

**ACER Public Consultation on
scoping the potential for
Framework Guidelines on “Rules for
Trading”**

Evaluation of responses

3 October, 2014

1. Introduction

On 14 April 2014, the Agency for Cooperation of Energy Regulators (ACER/Agency) launched a public consultation on the scope of potential Framework Guidelines on Rules for Trading (FG RfT). The purpose of the consultation was to collect the views of the stakeholders on the need and potential scope for such FGs and in case of support start the preparation of new Framework Guidelines (the FG) pursuant to Article 6(2) of the Regulation (EC) No 715/2009 (the Gas Regulation). The preparation of the potential gas Framework Guidelines on Rules for Trading has been foreseen by the annual priority list adopted by the European Commission.

2. The process leading to the consultation

a) Scoping document and expert discussions

In order to identify problems and issues of relevance in the area of Rules for Trading and to complete the analysis of the national energy regulators on possible options, ACER openly invited experts and created an ad-hoc expert group on 8 January 2014, with 11 selected experts¹.

The expert group met on 29 January 2014². The experts remarked that the scoping of a new FG is difficult until full account is taken of the implementation of network codes, which is still in progress. Nevertheless, potential issues that present obstacles in capacity markets were discussed. Experts saw that most issues could be better resolved by amending the existing rules.

b) The public consultation of the Agency

Based on the KEMA study³ on Entry Exit regimes and the discussions of experts and NRA's, the Agency identified the following topics that could fall within the scope of a potential FG RfT and proposed detailed questions on each of them in its consultation:

- Capacity products and terms and conditions of capacity contracts (limitations to free allocability and standardisation),
- Secondary capacity markets,
- Virtual trading point (VTP) design/access, and hub issues,
- Transparency rules,

¹ More information available on the Agency's website:

http://www.acer.europa.eu/Gas/Framework%20guidelines_and_network%20codes/Pages/Rules-for-Trading.aspx

² Minutes of the meeting available:

http://www.acer.europa.eu/The_agency/Organisation/Expert_Groups/EG_on_Rules_for_Trading/Documents/1st%20Expert%20Groups%20Meeting-minutes.pdf

³ DNV KEMA, Entry-Exit Regimes in Gas, a project for the European Commission –DG ENER under the Framework Service Contract for Technical Assistance TREN/R1/350- 2008 Lot 3. Contract ENER/B2/267-2012/ETU/SI2.628337, p.20 ff.

- Licensing requirements for market participants other than TSOs.

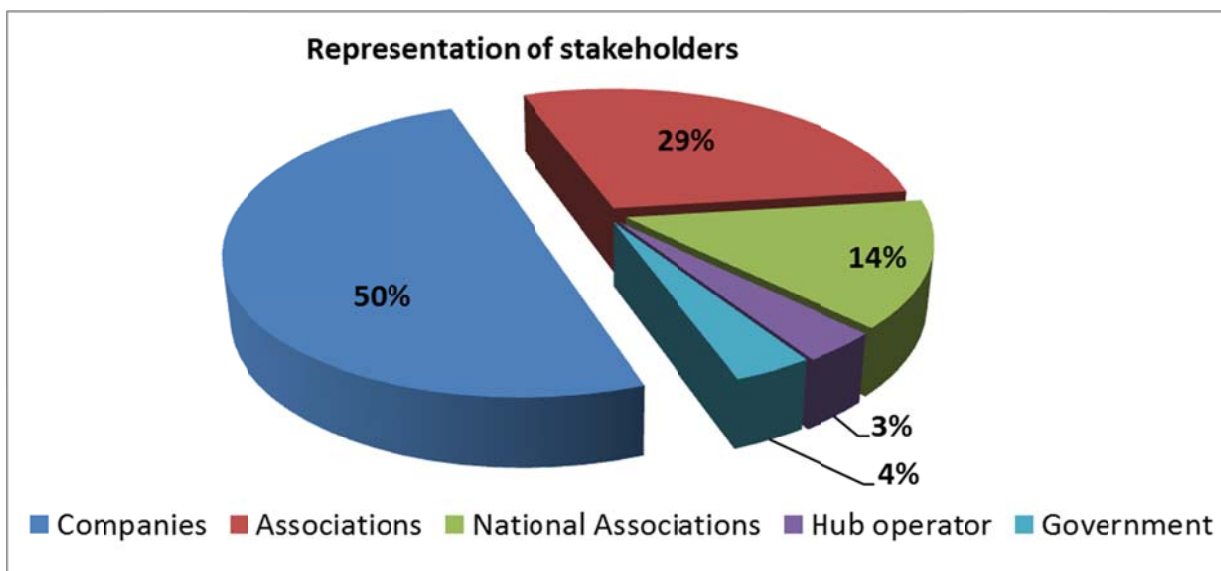
The public consultation was launched on 14 April 2014 on the Agency’s website and closed on 19 May 2014, after offering a week of extension to the stakeholders.

The aim of the public consultation was twofold;

- to identify whether the areas and issues are the correct ones and
- to get feedback from the market whether a new FG was needed.

3. Stakeholder answers

28 stakeholders answered to ACER’s questionnaire. As usual, energy companies and shippers provided most of the answers, amounting to 50% of the responses received. 12 European and national associations covering a large amount of members, upstream and downstream companies and shippers, accounted for 43% of the responses. A government and a hub operator also took part in the consultation. The list of respondents can be found in Annex I.



