capacity-based tariffs. The current proposal foresees the allocation of the additional fuel costs on top of those allocated as part of capacity tariffs, in the form of an additional top-up flow-based charge.
- (34) The fuel costs forecasted in the NRA motivated tariff decision of 2020¹⁴ for both GCA and TAG amounted to EUR 79,328,400/year. These costs are being recovered by the TSOs through capacity tariffs. In the 14 January 2022 consultation, fuel costs were estimated to increase by an additional EUR 81,580,520/year (102% increase), to further increase by an additional €93,818,440m in the 23 March 2022 consultation compared to 14 January 2022. This is a total increase of uncontrollable costs of EUR 175,398,960m compared to the 2020 decision (221% increase). Overall, this results in an increase of 43% on the allowed revenue of the TSOs.

Table 2: GCA and TAG allowed revenue (controllable and uncontrollable costs) for the 2021-24 regulatory period, in EUR. Source: E-Control 14 March consultation.

EUR/year		Previously allowed cost	11 January 2022 consultation		23 March 2022 consultation	
			Increase due to rise in energy cost	Revised allowed cost	Increase due to rise in energy cost	Revised allowed cost
GCA	Controllable costs	116,261,000		116,261,000		116,261,000
	Non-controllable costs	9,831,600	6,068,750	15,900,350	13,932,930	23,764,530
	Total costs	126,092,600	6,068,750	132,161,350	13,932,930	140,025,530
TAG	Controllable costs	209,336,400		209,336,400		209,336,400
	Non-controllable costs	69,496,800	75,511,770	145,008,570	161,466,030	230,962,830
	Total costs	278,833,200	75,511,770	354,344,970	161,466,030	440,299,230
Total increase in allowed revenue		404,925,800		486,506,320		580,324,760
Total non-controllable costs		79,328,400	81,580,520		175,398,960	

4.2 Allowed revenue and tariff setting mechanisms related to fuel costs

- (35) According to Article 4(3)(a)(i) of the NC TAR, flow-based charges should be *levied for the purpose of covering the costs mainly driven by the quantity of the gas flow*. These costs can be referred to as ‘fuel costs’ and can include the cost associated with CO₂ emissions, electricity and/or natural gas costs and network losses. In the current context, the first two components have been subject to increases.
- (36) The allowed revenue and tariff setting rules to manage uncontrollable costs, such as fuel costs, include several steps. These steps allow understanding why the increases in energy prices have become a problem for the Austrian TSOs.
- (37) In a first step, E-Control sets the allowed revenue of the TSOs, which includes both controllable and uncontrollable costs. The latter particularly depends on the network flows and on the price of energy. Both of these parameters are forecasted before the start of the tariff period. The values for the costs of energy that E-Control set in the 2020 Decisions¹⁵ are laid out in Table 3 below. Notably, the energy prices used to set the uncontrollable costs for the years 2021 and 2022 are considerably below the realised energy prices for these years, and the trend could continue in the years 2023

¹⁴ See footnote 2.

¹⁵ See footnote 2.

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and 2024. The forecasted values used in 2020 that are in Table 3 below should be compared with the gas prices for 2021-24 considered for the proposed flow-based charge, which range between 77.94 EUR/MWh (for 2022) and 33.62 EUR/MWh (for 2024). These updated forecast prices are shown in Table 6 below.

Table 3 Forecasted energy prices to set the allowed revenue of GCA and TAG, 2020. Source: E-Control 2020 Decisions V MET G 01/17 and V MET G 02/17.

