



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL FOR ENERGY

Directorate B - Internal Energy Market  
The Director

Brussels,  
ENER B/KDB/BK/ms (2018) 4271566

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**Subject: Implementation of Virtual Interconnection Points in accordance with Commission Regulation (EU) 2017/459**

Dear Jan,

Dear Dennis,

I am contacting you in relation to the questions on the interpretation of Article 19 (9) of Commission Regulation (EU) 2017/459 ('NC CAM') which have been raised by several national regulatory authorities, transmission system operators and other market participants ahead of the approaching implementation deadline.

According to Article 19 (9) of NC CAM, Virtual Interconnection Points ('VIPs') need to be established by 1 November 2018 between adjacent entry-exit systems where the conditions set out in the Article are fulfilled.

It appears that the extent of the obligations on transmission system operators under Article 19 (9) and the manner in which they should be implemented are unclear for a number of stakeholders. This concerns in particular the question as to how contracted capacity at the affected interconnections points should be treated.

The issue has been flagged on the Gas Network Codes Functionality Platform and was subsequently reviewed by ACER and ENTSOG. In a joint note sent to DG Energy, ACER and ENTSOG have recommended two possible approaches, both of which would require an amendment of the NC CAM. One option would be to clarify (via an amendment of the Article in question) that capacities contracted before the creation of the VIP shall be transferred to the VIP. The other option would be to allow that capacity contracted before the creation of the VIP remains at the original interconnection point and only available capacities are transferred (again via an amendment).

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With this letter, I would like to outline the Commission services' interpretation of the provision in question and thereby to contribute to a correct and timely implementation of VIPs across Europe. Please note that in the event of a dispute involving Union law it is, under the Treaty on the Functioning of the European Union, ultimately for the Court of Justice of the European Union to provide a definitive interpretation of the applicable Union law.

Article 19 (9) NC CAM states that "where two or more interconnection points connect the same two adjacent entry-exit systems, the adjacent transmission system operators concerned shall offer the available capacities at the interconnection points at one virtual interconnection point." Article 19 (9) provides moreover that VIPs shall be established only if "the total technical capacity at the virtual interconnection points shall be equal to or higher than the sum of the technical capacities at each of the interconnection points contributing to the virtual interconnection points" (Article 19 (9) (a)).

Whereas Article 19 (9) does not explicitly set out what should happen with any previously contracted capacity at the interconnection points in question, it follows from the quoted sections of Article 19 (9), as well as from the purpose of the NC CAM that any contracted capacity at the interconnection points in question will have to be transferred to the VIP.

Absent such mandatory transfer of contracted capacity (i.e. if one were to interpret the reference to "offering available capacities" in such a manner that already contracted capacity could remain at the original interconnection point), the technical capacity at the VIP would generally not be "equal or higher" than the sum of the technical capacities at the respective interconnection points and would thus not meet the aforementioned condition a) of Article 19 (9).

An interpretation of Article 19 (9) under which a transfer of contracted capacity was not required would thus prevent the implementation of VIPs in most or even all cases where capacity has been contracted at the interconnections points in question. Such an interpretation would undermine the application of the Article and contradict the main purpose the NC CAM, namely to create more liquid and competitive gas markets, and is hence not compatible with the principle of *effet utile*.

Therefore, it is considered that the transfer of contracted and available capacity to the VIP is implicitly required pursuant to Article 19 (9), followed by the offer of available capacity as stated therein.

It follows from the above that, in the view of the Commission services, an amendment of Article 19 (9) is not required to ensure its correct implementation. However, it is not excluded that the wording of Article 19 (9) could be clarified in accordance with the above considerations on the occasion of future amendments to the NC CAM.

The Commission services also consider that it cannot be excluded that the required transfer of contracted capacity from physical interconnection points to the VIP might require an adjustment of capacity contracts in some instances, depending on the wording of the individual contracts in question and on the applicable national contracts law. Article 19 (9) and the NC CAM make no provision in this regard.

The transfer of contracted capacity from interconnection points to a VIP is without prejudice to the applicability of other provisions of Union law, notably the rules on the pricing of capacity at VIPs set out in Article 22 of Commission Regulation (EU)

2017/460 establishing a network code on harmonised transmission tariff structures for gas (TAR NC).

Further to the above clarification, I would invite operators and regulators to take the necessary steps towards a timely implementation of Article 19 (9) of NC CAM and to keep any delays resulting from the previously unclear situation to a minimum.

My services remain at your disposal should you have further questions in this regard.

Yours sincerely,

Klaus-Dieter Borchardt