For most questions, respondents had to elaborate on their views, given the scoping nature of the current exercise, which aimed at identifying barriers and issues rather than proposing policy options and solutions. When asking whether certain practices are creating barriers respondents were requested to give yes and no answers.

The next table will focus on the detailed answers received by ACER and contains the view of the Agency on the various topics.

Respondents' feedback	ACER views
IDENTIFICATION OF TOPICS	
<p>1. Are the topics identified (i. e. capacity products and terms and conditions of capacity contracts (limitations to free allocability and standardisation); secondary capacity markets; virtual trading point (VTP) design/access, and hub issues, transparency rules, licensing requirements for market participants other than TSOs) the most relevant ones when it comes to Rules for Trading at EU level? Please specify which issue-if any-would merit further elaboration and rank the three most important Rules for Trading aspects?</p>	
<p>Number of answers received – 18.</p> <p>A majority of respondents (17) supported that the identified topics, which could fall within the scope of a potential FG RfT, are the most important ones. Some respondents (4) had no observations.</p> <p>13 out of 28 respondents also ranked the identified topics or at least some of them. Most respondents (11) considered the issue “capacity products and terms and conditions of capacity contracts” as by far the most important one. <i>The average ranking of the topics (derived by summing up all rankings provided by respondents per topic (where 1 represents the highest rank, 2 the 2nd highest, etc.) and divided by the total number of rankings received for a topic).</i> This way, the following ranking has been received:</p> <ol style="list-style-type: none"> 1. Capacity (Ø rank 1). 2. Secondary capacity markets (Ø rank 2.4) 3. VTP design/access (Ø rank 2.43) 4. Transparency rules (Ø rank 2.8) 5. Licensing (Ø rank 3.2). 	<p>ACER agrees that the identified topics are relevant for the functioning of the Internal Energy Market. ACER also agrees with the stakeholders that already existing and envisaged rules aim at improving transparency, congestion management, capacity allocation, balancing, interoperability and data exchange, tariffication and treatment of incremental capacity. All of these rules, of which most still need to be implemented, have an indirect or direct impact on the topics of relevance (and their urgency) expressed in this consultation.</p>
CAPACITY PRODUCTS AND TERMS AND CONDITIONS OF CAPACITY CONTRACTS	
<p>2. Do you agree that the key features of capacity products (besides its location, its direction and its duration) are as follows: <u>Firmness</u>: unconditional firm/ conditional firm (e.g. depending on temperatures)/ interruptible; <u>Allocability</u>: free allocability / restricted allocability to designated points/restricted to designated points but combined with interruptible free allocability to all points including VTP; <u>Tariff relations</u> between different capacity products. Please rank the most important aspects of capacity products for your business. If there are other aspects you find more important, please name them and explain why.</p>	

Respondents' feedback	ACER views
<p>Number of answers - 17.</p> <p>14 respondents confirmed that the key features of capacity products are firmness, allocability and tariff relations between different capacity products.</p> <p>Most (12) stakeholders considered the feature “firmness” as the most important one. The feature “tariffs” was ranked as the second most important and four times was considered to be of major importance. The aspect “allocability” was ranked third. Many respondents sought for shared definitions of firmness and allocability also in order to facilitate future capacity bundling. Some respondents found them interlinked, saying a product of reduced firmness shall be priced accordingly.</p> <p><u>Other issues were</u></p> <ul style="list-style-type: none"> • maximum offer of firm capacity, • tariff predictability, • avoiding time constraints for capacity bookings, • within-day products • treatment of maintenance (average and maximum duration of maintenance periods, notice given before maintenance periods, time of the year); • difference of backhaul and interruptible capacity; • shorthaul and wheeling services; • common definition of force majeure, temperature, • firm capacities and congestion; nomination and re-nomination rules applicable and likelihood of interruption (on each side of the border); clear conditions in terms of transparency on availability and use of capacities, especially reasons for interruption and others. 	<p>ACER found that most of the issues raised are either covered by existing FG/NCs, especially CAM NC, CMP or appear in the Tariff code discussions.</p> <p>ACER agrees with the respondents that common definitions clarifying terms like firmness, conditionally, allocability, interruptibility, maintenance and force majeure could simplify capacity allocation and usage. At the same time a balance needs to be found, when and where standard features shall apply, which was only requested by a minority.</p> <p>ACER agrees with the idea, suggested by some respondents, that greater co-operation between TSOs, NRAs, auction platforms, exchanges with the effective involvement of market participants is the best way to resolve the issues.</p> <p>With respect to standardization of capacity product characteristics definitions, ACER suggests that a comprehensive analysis of the products in the market, the effects of the early implementation of the NC CAM, and the requirements of the market participants is conducted in 2015 by NRAs, ACER and potentially ENTSOG, with a view to identify the need and scope for standardization and the appropriate measures, legally binding or not.</p>