	2021	2022	2023	2024	Average
Gas prices price (EUR/MWh)	19.66	19.42	19.32	18.42	19.21
Electricity prices (EUR/MWh)	79.94	82.32	87.44	88	84.43
ETS CO₂ prices (EUR/ton)	32.90	33	33.66	34.33	33.47

- (38) In a second step, this revenue is allocated to network points to be recovered by network tariffs. In the case of Austria, the totality of the allowed revenue of the TSOs is allocated as capacity tariffs. The TSOs use the revenue recovered through network tariffs to pay for the cost of fuel. In a scenario where energy prices follow the forecast, the recovered revenue is sufficient to finance fuel costs. However, where the forecast is lower than the realised energy prices, the TSOs face costs above their allowed revenue. The TSOs are then forced to advance the payments to finance these increases. This is the situation that has motivated the consultation carried out by E-Control for the introduction of a fuel-based charge which aims at covering the current increase in energy prices. E-Control provided to ACER information on the financial stress of the TSOs induced by the increases in energy prices that is not part of the consultation.
- (39) In a third step, the NRA can reconcile the recovered revenue to balance any under- or over-recovery resulting from the forecasted costs related to fuel costs. The NC TAR foresees various mechanisms for this adjustment. What is relevant in the case of Austria is the length of the *tariff* period extending for an unusual duration of four years, compared to the yearly tariff periods which are regular in the EU. This unusual length places a greater stress on the TSOs, should they be exposed to an enduring price deviation from the original forecast in the price of energy.
- (40) The Agency further assesses the financial stress on TSOs caused by the increase on energy prices under Section 4.4. Regarding the information published by E-Control on the increase of energy prices, the Agency recommends that E-Control provides in the motivation decision the values and the methodology used to forecast the energy prices to set a flow-based charge for the remainder of the on-going tariff period. This information is necessary to calculate the proposed flow-based charge and is has not provided in the consultation document.

4.3 TSOs' energy procurement procedures

- (41) While network tariffs provide the revenue for the TSOs to finance the costs of fuel, the purchase of the fuel is carried out by the TSOs is based on yearly tenders for electricity and gas. In the case of TAG, the tender for natural gas is based on monthly gas prices calculated as the average TTF day ahead price¹⁶. Suppliers can bid on the premium to be applied on top of the proposed monthly price to transport this gas to Austria.

¹⁶ The Agency received from E-Control the link to TAG's website containing information on the tenders for natural gas: <https://www.taggmbh.at/en/online-services/gas-purchase/>

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- (42) The Agency notes that the consultation document does not include any information on this procedures. The Agency could therefore not assess the tender procedures for the purchase of energy.
- (43) The Agency recommends that E-Control include in the motivated decision the information and the links on the TSO procurement tenders for electricity and gas. E-Control should provide sufficient transparency on the procedures followed and ensure that the tenders were carried out in a transparent, competitive and non-discriminatory manner.

4.4 Introduction of a flow-based charge before the end of the on-going tariff period

- (44) The NC TAR provides rules for setting tariffs that are applicable for one or various tariff periods. Notably, Article 12(3) of the NC TAR requires that *reserve prices shall be binding for the subsequent gas year*. In addition, Article 3(23) of the NC TAR defines 'tariff period' as *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*. This amounts to a requirement to keep capacity tariffs unchanged during the duration the tariff period for which the tariffs are applicable.
- (45) The Agency notes that the obligation to maintain tariff levels for the duration of the tariff period is applicable to the capacity tariffs derived using the RPM but not to the commodity tariffs referred under Article 4(3) of the NC TAR. The Agency therefore considers that the introduction of commodity tariffs before the end of the tariff period is compliant with the requirements of the NC TAR.
- (46) At the same time, the Agency notes that the NC TAR foresees an instrument to introduce exceptional changes in capacity tariffs before the end of the tariff period. Article 12(3) of the NC TAR allows for recalculating capacity tariffs *within the tariff period due to exceptional circumstances under which the non-adjustment of tariff levels would jeopardise the operation of the TSO*.
- (47) The Agency notes that the exceptionality foreseen under Article 12(3) applies to capacity tariffs and not to commodity tariffs. At the same time, the Agency considers that the conditions that support an exceptional change in the applicable capacity tariffs can equally justify the introduction of a flow-based charge. Even if there is no requirements to keep commodity tariffs unchanged before the end of the tariff period, the Agency considers that introducing such tariffs once the tariff period has started requires a justification on the same terms, and based on the same exceptionality criteria, as the justification required for capacity tariffs.
- (48) Following these requirements, the Agency notes that the consultation document does not fully explain how the increase in energy prices jeopardises the operation of the TSO. E-Control provides in the consultation document information on the total increases in the uncontrollable costs of the TSOs, but does not provide a description of how this affects the financial stability of the TSOs and their ability to continue financing the operation of the network. In the view of the Agency, this information is necessary to justify a pass-through of the volatility in energy prices to network users compared to using the foreseen TSO reconciliation mechanism. Notably, the NC TAR establishes a regulatory account that allows TSOs absorbing changes in energy prices and ensures the full recovery of TSOs' revenue. E-Control should explain in the motivated decision, why the current

