

## Annex 1 –Compliance with legal requirements

Pursuant to Article 37 of the NC CAM, the transmission system operators shall offer capacity by means of one or a limited number of joint web-based booking platforms.

On 5 June 2018, the Agency undertook a public consultation related to the selection of a booking platform on the German-Polish border. According to the results of the public consultation, at the time of selecting a Booking Platform, the following legal obligations were considered of relevance:

Legal compliance criteria		
<b>EU regulation</b>		
12	Allocation of firm capacity	12 Offer of competing capacity products
13	Allocation of interruptible capacity	13 Allocation of incremental capacity
14	Bundling of capacity products	14 Surrender of capacity
15	Ascending clock auctions (yearly, quarterly and monthly)	15 Buyback of capacity
16	Uniform price auctions (day-ahead, within-day)	16 REMIT reporting obligations
17	Day-ahead bid roll-over	17 Interoperability and data exchange obligations
18	Support of kWh/h and kWh/d as capacity unit	18 Avoidance of cross-subsidies between network users
19	Secondary capacity trading	<b>National regulation</b>
20	Automated bidding	19 Assignment to balancing groups (DE)
21	Reporting of platform transactions (bidders and public)	20 Support for capacity upgrade services (DE)
22	Bundling of capacity on 1:n situations	21 Use of protocol AS4 and data format Edig@s-XML (PL)
		22 Anonymity of all trading procedures (DE, best practice)

### Consultation questions:

1. Please confirm that these legal requirements are still relevant.

All are still relevant

Only some are relevant (Please mark only those numbers that you consider no longer relevant, using the table above.)

No. 21 (Use of protocol AS4 and data format Edig@s-XML) is not relevant. It's correct that according to Art. 20 NC INT (Regulation (EU) 2015/703) data exchange requirements between TSOs (and service providers acting on behalf of them); i.e. PRISMA in this context) and their counterparties shall be fulfilled by common data exchange solutions acc. to Art. 21 NC INT. However, Art. 21. 1 (c) considers interactive data exchange as an equivalent solution compared to document-based data exchange based on on AS4 and Edig@s-XML. Consequently, from our point of view there is no legal obligation to use AS4 and Edig@s-XML as the data exchange solution.

The following are missing. (Please specify which legal requirements are missing, including the legal text from which the requirement follows)

1. Capacity Conversion Service according to Article 21 (3) NC CAM<sup>1</sup>

According to Article 21 (3) NC CAM, TSOs shall offer a capacity conversion service for network users holding mismatched unbundled capacity at one side of an interconnection point for annual, quarterly or monthly capacity products. The European requirement has been bindingly transferred into the German Cooperation Agreement of Gas Transmission System Operators (Kooperationsvereinbarung X, Anlage 1, as of 29 March 2018), § 8<sup>2</sup>. Thus, an implemented functionality for capacity conversion is a binding requirement and shall be available on the respective booking platform.

2. Implementation of different firm capacity types (FZK, DZK, bFZK, BZK)

According to § 9 (3) GasNZV (German Gas Network Ordinance)<sup>3</sup>, TSOs are obliged to offer firm capacity, that is subject to certain conditions or restrictions, in order to maximize the free allocation of firm capacities within an Entry-Exit-system. The possibility for restrictions or conditions of capacity is also considered within the German Cooperation Agreement of Gas Transmission System Operators (Kooperationsvereinbarung X, Anlage 1, as of 29 March 2018), § 9<sup>4</sup>. The capacity types FZK, bFZK and DZK are also essential part of ordinance BK7-18-052 of BNetzA in its current consulted status, where the TSOs would be obliged to offer firm capacities via those types<sup>5</sup>.

Please explain your answer.

2. For each of the three Booking Platform currently active in the EU, please mark the numbers of the legal requirements next to it, which in your view are not complied with.

GSA: we don't use GSA

PRISMA: fully compliant

RBP: we don't use RBP

Please explain your answer.

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<sup>1</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R0459&from=EN>

<sup>2</sup> <https://www.bdew.de/service/standardvertraege/kooperationsvereinbarung-gas/>

<sup>3</sup> [http://www.gesetze-im-internet.de/gasnzv\\_2010/\\_9.html](http://www.gesetze-im-internet.de/gasnzv_2010/_9.html)

<sup>4</sup> <https://www.bdew.de/service/standardvertraege/kooperationsvereinbarung-gas/>

<sup>5</sup> [https://www.bundesnetzagentur.de/DE/Service-Funktionen/Beschlusskammern/1\\_GZ/BK7-GZ/2018/2018-0001bis0999/2018\\_0001bis0099/BK7-18-0052/BK7-18-0052\\_2\\_Konsultation\\_download\\_BF.pdf?\\_blob=publicationFile&v=4](https://www.bundesnetzagentur.de/DE/Service-Funktionen/Beschlusskammern/1_GZ/BK7-GZ/2018/2018-0001bis0999/2018_0001bis0099/BK7-18-0052/BK7-18-0052_2_Konsultation_download_BF.pdf?_blob=publicationFile&v=4)

## Annex 2 – Basic governance structure: a qualitative criterion assessed based on the written answers

Pursuant to Article 37(1) of the CAM NC, TSOs shall offer capacity by means of one or a limited number of joint web-based booking platforms. In doing so, TSOs can either operate such platforms **directly** or **via an agreed party** that, where necessary, **acts on their behalf** towards the network users. The TSOs, regardless of whether they are operating booking platforms or not, are subject to **respect transparency and non-discrimination**.