Respondents' feedback	ACER views
<p>3. Do you think that certain user categories (e.g. power plants, household suppliers, traders, gas producers, storage users etc.) have specific requirements/needs regarding capacity products? If so, which?</p>	
<p>Number of answers – 16.</p> <p>There was almost an equal number of supporters and opponents (9 - yes/ 7- no). The majority of the stakeholders asked for specific requirements for power producers, gas fired power plants and gas storages due to technical reasons and the burden of risks. The opposition warned that the creation of differentiated products could result in undue discrimination and market segmentation; others questioned the need to harmonise specific requirements given the national market specifics and the availability of different CAM products (yearly to daily), which can satisfy most needs.</p>	<p>ACER notes that some stakeholders asked for specific requirements for certain user categories and also took note of the voices opposing that.</p> <p>According to the third package non-discriminatory access has to be granted to every user. The current rules provide for this and a level playing field is generally preferred over special rules. ACER encourages an open discussion on whether non-discrimination with respect to capacity products is ensured and whether certain user categories can benefit from product characteristics granted to other users, such as within-day capacity.</p>
<p>4. Do you have experience with different levels of product firmness and allocation restrictions (i.e. different capacity designs)? Please provide examples.</p>	
<p>Number of answers – 13.</p> <p>A majority (9) of respondents have experience with different levels of product firmness and allocation restrictions and believe that common definitions of firmness and allocation restrictions could ease the situation. 4 respondents admitted that they have no such experience. Some respondents stressed that inconsistencies cause problems in particular with respect to capacity bundling.</p> <p>Examples:</p> <p>4 participants explicitly mentioned restrictions at the borders with Germany, 1 participant experienced restrictions at the IP between Spain-Portugal.</p>	<p>ACER takes note of the experiences reported by the stakeholders and the request of some respondents, reiterating the need for a thorough analysis of the potential scope for standardization. (see question 2)</p>
<p>5. Are different types of product features (in terms of firmness and freedom of allocation) barriers for cross-border trading? If yes, please provide an example of such a barrier. If yes, do you think that a set of “standard capacity products” in terms of quality (e.g. firmness rules, allocability) enshrined in a network code would provide a solution? Do you believe that the benefit of implementing such a solution outweighs the costs? Could you provide examples of such solutions?</p>	
<p>Number of answers – 17.</p> <p>A majority (14) of respondents explained that different types of product features create</p>	<p>ACER takes note of the identified barriers that the different types of product features may cause. ACER will also consider</p>

Respondents' feedback	ACER views
<p>barriers, whereas 2 respondents did not see such an effect. 1 respondent had a different observation requesting TSO transparency if and when introducing such products.</p> <p>Some respondents mentioned especially different product features (e.g. allocability, firmness), in particular for bundled capacity, complexity, different regulations, non-coordination between TSOs, as a barrier for cross border trading.</p> <p>Only 6 respondents explicitly supported standard quality products, 3 argued that it could reduce the offer of firm capacity. 2 respondents thought that the benefit of implementing such a solution outweighed the costs, 1 respondent argued the opposite.</p> <p>Examples: Stakeholders proposed solutions: equal contractual product definitions to be included in existing rules/NCs (1); coordinated capacity with similar features (1); promotion of cooperation between the national regulatory authorities at regional and Community levels via ACER (1); TSOs promoting similar products (1).</p>	<p>stakeholders' proposed solutions to eliminate the barriers.</p> <p>ACER certainly takes note of the request of making more effort when it comes to regulatory coordination, which is meant to resolve issues of different regulations and non-coordination of all involved players (i.e. TSOs, NRAs, auction platforms, exchanges). ACER suggests this is to be included in the analysis of capacity products and will continue to promote NRA and TSO cooperation.</p>
<p>6. In your view, is the way capacity is allocated (primary market) or traded (secondary market) expected to create any problem or barrier to gas wholesale trading after the full implementation of the NC CAM? (Please differentiate in your answer between IPs covered by NC CAM and those outside its scope, e.g. LNG, storage)? If not, what outstanding barriers remain after NC CAM implementation? Please provide specific cases and examples, if possible.</p>	
<p>Number of answers – 13.</p> <p>No majority could be identified among the respondents, but some of them (6) did not see any further problems. Others (6) were either not certain or saw problems or made their answer conditional on a high quality implementation; 1 respondent did not know yet (before NC implementation)</p> <p>2 respondents identified issues with secondary markets (if those are not harmonised and anonymized)</p>	<p>ACER takes note that stakeholders generally did not anticipate future problems. ACER understands the cautious approach of other stakeholders awaiting the full code implementation, before putting forward claims. ACER will follow up on its side the discussions of regulators and TSOs in the voluntary CAM early implementation processes, and will also monitor the mandatory NC CAM implementation.</p>

Respondents' feedback	ACER views
<p>3 respondents mentioned the need to sign two contracts (even if bundled) and one player noted difficulties accessing short term capacity.</p>	
<p>7. Do non-harmonised contract definitions or terms between neighbouring entry-exit zones limit cross border trade? If yes, please provide examples. Do you think that equal contractual definitions of product characteristics (in terms of firmness or freedom of allocation) can be achieved by compatible contract terms alone (product description along certain parameters) or can this only be achieved by a single standard contract established at EU level?</p>	
<p>Number of answers - 13. A majority (10) agreed that contract definitions are responsible for cross-border barriers, others (3) opposed. The respondents mentioned examples of such barriers, like increased risk, complexity and costs due to different definitions on various aspects. Compatible contract terms were supported by 6 respondents; however the same amount of players (6) argued for standard contracts.</p>	<p>ACER takes note that non-harmonised contract definitions are considered to limit cross-border trade. In this context, the extent of required harmonization of standard contractual definitions should result from the analysis, which is to be conducted in 2015.</p>
<p>7a. Considering the variety of private law regimes across EU, do you believe a single standard contract established at EU level is feasible? If yes, do you believe that the benefit of such standard contract established at EU level outweighs the costs of its implementation?</p>	
<p>Number of answers – 14. There was an equal number of supporters and opponents ((7 yes/ 7 no). Only 3 stakeholders answered to the second question (2 yes, 1 no). Some respondents mentioned that a single standard contract is needed if inconsistencies remain. In addition, harmonisation is required on how to bundle. Both the NC CAM and the NC Balancing have to be amended in order to achieve a single contract.</p>	<p>ACER takes note that due to varying private law regimes in the EU, a meaningful standard capacity contract – which would likely support the IEM completion – is difficult to achieve. However, ACER will further assess the issue.</p>
<p>8. Have you experienced inefficiencies and risks which make it necessary to harmonise certain clauses in capacity contracts and/ or contractual terms and conditions of different TSOs at EU level (given the variety of private law regimes applied across Europe)? If so, what are the inefficiencies and risks experienced that require harmonisation and why?</p>	