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changes in energy prices cannot be absorbed by the TSO and therefore justify a pass-through of the increases in fuel costs to network users in the form of a flow-based charge.

- (49) The Agency recommends that E-Control make this information part of the motivated decision to further support the introduction of a flow-based charge, which should include, at least:
- Information on the financial capacity or incapacity of the TSO to continue the operation of the network in the context of high energy prices.
 - Original forecasted values used to set the fuel costs of the TSOs for the current tariff period, as laid out in E-Control's 2020 decisions V MET G 01/17 and V MET G 02/17.
 - Information on the fuel consumption from compressors to allow linking the increases in energy prices with the increase in TSOs' uncontrollable costs.

4.5 Entry into force of the proposed flow-based charge

- (50) The consultation documents discuss possible dates to introduce the proposed flow-based charge. The consultation carried out on 14 January 2022 proposes to introduce the flow-based charge by 1 October 2022. The later consultation carried out on 23 March 2022 proposes the earlier date of 1 June 2022. E-Control justifies this change on the basis of the financial stress that the TSO is currently facing.
- (51) A number of stakeholders have expressed their concerns about the earlier implementation date.
- (52) Based on the previous section, the Agency considers that the introduction of a flow-based charge should be adequately justified. In the absence of an adequate assessment of the capacity of the TSOs to continue the operation of the networks, the Agency cannot assess the appropriateness of the two proposed dates
- (53) The Agency considers that the default date to be considered should be 1 October, as a later date provides stakeholder a longer lead time to prepare for the introduction of a significant network charge. At the same time, the Agency considers that 1 June could be a valid entry into force date should the TSOs financial state require an urgent adoption. The Agency recommends that E-Control justify the entry date of the proposed flow-based based on the capacity of the TSOs to continue the operation of the network. As part of this assessment, the NRA should minimise, to the extent possible, the costs imposed to network users by providing the longest possible lead time for the entry into force of the proposed flow-based charge.

4.6 Calculation of the proposed flow-based charge

- (54) E-Control proposes to set a flow-based charge at the level of the entry-exit zone which is equally applicable to both TSOs' networks.
- (55) The flow-based charge is calculated based on the gas nominations for 2021 (as represented in Table 4 and Table 5 below) and on the forward electricity and natural gas prices for the years 2022 to 2024 (as represented in Table 6 below). The Agency notes that the latter information is not provided in the consultation document.

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Table 4: Gas nominations 2021 11 January

MWh/y	GCA	TAG	Total
Market area entry points	79,267,794	343,248,965	422,516,759
Entries points from storage	14,570,920	0	14,570,920
Entry points from distribution	0	0	0
Total nominations at entry points	93,838,714	343,248,965	437,087,679
Market area exit points	44,504,630	306,330,089	350,834,719
Exit points to storage	17,324,974	0	17,324,974
Exit points to distribution	56,936,669	8,976,161	65,912,830
Total nominations at exit points	118,766,273	315,306,250	434,072,523

Table 5: Gas nominations 23 March Change in values are in red.

MWh/y	GCA	TAG	Total
Market area entry points	79,267,794	343,248,965	422,516,759
Entries points from storage	14,570,920	0	14,570,920
Entry points from distribution	0	0	0
Total nominations at entry points	93,838,714	343,248,965	437,087,679
Market area exit points	44,504,631	306,330,089	350,834,720
Exit points to storage	17,324,974	0	17,324,974
Exit points to distribution	60,407,515 (-5%)	8,977,498	69,385,014 (-5%)
Total nominations at exit points	122,237,120 (-3%)	315,307,588	437,544,708 (-1%)

Table 6 Forward natural gas prices used for the calculation of the flow based charge in E-Control's decisions V MET G 02/21 and V MET G 03/21.

