



European Union Agency for the Cooperation
of Energy Regulators

OPINION

No 09/2026

**on the derogation request submitted by the Slovak
Regulatory Office for Network Industries (ÚRSO)
from the application of the network codes and
guidelines, referred to in Article 70(1) of Regulation
(EU) 2024/1789, at the entry points from and the exit
points to Ukraine**

30 April 2026

Executive summary

Pursuant to Article 70(3) of Regulation (EU) 2024/1789¹ ('Gas Regulation'), ACER is required to provide the European Commission with a reasoned opinion within three months of the date of receipt of a request for a derogation, submitted by a national regulatory authority ('NRA') in line with the aforementioned provision, from the implementation of network codes or guidelines, referred to in Article 70(1) of the Gas Regulation, or specific elements of them.

On 5 February 2026, the Slovak national regulatory authority ('NRA'), Úrad Pre Reguláciu Sieťových Odvetví ('ÚRSO'), submitted to the European Commission and ACER a derogation request concerning the interconnection points situated between Slovakia and Ukraine, namely Budince and Veľké Kapušany. As a Contracting Party to the Energy Community Treaty, Ukraine is required to align its national legislation with, and implement, relevant parts of the EU energy acquis, as transposed into the Energy Community acquis.

ÚRSO has requested a derogation from the application of Article 8, Article 9, Article 19, and Article 37 of Commission Regulation (EU) 2017/459² ('CAM NC') at the aforementioned interconnection points.

In addition, ÚRSO has requested a derogation from the application of Chapter III, Chapter V, Chapter VI, Article 28, Article 31(2) and (3), and Chapter IX of Commission Regulation (EU) 2017/460³ ('TAR NC') at the aforementioned interconnection points.

Conclusion

With reference to the derogation request regarding Budince and Veľké Kapušany interconnection points, and taking into account all the justifications provided by the Slovak NRA, ACER is of the opinion that, in the case at issue, a derogation from the application of CAM NC Article 19, specifically with regard to the bundling of standard capacity products, should be granted as the requirements listed in Article 70(3) of the Gas Regulation are fulfilled to the extent possible. Moreover, ACER cannot conclude on the derogation request from the application of CAM NC Article 19(9), specifically on the virtualisation of the interconnection points connecting Slovakia and Ukraine, lacking sufficient information.

In relation to the derogation from the application of CAM NC Article 8 and Article 9, specifically with regard to the allocation methodology and the standard capacity products, ACER is of the opinion that this derogation does not fulfil the requirements listed in Article 70(3) of the Gas Regulation, and hence it should not be granted.

As regards the derogation from the application of CAM NC Article 37, specifically with regard to the establishment of a joint booking platform, ACER is of the opinion that in the case at issue, this derogation should not be granted as the requirements listed in Article 70(3) of the Gas Regulation are not fulfilled.

Lastly, ACER is of the opinion that in the case at issue, a derogation from the application of Chapter III, Chapter V, Chapter VI, Article 28, Article 31(2) and (3), and Chapter IX of the TAR NC should not be granted as the requirements listed in Article 70(3) of the Gas Regulation are not fulfilled.

¹ Regulation (EU) 2024/1789 of the European Parliament and of the Council of 13 June 2024 on the internal markets for renewable gas, natural gas and hydrogen, amending Regulations (EU) No 1227/2011, (EU) 2017/1938, (EU) 2019/942 and (EU) 2022/869 and Decision (EU) 2017/684 and repealing Regulation (EC) No 715/2009 (recast). Official Journal 2024/1789, 15.7.2024.

² Commission Regulation (EU) 2017/459 of 16 March 2017 establishing a network code on capacity allocation mechanisms in gas transmission systems and repealing Regulation (EU) No 984/2013. C/2017/1660. Official Journal L 72, 17.3.2017.

³ Commission Regulation (EU) 2017/460 of 16 March 2017 establishing a network code on harmonised transmission tariff structures for gas. C/2017/1657 Official Journal L 72, 17.3.2017.