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<p>Number of answers – 11.</p> <p>Slightly more respondents (6) have experienced inefficiencies, compared to those who have not (5). The respondents mentioned the following inefficiencies and risks:</p> <ul style="list-style-type: none"> –differences in events considered as force majeure; –not coordinated maintenance programs, nomination scheduling, gas quality specifications; –differences in the gas day; –different CMPs (e.g. Restriction of renominations on the German side only). 	<p>ACER takes note that a number of inefficiencies and risks are pertinent for market players. Some of these, such as gas day differences, are already addressed in existing codes and should become less important with the due implementation of these. Others could be addressed by potential future standardization activity, such as on gas quality. Further analyses and work on potential harmonization of capacity contract terms is needed to see whether this will be able to reduce inefficiencies.</p>
<p>9. Assuming everything else being equal (e.g. tariffs), do you prefer: a) firm products with limited allocability/locational restrictions (ex-ante information on conditions of use) or b) interruptible products (with ex-post information on actual occurrence of interruptions)?</p>	
<p>Number of answers - 15.</p> <p>No clear majority in the responses has been identified. 7 respondents chose option a) and 2 chose option b). The others (6) remained undecided, some of which had a limited preference/tendency for option a).</p> <p>Some respondents mentioned the need for clarity, simplicity of products, while technical firm capacity is to be maximized.</p>	<p>ACER takes note of the diverse views of stakeholders and recognizes a tendency towards a preference of firm products and simple arrangements. These issues should be further assessed by NRAs and ACER and could potentially be resolved with further refinement of standardized capacity qualities (e.g. a limited and low number of standard firmness levels).</p>
<p>10. Given the Balancing NC implementation, which should foresee within-day obligations as an exception, do within-day standard capacity products (“rest-of-day capacity products”) create any barrier to trade?</p>	
<p>Number of answers – 12.</p> <p>A majority of respondents (9) did not see barriers. Only 1 respondent confirmed barriers to trade, as the ‘rest-of-day capacity products’ lead to additional costs for power plants. 2 respondents had no observations. In addition, the respondents suggested implicit auctions instead of WDOs as well as more day-ahead auctions during the gas day.</p>	<p>ACER agrees with the majority of respondents, and therefore plans no further measures in this area. ACER also takes part in the early implementation of the NC Balancing and keeps the process under surveillance.</p>
<p>11. Are there any differences in the legal framework/capacity contracts that undermine the concept of a bundled capacity product (treatment after allocation)? If yes, please describe the differences as well as the risk for market participants resulting from those. Please provide specific examples.</p>	

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<p>Number of answers – 12.</p> <p>The majority (10) mentioned differences due to different terms and conditions and multiple contracts, different levels of firmness, licenses, different TSO processes, conditional/non conditional bids. 2 respondents disagreed, however they mentioned the need to be transparent regarding differences.</p>	<p>ACER takes note of the identified differences and also notes the repeating issues in relation to firmness, multiple contracts etc., which should be systematically addressed in the forthcoming analysis.</p>
<p>12. Are there any other obstacles that hamper the use of capacity contracts across borders in the EU?</p>	
<p>Number of answers – 11. The majority (9) agreed that there are other obstacles such as different market maturity, liquidity, insufficient interconnections, the parallel existence of bundled/unbundled capacity. 2 respondents did not see any obstacles.</p> <p>Some respondents requested a bundling concept for those who hold unbundled capacity and want to increase or match capacity with the other side. Some respondents stressed firmness, difficulties in application of LT UIOLI mechanism, tariff levels.</p>	<p>ACER takes note on the identified additional barriers. Some of them may require national efforts (improving market conditions and investments) in order to be eliminated. European instruments (PCIs for investments) in combination with appropriate regulatory practices as well as the full implementation of the network codes, the progress towards the gas target model and other measures should facilitate their elimination.</p>
<p>13. Do you think that a) binding EU rules, b) non-binding guidance or c) no rules at all (awaiting the implementation of existing NCs) address the above issues best? If needed, you can differentiate between different topics.</p>	
<p>Number of answers – 14.</p> <p>No majority identified. 4 respondents would support no rules. Some respondents (5) would be in favour of non-binding guidance, some others (5) prefer binding rules.</p> <p>The themes raised include:</p> <ul style="list-style-type: none"> • first wait for NC implementation, • non-binding rules to support proper implementation (NC CAM) • non-binding rules endorsed by TSOs and TSO platforms including best practices of capacity product standardisation, • bundling requires knowledge of the "content" of capacity products, • terms and conditions of the contracts are different. 	<p>ACER notes that stakeholders' views are not aligned on the matter. A combination of measures to be taken may be suitable, i.e. different approaches depending on the issue or a progressive approach (e.g. 1. wait for NC implementation, 2. Test non-binding guidance, 3. go for binding rules only if necessary) .</p> <p>ACER is in favour of facilitating the implementation of the codes, which is happening via early voluntary implementation work and NRA cooperation.</p> <p>Binding measures, such as amendments to NC CAM concerning definitions may be considered at the appropriate stage after comprehensively taking stock of the capacity contract landscape and user requirements.</p>