Gas yearly future	EUR
Cal-22	77.94
Cal-23	50.56
Cal-24	33.62

- (56) E-Control explained to the Agency that it proposes to allocate 75% of the increase in the fuel costs in the current tariff period and 25% in the next regulatory period. The consultation document does not refer to this split of costs. The Agency understand that the figures in Table 4 and Table 5 above correspond to the 75% of the uncontrollable costs to be allocated in the current tariff period.
- (57) Based on the forward prices for 2022 and 2023, E-Control forecast the fuel costs for the remainder of the tariff period. These costs are then allocated separately based on the forecasted nominations at entries and at exits.
- (58) The calculation of the flow based charge is based on the entry-exit split of the RPM that is currently applicable. 20.6% of the allowed costs of the flow-based charge (36,132,186 EUR/year) are allocated to entry points and 79.4% from exit points (139,266,775 EUR/year).
- (59) E-Control then divides the additional non-controllable costs to be allocated at entry points by the total forecasted nominations at entry points (437,544,708 MWh/year – without storage) to calculate the flow base charge at entry points. For the calculation of the flow-based charge at exit points, E-Control divides the additional non-controllable costs to be allocated at exit points by the total nominations at exit points (434,072,523 MWh/year). The resulting flow-based charges are:
- at entry points: 0.08552 EUR/MWh
 - at exit points: 0.31829 EUR/MWh
- (60) The Agency recommends that E-Control provide additional transparency on:

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- The 75%-25% split of uncontrollable costs to be allocated in the current tariff period and in the forthcoming tariff period. E-Control should additionally provide the rationale for such split.
- The values used to set the fuel costs of the TSOs for the remainder of the current tariff period, as laid out in Table 6 above.

4.7 Non-application of the proposed flow-based charge to entry points from storage

- (61) E-Control proposes to apply the flow-based charge to all entry points, with the exception of entry points from storage. The Agency points out that this approach is not compliant with Article 4(3)(a)(ii) of the NC TAR which requires that the charge is set in such a way that it is the same at all entry points and/or the same at all exit points.
- (62) In addition to the NC TAR, discounts to capacity-based transmission tariffs to and from storage are considered in the EC amendment proposal to Regulation (EU) 2017/1938 concerning measures to safeguard the security of gas supply and Regulation (EC) n°715/2009¹⁷. Article 2(2) states that *a discount of 100 % shall be applied to capacity-based transmission tariffs at entry points from and exit points to storage facilities*. The Agency notes that the scope of the rule is consistent with the NC TAR as it is applicable to capacity tariffs. The Agency notes that the text has not been yet approved and could be subject to amendments.
- (63) The consultation document does not justify the choice of E-Control not to apply the flow-based charge at entry points from storage. At the same time, E-Control explained to the Agency the reasons for this choice:
- (64) First, TSOs' compression power is used to transport gas through the transmission network to the storage facilities. From these points, storage facilities inject the gas underground using dedicated compressor power that is part of the storage infrastructure. When withdrawn, gas exits storage and enters the transmission or distribution networks with the pressure that was provided upon injecting underground, so no additional pressure is needed for the gas to enter the transmission network.
- (65) Second, a 100% discount on capacity tariffs is applicable at entry points from storage. The proposed approach aims at ensuring consistency with a full discount on the capacity tariffs applicable at these points.
- (66) Third, the Austrian law does not foresee the application of tariffs at entry points from storage¹⁸. E-Control explained to the Agency that the urgency to introduce a flow-based charge is not compatible with the time required to change the Austrian national law.
- (67) Regarding the first point, the Agency considers that E-Control's argument could justify the non-application of flow-based charges at entry points from storage due to the pressure provided by

¹⁷ See Article 2(2) (page 19) of the pdf in the following [link](#).

