



## ACER Call for Evidence

on the conditions for the application of FDA UIOLI pursuant to paragraph 2.2.3.1 a) - d) of the CMP Guidelines

**(“congestion indicators”)**

PC\_2016\_G\_01

Fields marked with \* are mandatory.

### Background & objective

According to paragraph 2.2.1.2 of the Commission Guidelines on Congestion Management Procedures[1] (hereafter, the ‘CMP GL’) the Agency for the Cooperation of Energy Regulators (‘the Agency’) has to publish a yearly monitoring report on contractual congestion[2] at interconnection points (‘IPs’), taking into consideration, to the extent possible, capacity trading on the secondary market and the use of interruptible capacity.

Paragraph 2.2.3.1 specifies the conditions[3] under which a specific CMP - i.e. the Firm day-ahead Use-It-Or-Lose-It mechanism (‘FDA UIOLI’) - is to be applied. The Agency has used each of these conditions as an indicator for contractual congestion (‘congestion indicators’). Accordingly, in the ACER Congestion Reports[4], the Agency had identified contractual congestion at those IP sides where at least one of the conditions of the ‘congestion indicators’ (conditions 2.2.3.1 a) – d)) was fulfilled.

Some stakeholders (including TSOs, NRAs and network users) have expressed doubts on whether the ‘congestion indicators’ are able to correctly identify actual situations of contractual congestion. Some stakeholders suggested also to include other elements or criteria in the

decision-making process on whether an IP side is to be considered “contractually congested” and therefore would require the application of the FDA UIOLI.

To investigate these issues, **the Agency is inviting stakeholders to formulate concrete suggestions to improve the “congestion indicators”**. The aim is to check if it is possible to improve the existing “congestion indicators” and/or define criteria to be used by the Agency in its congestion analysis. Such criteria would have to:

- appropriately reflect / describe circumstances that identify persistent existence of contractual congestions at IP sides,
- be objective and replicable,
- be based on data which is or will have to be made available at least to the Agency in a timely manner,
- and be applicable - with reasonable efforts - across the EU.

Please note that, by launching this exercise in the form of a survey, the Agency does not commit to propose amendments[5] to the existing provisions related to the “congestion indicators”. Whether the Agency will do so depends to a large extent on the proposals which will be received, the support these proposals enjoy among stakeholders, and the Agency’s assessment of whether such proposals would be an improvement compared to the current formulation.

Next to the above mentioned main topic, the questionnaire covers a number of additional issues which were raised in the recommendations section of the Agency’s latest Congestion Report.

[1] Commission Decision of 24 August 2012 on amending Annex I to Regulation (EC) No 715/2009 of the European Parliament and of the Council on conditions for access to the natural gas transmission networks:

<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012D0490&from=EN>

[2] Article 2(1)(21) of Regulation 715/2009 (

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:211:0036:0054:en:PDF>)

defines contractual congestion as a situation where the level of firm capacity demand exceeds the technical capacity

[3] i.e. points a) – d) of paragraph 2.2.3.1

[4] Latest Report: ACER annual report on contractual congestion at [interconnection points \(period covered 2015\)](#), 3rd edition, 31.05.2016:

[http://www.acer.europa.eu/Official\\_documents/Acts\\_of\\_the\\_Agency/Publication/ACER%202016%20Re](http://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/Publication/ACER%202016%20Re)

[5] The CMP GL may be amended according to Article 23 of Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks (Gas Regulation):

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:211:0036:0054:en:PDF>

## Respondent identification

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E-mail address

**Question 0 – Respondent identification: Please indicate your name, e-mail address, company/organisation, type of stakeholder (organisation) you are representing and whether or not you agree that your answer is published.**

**Name and Surname (not to be published)**

**\* Company/organisation**

EDF Group

**\* Please let us know the type of stakeholder (organisation) you are representing**

- Network user
- TSO
- Producer
- NRA
- EU or international organisation
- National association
- Government
- Other (please specify)

**If you are a network user and you have booked capacity at IPs, where the FDA UIOLI mechanism is applied, to which extent does paragraph 2.2.3.5 of the CMP GL (i.e. the exception from the renomination restriction, if less than 10% of average technical capacity was booked by you in the preceding year) apply to you?**