Respondents' feedback	ACER views
SECONDARY CAPACITY MARKETS	
<p>14. Do you think that rules are needed in order to stimulate secondary trading in Europe (taking into account the facilitation of trading already in place nationally or at EU-level, including joint booking platforms as demanded by NC CAM)?</p>	
<p>Number of answers – 12.</p> <p>The majority (8) replied that no rules are necessary. Among those, some stressed that additional guidance may be enough to promote good practices, and proper CMPs could also stimulate secondary markets. Only 4 respondents agreed that some rules were necessary e.g. on transparency (incl. historic prices of recent trades), harmonised products and trading (incl. 'click-and-buy' systems and trading concentrated on regulated platforms).</p>	<p>ACER notes a limited interest and need of respondents with respect to additional rules to stimulate secondary capacity trading. Next to the transparency items, it has to be checked whether the additional requests are not yet covered by existing rules and practices. If need be, additional guidance measures (such as best practice guidelines) may suffice to meet the market's needs.</p>
<p>15. Do you see a need for a fully anonymised secondary capacity market (including third-party clearing) or is a bilateral capacity transfer (with consistent information to the TSO) sufficient?</p>	
<p>Number of answers – 13.</p> <p>No majority identified among respondents. 4 would support bilateral transfers. Others (3) prefer an anonymized market. 6 respondents requested both options by. Some respondents stressed that further analysis should be done, because the choice depends on market maturity.</p>	<p>There is no clear steer on whether trading should be fully anonymised or bilateral. Rather a coexistence of both options in Europe is seen to be a sensible approach, as the choice may also depend on market maturity. ACER agrees with this conclusion and may further review the (secondary market) developments, as needed.</p>
<p>16. Do you see the need to harmonise the handling of secondary capacity transfers to the primary market with reference to e.g. contract durations, handling, deadlines etc.?</p>	
<p>Number of answers – 12.</p> <p>A small majority opposed harmonisation (6), some respondents (4) agreed, some of them were undecided (2). Some respondents stressed the need for a limited number of standard products. Others advised that secondary markets shall allow for tailor made trades. Respondents also suggested that lead times could be improved (i.e. shortened) so that shippers' flexibility is increased.</p>	<p>ACER takes note that stakeholders seem to appreciate a more flexible approach in secondary trading, which is explained by the desire of some market players to have tailor made products in secondary markets. Since there is no clear steer in favour of fully aligning the handling of secondary capacity transfers with the primary capacity market characteristics, ACER is currently not planning to take up this topic.</p>
<p>17. Are there any rules hampering secondary trading of bundled capacity products? If yes, which ones and where? (Please provide specific cases, examples).</p>	

Respondents' feedback	ACER views
<p>Number of answers – 9.</p> <p>The majority (7) stated that there are rules hampering trading of bundled products on the secondary market. Some of them mentioned the rule to keep bundled capacity bundled having a hampering effect as well as – again - capacity quality differences, potential difference of TSO lead times, co-existence of bundled/unbundled capacity. 1 respondent preferred non-binding rules, and another (1) had no experience.</p> <p>Other themes mentioned are: heterogeneity and complexity of products, PRISMA burdensome (for some of the operations), short-term shall be better facilitated with flexible resell rules and other means.</p>	<p>ACER takes notes of the problems identified in the trading of bundled capacity products (due to capacity quality difference, co-existence of bundled/unbundled capacity, sophisticated trading rules). The view of ACER is that progressive bundling may eliminate some of the problems, some other issues may require further analysis, but don't seem to be of highest priority at this moment in time (considering that is has not been mentioned often).</p>
<p>18. What would be, in your view, the most efficient way of secondary trading of capacity: a) mandatory trading on a limited number of liquid secondary platforms as for primary capacity or b) keep the current regime as is (e.g. many options, venues, etc.)?</p>	
<p>Number of answers – 13.</p> <p>A majority (8) would be in favour of option b), keeping the current regime. 4 respondents chose option a). 1 respondent argued that shippers should decide whether a) or b) is most appropriate.</p> <p>Themes: country-specific products should be allowed, standardisation may increase liquidity, but not always suitable.</p>	<p>ACER takes note that most stakeholders favour secondary capacity trading to take place in the current regime, which allows more flexibility when trading at more venues without mandating/limiting them.</p>
<p>19. Would you support additional transparency rules for secondary trading and what should, in your view, those rules focus on (e.g. reporting on transactions, potentially incl. price)?</p>	
<p>Number of answers – 12.</p> <p>No majority identified with equal distribution of replies. Half of the respondents (6) supported additional transparency rules, emphasizing e.g. anonymous offers, volumes, transactions, prices on platform, same level of information, as for primary markets and the need for a central clearing party. 6 respondents opposed this, arguing that the rules imposed by REMIT implementation are sufficient (as REMIT data provision is considered to be accessible for</p>	<p>ACER takes the view that additional transparency in secondary trading (e.g. anonymized number of offers, volumes, trades, prices) can improve the current situation on information available to the market and on data availability for reporting (e.g. congestion report).</p> <p>Exceptions could be granted, when anonymity is not guaranteed anymore and/or data aggregation (e.g. over a period of time and/or shippers) could be applied.</p> <p>The applicable REMIT rules aim at detecting market manipulation</p>