¹⁸ Section 74 para 2 Natural Gas Act 2011 (GWG 2011) states that the transmission system utilisation charge shall only be charged at storage-related exit points, https://www.e-control.at/documents/1785851/1811597/GWG+2011+Fassung+vom+14062017_en.pdf/40c3d347-c0fe-7539-fafb-0cdaf87061e0?t=1511873597354

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storage sites. At the same time, the Agency points out that entry points from other networks receive gas that has been pressurised with compressors that are outside the transmission networks (in neighbouring network). The argument provided by E-Control is therefore not conclusive. The Agency cannot assess the second and third arguments made by E-Control.

- (68) Based on the information laid out in this report, the Agency considers that the proposed approach to not apply flow-based charges at entry points from storage could potentially improve cost reflectivity, accelerate the entry into force of the flow-based charge, and potentially incentivise the storage of gas. At the same time the Agency notes that this approach is not compliant with the NC TAR.

4.8 Split of fuel costs between the GCA and TAG

- (69) The increase in fuels costs impacts differently each of the TSOs operating the Austrian network. This is due to differences in the design and operation of each of the two TSO networks. The difference in the controllable and uncontrollable components of the TSOs allowed revenues is represented in Table 2 above.
- (70) TAG's network has a length of 340km and is powered by five compressor stations (total power of 421 MW). Gas enters through Baumgarten, which is located at an altitude of 143m, and is transported to domestic points and to the Tarvisio exit point on the border with Italy which is located at an altitude of 727m. The pressure of the gas delivered to Austria at the Slovak border is lower (50 bar) than the pressure at the exit point at Italy, Tarvisio IP (53.5 bar), so TAG has to increase the pressure of the gas it transports.
- (71) GCA's network has an extension of 550 km, however the compressor needs are significantly lower. The network is powered by four compressor stations totalling 145 MW. According to E-Control, there are long term contracts in place from Slovakia to Austria. While the market spreads generally support the nominations of gas from Germany to Austria, the existence of these long term contracts results in gas nominations in the reverse direction. As a result, the nominations in both directions can be netted, cancelling each other, and limiting the needs of transporting gas across the network.
- (72) The Agency notes that the consultation documents include the total values for the TSOs' uncontrolled costs as shown in Table 2 above. However, the consultation documents do not include information on the energy consumption of the compressors and the running hours. This would allow linking the increase in energy prices to the increase in the TSOs' uncontrolled costs. The Agency recommends that this information be published in the NRA motivated decision.
- (73) The Agency notes that the NC TAR foresees the flow-based charge to be applied uniformly across entries and across exits of the entry-exit zone. However, given that there are two TSOs operating in the Austrian network with very different fuel costs, the resulting flow-based charge is the average of the fuel costs of both TSOs. This implies a cross-subsidisation effect whereby the users of GCA infrastructure partly subsidise the users of the TAG infrastructure. The Agency notes that this effect is a result of the correct application of the NC TAR

4.9 Cost allocation assessment

- (74) E-Control includes in the consultation the calculation of the CAA for the proposed flow based charge. It is based on the cost driver of nominations (amount of gas flows) as required by Article 5(1)(b).
- (75) The result of the CAA is provided in the consultation from 14 January is 1,33%. E-Control reviewed the calculation in the 23 March consultation updating the result to 6.76%. The Agency notes that both results are within the 10% threshold laid out under Article 5(6) of the NC TAR and do not require further justification.
- (76) At the same time, the Agency points out that CAA is not designed to reflect the cross-subsidisation effect referred to in paragraph (73) above resulting from the operation of two TSOs in a single entry-exit system. This effect though, as mentioned before, is compliant with the application of the NC TAR.

4.10 Inter-TSO compensation mechanism

- (77) According to the consultation document, the application of a flow-based charge will be accompanied by an ITC to redistribute the recovered revenue between the two TSOs operating in the entry-exit zone. This mechanism is necessary to ensure that each of the TSOs recovers its allowed uncontrollable costs. Both TSOs have different flow costs, however, a single flow-based charge is applied to them. The ITC serves to balance the expected over-recovery from GCA and the expected under-recovery from TAG.
- (78) The Agency considers the application of an ITC mechanism necessary to ensure that TSOs recover their allowed revenue.