**Possible answers:**

- The renomination restriction **DOES NOT APPLY** to me at **ALL** my booked IPs, where the FDA UIOLI is applied. (“small shipper”)
- The renomination restriction **APPLIES** to me for a **MINORITY** of all my booked IPs, where the FDA UIOLI is applied
- The renomination restriction **APPLIES** to me for a **MAJORITY** of all my booked IPs, where the FDA UIOLI is applied
- The renomination restriction **APPLIES** to me for **ALL** of my booked IPs, where the FDA UIOLI is applied. (“big shipper”)
- I don’t know / I don’t want to answer this question

**\* Do you agree that your answer will be published?**

- Yes
- No

**Survey questions**

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**Question 1: Do you consider the existing “congestion indicators” (conditions 2.2.3.1 a) – d) of CMP GL) appropriate and sufficient to determine the existence of contractual congestion (as defined in Regulation 715/2009) at IP sides? In case not, what alternative indicators would you suggest? Please be as concrete as possible with your proposal and provide a justification.**

- Yes
- No
- Neutral / I don't know

**Reasons and alternative formulation:**

The existing “congestion indicators” seem to properly capture situations when contractual congestion is likely to occur and the release of additional firm day-ahead capacity may deliver benefits to the market. However, EDF does not view amendments to congestion indicators as a topic to be addressed as a matter of priority. Currently, congestion management procedures are often ineffective due to the application of inconsistent mechanisms at two side of an IP (OSBB vs. FDA UIOLI or FDA UIOLI releasing capacity according to different criteria). Additionally, prices for day ahead capacity are often above the price spread between markets. If ACER wants to fully unleash the potential of FDA UIOLI to promote market integration and hub price convergence, it should promote measures that prevent TSOs and NRAs in adjacent markets to apply different congestion management mechanisms - amendments to CMP GL and the development of a legally binding contract template in the context of the revised CAM NC could be valid tools for this purpose.

**Question 2: Do you think that the “congestion indicators” should further specify how to take into consideration capacity trading on the secondary market and the use of interruptible capacity[6]? If so, please indicate how this should be done. Please give reasons for your answer.**

[6] In its past annual congestion reports, the Agency applied the current “congestion indicators”, but also reported on other elements, such as on the extent of secondary capacity trading, the application of CMPs, the offer and bookings of interruptible capacities, actual interruptions of interruptible capacities, the

occurrence of unsuccessful requests, a congestion comparison with previous years, and on further specific market conditions at IP sides found contractually congested by applying the “congestion indicators”.

- Yes
- No
- Neutral / I don't know

**Reasons and specification:**

Secondary capacity trading should not be construed as an indicator of congestion but rather as a tool to solve congestion issues (both contractual and physical).

Secondary markets are indeed a fundamental congestion management mechanism. However, secondary capacity trading (especially on shorter timeframes and for smaller volumes) is ridden with obstacles such as high fees, too long lead times for confirmation by TSOs and significant limitations as to the portion of a shipper's capacity holding that can be sold or leased. TSOs are caught in a conflict of interest as they are naturally incentivised to maximise capacity bookings rather than encouraging shippers to trade with each other on the secondary markets. There would be significant value at taking actions aimed at developing and organising secondary capacity trading.

**Question 3: In cases of contractual congestion, do you consider FDA UIOLI to be an appropriate mechanism to mitigate the effects of the identified contractual congestion? If not, what alternative or additional measure would you suggest to address the congestion and why?**

**Your view:**

FDA UIOLI are generally effective in making capacity available on a day-ahead timeframe. However, as argued in Q1, the price of day-ahead capacity is often above the price spread between markets.

**Question 4:** In its latest congestion report[7], the Agency recommends clarifying the scope of criterion d) of paragraph 2.2.3.1 of the CMP GL to align it with the other congestion criteria. The current wording of criterion d) considers an IP side not congested, if capacity for at least one month was offered out of the 12 months in the preceding year’s rolling monthly auction procedures. The Agency would propose amending the text so that all 12 monthly products should be offered at an IP in order for it not to be considered as contractually congested, as there is no way to test “demand exceeding offer” in auction regimes if no such product is offered. (Also, no quota applies for monthly products.)