On 5 June 2018, the Agency undertook a public consultation related to the selection of a booking platform on the German-Polish border. According to the results of the public consultation, the governance structure is of relevance. In particular, the governance structure should enable the Booking Platform to adapt to the changing market needs and the changing regulatory framework, independently from the priorities of the individual TSO in which it is embedded.

According to the results of the public consultation a clear, transparent and adequate governance structure would allow for a transparent and non-discriminatory decision-making process, ensuring absence of control of one or more shareholders of the Booking Platform. The Agency is called to select a Booking Platform for a limited period (i.e. three years). The Agency will consider whether the measures proposed by the consultation are proportionate.

### Consultation questions:

1. **Please indicate the measures** that you consider necessary for the governance of the booking platforms to offer users transparent and non-discriminatory services, in the light of the application of Union and national competition and regulatory framework.

To enable and to ensure the aim of Article 37 (1) NC CAM to offer capacity via a joint web-based booking platform, a clear governance structure and clearly defined related processes are necessary.

A governance structure should reflect the cooperative character of a booking platform as a service provider for all affected TSO. In addition, the market needs, the demands and requirements of the network users as well as the cooperation with all National and European Regulatory Authorities and Institutions must be considered properly.

Thus, a governance structure for a joint booking platform needs to ensure constant and continuous operation of the platform via an independent platform management, meaning without the sole control of one TSO. The implementation of existing and new European and/or national requirements related to capacity allocation must be ensured.

Thus, inter alia the following measures should be considered for a governance structure:

- Independent management (no sole or joint control of one or more TSOs)
- Possibility to acquire shares
- Independent service implementation
- Cooperative body to take decisions on service implementation
- Separated IT-administrators
- Contractual obligation to implement legal European and/or national requirements
- Involvement of customers and users in design and delivery process
- Established User Groups for specific users (TSOs, Shippers) for developments, releases and operative issues
- Established joint Working Groups for implementation of regulatory and/or legal requirements
- Establishment of an independent audit committee, where the participating TSOs are involved, that defines and continuously monitors the implementation of minimum business requirements and

- critical processes, that conducts to audits related to the platform, to consolidate TSOs' audit needs, to independently review audit reports and related measures and their implementation
- Obligation to provide an annual audit report to satisfy annual financial audit needs of the service oriented internal control system according to ISAE3402

2. Do you consider that the legislation implicitly requires a governance structure for the Booking Platforms to ensure-, **as a minimum**, that a dedicated budget and a dedicated independent management ensures autonomous decisions on Platform developments, IT developments and maintenance, based on the market needs?

YES  (as minimum requirements together with measures as mentioned in No. 1 and No. 3)

NO

Please explain your answer.

Article 37 NC CAM requires TSOs to offer capacity on a joint web-based booking platform. Continuous operation of a booking platform is therefore a delegated obligation. Anyhow, each TSO stays responsible for compliance towards its NRA and (indirectly) to its customers. Thus, efficient measures need to be implemented to ensure compliance, cooperation, involvement and influence of each participating TSO, without dominating influence of one single TSO. A dedicated budget, an independent management and coordinated and transparent decisions on platform development and maintenance are necessary – next to additional measures as indicated in No. 1 above and No. 3 below – for continuous operation of the platform in a non-discriminatory, transparent way, according to Reg. (EC) 715/2009<sup>6</sup>, Dir. 2009/73/EC<sup>7</sup>.

3. Are there other areas/aspects in which you consider that the Booking Platform should be independent from the TSO(s) in which it is embedded?

YES

NO

Please explain your answer.

If you answered in the affirmative, please **enlist** those areas/aspects in which you consider that the Booking Platform should be independent and/or autonomous from the TSO in which is embedded.

Although Article 37 (1) NC CAM foresees the operation of a joint booking platform by a TSO themselves, that possibility does not waive further obligations of the participating TSOs, going beyond the obligation to cooperate.

Especially – but not limited to – the following rules must be complied with in addition to the above-mentioned minimum measures:

- Prohibition of restriction or distortion of competition, Article 101 TFEU<sup>8</sup>

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<sup>6</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02009R0715-20181224>

<sup>7</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32009L0073&from=de>

<sup>8</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02009R0715-20181224>

- the obligations related to the wholesale market integrity and transparency, especially the treatment of inside information, the prohibition of insider trading and market abuse and the obligations for a person professionally arranging transactions (PPAT), according to Reg. (EU) 1227/2011<sup>9</sup>
- obligations to treat commercially sensitive data confidential, Art. 16 Dir. 2009/73/EC<sup>10</sup>.