4.11 Reconciliation of the fuel costs across regulatory periods

- (79) E-Control proposes to adapt the commodity charge for the remaining years of the regulatory period. For this purpose, E-Control provides a forecast of electricity and natural gas prices based on the forward curve as detailed on Table 6 above.
- (80) The flow-based charge proposed for by E-Control is applicable to the remaining 2.5 years of the tariff period. This charge is based on a forecast for the prices of electricity and gas. Should the actual energy prices deviate from this forecast, the TSO will have an under- or over- recovery related to the fuel costs. The consultation document, however, does not explain how the potential reconciliation of these costs would be carried out.
- (81) Chapter IV of the NC TAR covers the rules applicable for the reconciliation of transmission revenue, which is applicable to both capacity and commodity tariffs. However, the consultation document does not explain the details of the reconciliation applicable to the flow-based charge. This is particularly relevant given the potential for large over- or under- recoveries that could arise in the current context of high energy price volatility.

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- (82) The Agency recommends that E-Control explain how the revenue resulting from the application of a flow-based charge would be reconciled, including by explaining whether the forecast for the next tariff period could be used to reconcile revenue related to fuel costs.
- (83) Finally, the Agency understands that, under the current regulation¹⁹, the Austrian TSOs can request a review of the allowed revenue and tariff methodologies in the event of significant under-recoveries, such as the one now happening. The Agency understood from E-Control that this mechanism is not symmetrical and does not foresee the any corrections to be applied in the case of significant TSO over-recoveries. The Agency recommends that E-Control review the reconciliation mechanism with a view to ensuring a symmetric approach to under- and over-recoveries.

4.12 Publication of E-Control's decisions on the allowed revenue methodologies of the TSOs

- (84) The Agency notes that E-Control has not followed ACER's recommendation provided in the 2020 Report to the Austrian final consultation on transmission tariffs²⁰. The Agency recommended in the Report that E-Control publish the allowed revenue decisions applicable to the transmission networks of GCA and TAG²¹. In addition, E-Control has not published neither the 2022 decisions updating the uncontrollable costs of the TSOs²² which contain the supporting data for the calculation of the proposed flow-based charge.
- (85) The Agency notes that this information must be published before the start of the relevant tariff period according to Article 30(1)(b). In addition, the requirements to introduce changes to tariffs within the tariff period, only in the event of exceptional circumstances, should be founded on the provision of adequate transparency supporting the justification of such a measure. The need to introduce a new charge before the end of the tariff period should be based on a transparent and public assessment of the circumstances triggering the tariff revision.
- (86) The Agency recommends that E-Control publish the decisions related to the allowed revenue of the TSOs. This applies to the initial decision applicable for the current tariff period and, in the context of this Report, to the recently adopted amendments in 2022 to update the uncontrollable costs of the TSOs. The publication of the NRA decision on the allowed revenue of the TSOs is a requirement set in Article 41(16) of Directive 2009/73/EC, which established that NRAs decisions *shall be fully reasoned and justified to allow for judicial review. The decisions shall be available to the public*

¹⁹ METHODE GEM § 82 GWG 2011 FÜR DIE FERNLEITUNGEN ÖSTERREISCHISCHER FERNLEITUNGSNETZBETREIBER. See II.7. Energiekosten und Kosten für CO₂-Zertifikate: *Bei einer maßgeblichen Überschreitung der Energiekosten und Kosten für CO₂-Zertifikate von Ist-Kosten zu Plan-Kosten ist eine entsprechende Erhöhung der geltenden Tarife auf Antrag des Netzbetreibers zu prüfen*

*Bundesgesetz, mit dem Neuregelungen auf dem Gebiet der Erdgaswirtschaft erlassen werden (Federal Act Providing New Rules for the Natural Gas Sector) (Gaswirtschaftsgesetz [Natural Gas Act] 2011) FLG I no 107/2011 (National Council: GP XXIV RV 1081 AB 1128 p. 124. Federal Council: 8581 AB 8593 p. 801.). See Section 82: *Upon request of the regulatory authority, the methodology shall be adjusted or redesigned.**

²⁰ https://documents.acer.europa.eu/Official_documents/Acts_of_the_Agency/Publication/Agency%20report%20-%20analysis%20of%20the%20consultation%20document%20for%20Austria.pdf

²¹ See footnote 2.