Respondents' feedback	ACER views
whole ACER/NRAs). Some concerns were expressed on how anonymity could work for IPs with few players.	and the information collected may not be public for all stakeholders.
20. Do you think that a) binding EU rules, b) non-binding guidance or c) no rules at all (awaiting the implementation of existing NCs) address the above issues best? If needed, you can differentiate between different topics.	
<p>Number of answers – 14.</p> <p>A majority (8) of respondents stated that the existing rules are sufficient. Few respondents (4) preferred binding EU rules (regarding transparency equivalent to REMIT), while 2 respondents chose non-binding rules (as a second best choice after 'no rules at all').</p> <p>Topics/ themes:</p> <ul style="list-style-type: none"> • Compatible/consistent contracts • Anonymity of offers. 	<p>ACER notes that the majority is not in favour of further rules. An exception could be transparency improvements. Certain issues, like contract compatibility, may need regulatory advice/ intervention.</p>
VIRTUAL TRADING POINT DESIGN/ ACCESS AND HUB ISSUES	
21. Are there any design elements of hubs which provide a barrier to cross-border trade (e.g. independence of the hub operator from traders)? If yes, which ones? Please provide specific cases, examples.	
<p>Number of answers – 11.</p> <p>For some respondents (3) design elements are not considered as barriers. 1 respondent had no experience. Some respondents (4) stressed that design elements could constitute barriers (if not carefully considered), 3 respondents emphasized the need for an independent hub operator. 1 respondent mentioned specific design elements and the importance of NC implementation to overcome current barriers.</p>	<p>ACER agrees that NC implementation will create a more predictable regulatory environment, as requested by the stakeholders. Some design elements of hubs, if not properly considered/supervised, could create barriers. Some regulatory oversight for these cases is being discussed.</p>
22. Are the fees (if any), the methods to calculate these fees, the general terms and conditions and/or contracts for service providers/intermediaries for transferring gas via trade notifications according to Article 5 of the Balancing NC discriminatory and do they constitute a barrier to trade? If so, please state which of the elements above are problematic and which entry-exit systems are affected. Are there any other issues that create barriers to trade?	
<p>Number of answers – 10.</p> <p>No majority identified, but 2 respondents stated that fees were not an issue, 1 respondent underlined that fees could be an issue if no simple administrative fees are applied. 1 responded stressed that in-kind contributions of</p>	<p>ACER notes the importance of simple and transparent fee structures, which may require a periodic review by NRAs to ensure this.</p>

Respondents' feedback	ACER views
<p>fuel gas is a problem for shippers and proposed to move to simple fee regimes. 2 respondents agreed that entry fees might constitute a barrier. Others (4) had no observations. Some respondents stressed that after NC BAL implementation the issue of fees should be verified again. In general it needs to be ensured that fees are transparent and predictable.</p>	
<p>23. Do non-standardised formats represent a barrier for cross-border trading? If yes, do you see a need to establish a standardised data exchange format for trading of wholesale gas products to be used as interface between all potential balancing and trading venues -including key inputs (e.g. trading parties, time, location of trade, trading volumes and price, etc.)?</p>	
<p>Number of answers – 11. No majority identified. 4 respondents agreed that non-standardised data exchange formats are an obstacle, standardization of formats shall even be extended to commodity. 5 respondents deny the need for more rules; 1 respondent requested some improvements to existing rules (regarding automation, timing) and another one suggested that rules are needed at a later stage (when moving to the 'hub-to-hub' market model). Those arguing against a standard format bring up the NW hubs as benchmark example. Those in favour of standardized formats propose the market practiced to be considered when rules are designed.</p>	<p>The debate on the standardisation of formats for trading wholesale products is ongoing among stakeholders. Once the implementation of the Balancing and Interoperability and Data Exchange network codes is finalised, a high degree of standardisation should be reached which will then be monitored by the Agency. Further (industry standardisation) initiatives will be able to build on that.</p>
<p>24. How could the establishment of organised market places at hubs trading platform (via VTPs) be facilitated and should the Agency foresee rules to facilitate it?</p>	
<p>Number of answers– 13. A majority (8) felt that no further rules are necessary, but the implementation of the Balancing NC should first be awaited. 2 respondents stressed that enough capacity and predictable regulatory environment is needed. Others (3) had no observations. Themes raised: Overregulation should be avoided; propose Agency Roadmap on creation of hubs; simple rules and good implementation, national actions shall be taken, if those impede IEM,</p>	<p>The Agency agrees that overregulation should be avoided. However, an Agency roadmap could guide future hub location. Appropriate national measures shall be put in place, if existing national rules create barriers to IEM. Best practices (of other EU countries) could be considered then. At this stage, first the NC BAL's complete implementation has to be awaited in its effects to be assessed (through NC implementation monitoring by the Agency).</p>