Therefore, we deem at least the following measures as further minimum requirements:

- Independent and separated Platform IT-administrators from TSO IT-administrators

Each platform IT-administrator, meaning every employee having access to platform data via several administrator level rights, must be different from the employees and IT-administrators of the embedded TSO and must be subject to dedicated confidentiality obligations, since the platform IT-administrators have access to non-public and commercially sensitive data. Such data comprises e.g. registration information of network users that are not active or registered with the TSO, where the platform is embedded. In addition the platform IT-administrator can access information to the bidding behavior of network users, especially to bidding curves, the maximum bids for capacity and the maximum price bids (willingness to pay) of network users for each capacity product and each side of a interconnection point, even if the embedded TSO itself is not concerned. Also, the platform IT-administrator might have access to capacity data of participating TSOs prior to all other market participants. As this kind of information is not publicly available, it is commercially sensitive information. TSOs would be prohibited to share this kind of information, as it could have a negative impact on competition by adopting behavior and would infringe antitrust regulation. Moreover, this information is also deemed as inside information according to REMIT, leading to the prohibition of the TSO to participate in capacity auctions for own procurement processes, in case of non-separation of roles of the IT-administrators.

- Separated REMIT Compliance Organizations for platform and TSO

A TSO, that is also acting as a platform operator, actually covers two roles that are subject to Reg. (EU) 1227/2011 (REMIT): one as a market participant (TSO) one as a PPAT. To ensure efficient REMIT-compliance and to avoid any conflict of interest as explicitly recommended in the ACER guidance on REMIT application<sup>11</sup>, the role as PPAT requires a separated REMIT governance organization, which is different from the TSO's. A conflict of interest might especially arise, if the TSO as PPAT would have to report suspicious market behavior or REMIT breaches of the TSO in which it is embedded or its (main) customers.

- Independent User Help Desk, dedicated for Platform User Support, separated from TSO User Support

To guarantee focus and prioritization for platform operational issues, the User Help Desk must be dedicated and independent from the TSO User Support. This is not only necessary to avoid again any conflict of interest, but also to comply with the obligation to keep commercially sensitive information confidential. Whenever operational issues and/or questions related to the platform and the TSO-systems would occur in parallel, only a dedicated platform User Help Desk guarantees to solve the platform related topics within reasonable time. Otherwise there could be the conflict or the instruction to focus on the embedded TSO's systems, which would affect the other participating TSOs and shippers in a discriminatory manner. Moreover, the platform User Help Desk also continuously receives commercially sensitive data, e.g. registration information, planned and actual bids and market

<sup>9</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011R1227>

<sup>10</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32009L0073&from=de>

<sup>11</sup> [https://acer.europa.eu/Official\\_documents/Other%20documents/4th%20Edition%20ACER%20Guidance%20REMIT.pdf](https://acer.europa.eu/Official_documents/Other%20documents/4th%20Edition%20ACER%20Guidance%20REMIT.pdf), p. 55 ff.

participants' behavior, via requests and information of platform users. Those data must not be shared within TSOs, including the embedded TSO to comply with the above-mentioned regulation.

4. Do you consider that the above-mentioned **minimum** set of measures would guarantee, by effect, a sufficient degree of independence to ensure the **transparent and non-discriminatory operation of a TSO-led booking platform** towards the network users?

YES

NO

Please explain your answer.

See answers and additional requirements according to No. 1 and No. 3 above.

5. Do you consider that an **agreed party acting on behalf of the TSOs** towards the network users as a booking platform should guarantee the same minimum set of conditions?

YES

NO

Please explain your answer.

An independent booking platform as agreed party might already fulfil those requirements without implementing additional measures such as Chinese walls, having dedicated employees for different roles or separated IT-systems. Priority and focus on platform operation are guaranteed as main business without conflict of interest, if the party acts as dedicated booking platform operator. In addition, a clear allocation of cost for the cooperation and operation of the booking platform is ensured.

If you answered in the negative, please enlist those additional measures that the agreed party acting on behalf of the TSOs should establish to maintain its independence from the TSOs.

## Annex 3 – First stage selection criterion: minimum pass-mark IT Requirements

## Annex 4 – Case Study, scored qualitative criteria General Remarks

### 1. Price/Quality ratio

The intended 40/60 ratio for the assessment of offers might lead to unintended loss of quality, e.g. related to IT-security, platform performance and user support. Respectively required high standards naturally come with a higher price. Thus, Quality should be rated higher than 60 %. A ratio of 20/80 or at least 30/70 seems more reasonable.

### 2. Implementation time for potentially missing requirements

A reasonable implementation time for potentially missing requirements (after conclusion of the contract) should be considered, whereas the platform operator has to prove its actual capabilities for development.