²² See footnote 9.

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while preserving the confidentiality of commercially sensitive information. The Agency recommends that E-Control adopt the highest standards of transparency and justification on these decisions.

5. Compliance: Are the criteria for setting commodity-based transmission tariffs as set out in Article 4(3) met?

- (87) Article 27(2)(b)(2) of the NC TAR requires the Agency to analyse whether the criteria for setting commodity-based transmission tariffs as set out in Article 4(3) are met.
- (88) The use of commodity-based transmission tariffs is an exception. Only part of the transmission services revenue may be recovered by commodity-based transmission tariffs. E-Control proposes to recover a share of the fuel costs using a commodity charge. The flow costs proposed to be allocated as a flow-based charge are 43% of the allowed revenue of the TSOs. The Agency considers this an appropriate use of the commodity charge in the current context of high energy prices.
- (89) The NC TAR allows for two types of commodity-based transmission tariffs: a flow-based charge and a complementary revenue charge. Austria proposes to apply a flow based charge
- (90) The proposed flow-based charge does not meet all the criteria set in Article 4(3).

Table7 Criteria Article 4(3a)

Criteria	Y/N?
Levied for the purpose of covering the costs mainly driven by the quantity of the gas flow	Yes
Calculated on the basis of forecasted or historical flows, or both	Yes
Set in such a way that it is the same at all entry points and the same at all exit points	No. The flow based charge is not applied to entry points from storage.
Expressed in monetary terms or in kind	Yes

- (91) The Agency reminds that it is a requirement of the NC TAR to apply the same flow-based charge to all entry points and / or to all exists or both.

Annex 1: Legal framework

(92) Article 27 of the NC TAR reads:

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 Agency.*

2. *The Agency 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:

(1) whether the proposed reference price methodology complies with the requirements set out in Article 7;

(2) whether the criteria for setting commodity-based transmission tariffs as set out in Article 4(3) are met;

(3) 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 Agency shall publish and send to the national regulatory authority or transmission system operator, depending on which entity published the consultation document, and the Commission the conclusion of its analysis in accordance with paragraph 2 in English.*

The Agency 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 Agency and the Commission 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 2019. 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 2019 will be applicable until the end thereof. This procedure shall be repeated at least every five years starting from 31 May 2019.*

(93) Article 26(1) of the NC TAR reads:

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:

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- (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.
- (94) Article 7 of the NC TAR reads:

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;

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(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.

(95) Article 13 of Regulation (EC) No 715/2009 reads:

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

Member States may decide that tariffs may also be determined through market-based arrangements, such as auctions, provided that such arrangements and the revenues arising therefrom are approved by the regulatory authority.

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

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

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

(96) Article 4(3) of the NC TAR reads:

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) levied 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;*

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(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.

(97) Article 4(4) of the NC TAR reads:

4. The non-transmission services revenue shall be recovered by non-transmission tariffs applicable for a given nontransmission 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 Member State, 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.

Annex 2: List of abbreviations

Acronym	Definition
ACER	Agency for the Cooperation of Energy Regulators
ENTSOG	European Network of Transmission System Operators for Gas
NRA	National Regulatory Authority
TSO	Transmission System Operator
EC	European Commission
EU	European Union
MS	Member State
NC TAR	Network code on harmonised transmission tariff structures for gas
IP	Interconnection Point
VIP	Virtual Interconnection Point
RPM	Reference Price Methodology
CWD	Capacity Weighted Distance
CAA	Cost Allocation Assessment
RAB	Regulated Asset Base
OPEX	Operational Expenditures
CAPEX	Capital Expenditures