Respondents' feedback	ACER views
cross-border and hub trading.	
<p>25. Do you think that a) binding EU rules, b) non-binding guidance or c) no rules at all (awaiting the implementation of existing NCs) address the above issues best? If needed, you can differentiate between different topics.</p>	
<p>Number of answers – 13. The majority (7) believes that no rules are needed. 5 respondents were in favour of non-binding measures or guidance on hubs. Only 1 respondent asked for binding rules to create a level playing field and assure non-discrimination among players.</p>	<p>ACER notes that due to the current stage of VTP, hub development and NC implementation processes, stakeholders prefer awaiting the full implementation of existing network codes. The Agency currently does not consider any new binding rules on the issue.</p>
<p>TRANSPARENCY RULES</p>	
<p>26. Do you think that contractual conditions of capacity services (incl. usage conditions) are transparent and clear enough and easy to access (taking into consideration the establishment of joint booking platforms such as PRISMA)? If not, please name the TSOs/platforms where this is not the case and evaluate it along any of these three parameters (i.e. non-transparent, unclear or difficult to access).</p>	
<p>Number of answers – 11. No majority identified. Some respondents (4) stated that PRISMA offers enough transparency. 3 respondents were in favour of better implementation of (existing) transparency rules. 2 respondents stressed that transparency is important for bundled capacities. 2 respondents prefer a standard approach for contractual terms and conditions or support TSO/NRA oversight to make contracts structured and simple. Some stakeholders missed English translations for both published documents and consultations.</p>	<p>The Agency notes the diversity of views of the respondents and agrees with the necessity for efficient and early implementation and in particular the enforcement of existing transparency requirements. The Agency agrees that English translations are important for communication and transparency. While ACER/ENTSO consultations and the responses to them are always in English, some specific national documents and consultations are indeed not always published in English. Here, it would help if NRAs could arrange to at least publish a (non-binding) summary of the documents with EU gas market relevance in English (e.g. decisions and consultation results).</p>
<p>27. Do you consider that the contractual conditions of capacity products with limited allocability (e.g. interruptible hub access, but firm cross-border flow) are transparent and clear enough? If non-transparent and clear enough, what should be improved? (Please provide specific cases, examples).</p>	
<p>Number of answers – 11. No majority identified. Among the views expressed: 2 promoted better implementation of transparency rules; 3 others stressed that complexity of products is a barrier to trade and incompatible with the full Entry/Exit system</p>	<p>ACER takes note of the stakeholders' views and emphasizes implementation and enforcement of existing transparency requirements. Perceived complexity of products, could be a barrier to trade, however clear (ex-ante) product definition and better explanation and communication of the special</p>

Respondents' feedback	ACER views
<p>model. 2 others proposed to explain those products better or (2) to standardise and simplify them. The others have no experience with these products.</p>	<p>characteristics and conditions (e.g. for interruption to hub-access) could help resolve the issue.</p> <p>Further, to the extent possible (striking a balance between complexity, costs and efficiency), key definitions and a strict limitation of differing 'qualities' of products to a few 'standards' could remedy the situation. The feasibility of this should be subject of a thorough analysis by NRAs, ACER and potentially ENTSOG.</p>
<p>28. Do you have access to sufficient information on the condition(s) for interruption of a capacity service and/or its probability? If not, please specify where this is not the case.</p>	
<p>Number of answers – 10.</p> <p>Only one respondent agreed, but 5 respondents disagreed that they have access to sufficient information. 3 complained about insufficient implementation of transparency rules.</p> <p>Stakeholders mentioned the need for upgrading transparency on interruptible capacities, including publication of calculations, circumstances and ex post data (statistics).</p>	<p>ACER notes that most respondents to this question still don't have sufficient information on conditions for interruption of capacity services. Next to insufficient implementation of existing rules, which can only be remedied via stricter enforcement by NRAs, some stakeholders ask for upgrades of transparency requirements. In order to also be fully consistent with the recently published network codes, ACER may review the transparency requirements and, if found necessary, develop further additions to it, in cooperation with ENTSOG.</p>
<p>29. Do you have sufficient information on the occurrence of the condition(s) for interruption and/or its probability? If not, please specify, where this is not the case.</p>	
<p>Number of answers – 7.</p> <p>Only one respondent considered the information sufficient, while the others disagreed. 3 of the latter complained about transparency rules not being followed up and therefore information is not accessible. Stakeholders mentioned that transparency rules on interruptible could be upgraded, more information on calculations and its parameters are needed, and interruptions due to maintenance should be published a year-ahead.</p>	<p>ACER notes that most respondents to this question still don't have sufficient information on the occurrence of the conditions for interruptions. Next to insufficient implementation of existing rules, which can only be remedied via stricter enforcement by NRAs, some stakeholders ask for upgrades of transparency requirements. In order to also be fully consistent with the recently published network codes, ACER may review the transparency requirements and, if found to be necessary, develop further additions to the transparency rules in cooperation with ENTSOG.</p>
<p>30. Do you think that a) binding EU rules, b) non-binding guidance or c) no rules at all (awaiting the implementation of existing NCs) address the above issues best? If needed, you can differentiate between different topics.</p>	
<p>Number of answers – 11.</p> <p>No majority identified. 3 respondents requested some additional rules. 4 specified the need for non-binding rules and 4 shared the view that no rules were required.</p>	<p>Next to insufficient implementation of existing rules, which can only be remedied via stricter enforcement by NRAs, some stakeholders ask for upgrades of transparency requirements. In order to also be fully consistent with the recently published network codes, ACER may review the transparency requirements</p>