[7] Latest Report: ACER annual report on contractual congestion at interconnection points (period covered 2015), 3rd edition, 31.05.2016: [http://www.acer.europa.eu/Official\\_documents/Acts\\_of\\_the\\_Agency/Publication/ACER%202016%20Report%20on%20Congestion%20at%20IPs%20in%202015.pdf](http://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/Publication/ACER%202016%20Report%20on%20Congestion%20at%20IPs%20in%202015.pdf)

**Do you support this recommendation? Please provide reasons.**

- Yes
- No
- Neutral / I don't know

**Reasons:**

As argued above, we do not see amendments to congestion indicators as a priority, so we are not in favour of complicating matters further by adding indicators.

**Question 5:** With respect to paragraph 2.2.1 of the CMP GL, the Agency recommends in its latest congestion report that the Commission clarifies

- a) until when the Agency shall produce congestion reports (or under which conditions the reports are no longer required);
- b) an implementation period for the FDA UIOLI mechanism, if congestion is identified at IP sides only after 1 July 2016.

**Please provide your views on these 2 issues, including concrete suggestions and reasons.**

**Your view on a):**

If ACER and national regulators are to rely on specific indicators to trigger the application of FDA UIOLI rather than applying them on a

permanent basis when shippers make requests for firm day-ahead capacity above their capacity holdings, we believe a congestion report should be published indefinitely. Alternatively, a congestion assessment could be incorporated into the market monitoring report published yearly by ACER.

**What would be an appropriate implementation period for b):**

Rather than having an implementation period, a simpler approach to the application of FDA UIOLI could be to allow shippers to make requests for firm day-ahead capacity above their capacity holdings. If different approaches are adopted, the application of FDA UIOLI should be linked to the effectiveness in achieving their objectives measured by the actual utilisation of the capacity released under this mechanism. If after a month or a quarter in which FDA UIOLI are applied no requests for the released capacity are made (possibly due to the above-mentioned issues around the application of inconsistent CMPs at the two sides of an IP and the high cost of DA capacity), FDA UIOLI should be terminated and the reason of its ineffectiveness should be investigated by the NRA.

**Question 6: Do you think the CMP GL should set out an implementation process for the FDA UIOLI, specifying when (under which measurable conditions) to terminate the application of FDA UIOLI?**

- Yes
- No
- Neutral / I don't know

**Your view:**

As argued above, a harmonised approach to CMP across the two sides of an IP is necessary. Harmonisation and coordination should be applied not only to termination but to all conditions triggering the application of a congestion management mechanism and their design features.

**Question 7:** In its latest congestion report, the Agency also suggests to consider extending the scope of "contractual congestion" to the day-ahead timeframe between hubs (requiring the Agency to assess auction premia and the non-offer of firm DA products at a cross-zonal level), which could then also result in the mandatory application of the FDA UIOLI mechanism at IPs/VIPs/IP sides between the corresponding market areas, to promote a short-term gas market price convergence.

**Do you support this suggestion? Please provide reasons.**

- Yes  
 No  
 Neutral / I don't know

**Reasons:**

EDF supports further work by ACER on this approach. A mandatory application of FDA UIOLI could indeed maximise gas flows across borders and favour convergence of short-term gas prices. Such mechanisms are successfully applied in electricity markets and we do not see any intrinsic reasons why the experience could not be replicated in gas markets.

If that route is taken, however, it is crucial that FDA UIOLI foresee a compensation for the original holder of capacity. Compensation should be equal to the average short-term capacity auction price or the price spread between the two markets (in efficient markets these two values are expected to converge) multiplied by the volume of the capacity reallocated as a result of the application of FDA UIOLI.

**Question 8: In your view, should the Agency assess in more depth[8] the possible existence of physical congestion at IPs? Please provide your view, reasons and concrete suggestions for further possible indicators.**

[8] To date, the Agency has used the occurrence of actual interruptions of nominated interruptible capacity as an indicator for the (temporary) existence of physical congestion.

- Yes
- No
- Neutral / I don't know
- I don't know

**Your view:**

EDF does not consider work on physical congestion by ACER to be a priority. First, physical congestion is not a main issue in current market conditions. Second, should it occur at some IPs, it tends to be rather successfully addressed by existing TSO-led processes, such as open seasons, TYNDPs and the CAM amendment on incremental capacity being approved by Member States.

**Question 9: Do you have any other suggestions on how to improve the CMP GL?**

**Contact**

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