Respondents' feedback	ACER views
<p>The following issues were raised are:</p> <ul style="list-style-type: none"> • proper implementation needed, • Users perceive unequal access to information, • upgrading the rules to align with other codes (E.g. point 3.3.5 of Transparency Annex should give an outlook up to Y+15), • enforcement rules to be considered, if alignment with the Transparency Annex is not achieved. 	<p>and, if found to be necessary, develop further additions to the transparency rules in cooperation with ENTSOG.</p>
<p>LICENSING REQUIREMENTS FOR MARKET PARTICIPANTS OTHER THAN TSO</p>	
<p>31. Do you see a problem with regard to different licensing requirements in the EU? If yes, please name the Member State, explain the main issues and propose solutions (such as minimum requirements for licenses at EU level, etc.).</p>	
<p>Number of answers – 13. Majority identified issues around varying licensing practices (7). 5 respondents did not see a problem; others (1) had no clear views. The majority (regardless of whether considering to be a problem or not) would like to see mutually acceptable licenses across the EU. Mandatory registration with REMIT may even question the need for licenses in the view of some respondents.</p>	<p>ACER agrees with the stakeholders that mutual acceptance of licenses would be a desirable way forward. However, analysis is necessary to see whether this is (legally) possible and also to find out, what best practises are.</p>
<p>32. Do you think that a) binding EU rules, b) non-binding guidance or c) no rules at all (awaiting the implementation of existing NCs) address the above issues best?</p>	
<p>Number of answers – 14. Responses were spread across the options: binding (5), non-binding (4), no rules (3). The respondents stressed the simplicity and the need for reduction of administrative burden, in particular in relation to reporting obligations. It was stated that interventions should focus on markets that do not function properly. In addition, it was proposed that implementation of the NCs is an opportunity to build common understanding and resolve the problems without further rules.</p>	<p>ACER agrees that the current code implementation shall be used to resolve the problems and/ or notify accurately the relevant authorities of the major inconsistencies and problems. This can also be targeted at regional level through the GRI. It then remains to be seen, whether some harmonising rules (either non-binding or binding), as also requested by most of the respondents may be required.</p>

4. Conclusion

Given that a large number of Network Codes are still being developed or are in the process of implementation, ACER decided to recommend to the Commission that it is not a priority to launch a new FG, in line with the request of the stakeholders (26 out of 28).

Nevertheless, ACER is currently not fully convinced that all issues raised by stakeholders will be solved once the existing Network Codes are fully implemented, as those codes do not have clear and specific rules on all the mentioned issues. At the same time, ACER agrees that it is sensible to first implement the existing Network Codes and closely monitor the process and the effects of the code application. Hence, ACER - as also suggested by several stakeholders – will at this stage not work on comprehensive new binding rules, but rather focus on the assessment during and after the full NC implementation whether further harmonisation is needed in specific detailed areas, which might then translate for example into amendment proposals of the then existing network codes.

ACER's intention is to periodically review and assess the outstanding issues and find potential remedies according to the following priorities:

- Analysis of the capacity products currently on offer, their characteristics, their take-up by the market, and the potential scope for improvement and harmonisation.
- Analysis of the differences of contract terms and definitions, and whether these could be levelled by harmonisation.
- Further analysis on the design and procedures of virtual trading points, once the NC Balancing is implemented.
- Further work on secondary capacity markets and ways to facilitate secondary capacity trading.

In this context, ACER also notes that:

- The Agency is ready to foster early implementation;
- TSOs and TSO platforms have to be encouraged to share best practices of capacity product standardization on the basis of self-commitments;
- ACER will collect, recommend and advocate best practices;
- ACER will support the improvement of governance issues.
- ACER flags the necessity for speedy implementation and enforcement of existing transparency requirements. Stricter enforcement rules on transparency issues may be considered in the future, if the transparency obligations are not fully complied with.
- With regard to licensing issues, ACER is willing to include that in its analysis work. ACER is willing to foster the implementation of harmonised requirements for national licenses, if mutual acceptance is proved insufficient.

Annex I - List of Respondents

N o	Name	Organisation	Segment	Country of Origin	Confid ential
1	AIGET	National association	Supplier, shipper	Italy	No
2	BDEW	National association	Network user	Germany	
3	CEGH AG	Hub operator	Hub operator	Austria	No
4	CEZ a.s.	Company	Supplier, network user	Czech Republic	No
5	DEPA S.A	Company	Supplier	Greece	No
6	EASEE-gas	Association	Wholesale, retail and distribution	Europe	No
7	EDF	Company	Network user	France	No
8	EDP S.A.	Company	Supplier	Portugal	No
9	EFET	Association	Shipper	Europe	No
10	Enagas	Company	TSO	Spain	No
11	EnBW Trading GmbH	Company	Supplier	Germany	No
12	Energie- Nederland	National association	Industrial energy users	The Netherlands	No
13	Energy UK	National association	Electricity Producers	UK	No
14	Eni	Company	TSO	Belgium	No
15	ENTSOG	Association	TSO	Europe	No
16	Eurelectric	Association	Industry	Europe	No
17	Eurogas	Association	Wholesale, retail and distribution	Europe	No
18	Europex	Association	European Energy Exchanges	Europe	No
19	Galp Gas Natural	Company	Shipper and Supplier	Portugal	No
20	Gas Natural Distribucion	Company	DSO	Spain	No
21	GasTerra BV	Company	Shipper	The Netherlands	No
22	Gazprom M&T	Company	Shipper	UK	No
23	GdF Suez	Company	TSO	France	No
24	GDF SUEZ Infrastructure s	Company	TSO	France	No

25	GIE	Association	TSO, Storage, LNG operator	Europe	No
26	OGP Europe	Association	Producer	Europe	No
27	Statoil	Company	Producer, network user	Norway	No
28	UK government	UK government	UK government	UK	No