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1. Background

- 1 Regulation (EU) 2024/1789⁴ ('Gas Regulation') extends the application of network codes and guidelines, referred to in Article 70(2) of the Gas Regulation ('network codes and guidelines'), to the entry points from and exit points to third countries, namely countries that are not members of the European Union. The principle embedded in the Regulation at issue is the enhancement of the internal gas market by supporting cross-border trade and efficient operations also at the borders with third countries. Applying network codes and guidelines at these border points helps to avoid market fragmentation and ensures the seamless functioning of the internal market, in particular by guaranteeing consistent rules, non-discriminatory access and efficient cross-border trading conditions, even at the borders of the Union.
- 2 Article 70(2)(d) of the Gas Regulation lays down that network codes and guidelines, adopted in accordance with paragraph 1 of the same provision, shall apply to all interconnection points within the Union and to entry points from and exit points to third countries from 5 August 2026.
- 3 Furthermore, Article 70(3)⁵ thereof states that until 5 February 2026 national regulatory authorities ('NRAs') may submit a request to the European Commission and ACER for a derogation from the application of the network codes and guidelines at entry points from and exit points to third countries pursuant to Article 70(2)(d).
- 4 ACER shall provide a reasoned opinion to the European Commission within three months of the date of receipt of the request for a derogation. In its reasoned opinion ACER provides an assessment on the request submitted by the NRA. The European Commission shall adopt a decision on the request for a derogation, taking into account ACER's reasoned opinion and after assessing the existence of the conditions listed in Article 70(3)(a), (b) and (c).
- 5 Notably, whether the NRA has demonstrated that provisions of a network code or guideline cannot be effectively implemented at an entry point from or exit point to a third country; has taken measures to alleviate obstacles to such implementation; and has shown that the derogation is not detrimental to the internal gas market or to the security of supply of the Union or of a Member State. The derogation shall be limited to specific provisions that cannot be effectively implemented and shall be granted by the European Commission for a limited period of time.

⁴ Regulation (EU) 2024/1789 of the European Parliament and of the Council of 13 June 2024 on the internal markets for renewable gas, natural gas and hydrogen, amending Regulations (EU) No 1227/2011, (EU) 2017/1938, (EU) 2019/942 and (EU) 2022/869 and Decision (EU) 2017/684 and repealing Regulation (EC) No 715/2009 (recast). Official Journal 2024/1789, 15.7.2024.

⁵ 'Until 5 February 2026, regulatory authorities may submit a request to the Commission for a derogation from the application of the network codes and guidelines referred to in paragraph 1 at entry points from and exit points to third countries pursuant to paragraph 2, point (d). The request for a derogation shall be submitted simultaneously to the Commission and to ACER. Within three months of the date of receipt of the request for a derogation ACER shall provide a reasoned opinion to the Commission. The Commission shall adopt a decision on the request for a derogation, taking into account ACER's reasoned opinion and after assessing whether the regulatory authority has: (a) demonstrated that a network code or guideline, or specific element of those acts, cannot be effectively implemented at entry points from and exit points to third countries; in the case of interconnection points with third countries which have the obligation to adapt to the Union energy acquis, including this Regulation, pursuant to an agreement concluded between the Union and those third countries, but where application or implementation has not been completed, the request for a derogation shall specify which provisions of this Regulation have not been effectively applied or implemented in the third country concerned or which technical rules or lack of technical rules in the third country impede the application of the specific provisions of the relevant network code or guideline; (b) explained which measures were taken to alleviate the obstacles to the application of the specific provisions of the relevant network code or guideline; (c) demonstrated that the derogation is not detrimental to the proper functioning of the internal market for natural gas, or to the security of supply of the Union or of a Member State. The derogation shall be limited to the specific provisions that cannot be effectively implemented and shall be granted for a limited period of time.'

- 6 Furthermore, Recital 95 of the Gas Regulation acknowledges that specific circumstances, including the existence of long-term contractual arrangements or legal difficulties in establishing dispute resolution procedures with transmission system operators or natural gas suppliers established in third countries, may prevent the effective application of network codes in the short term.
- 7 This Opinion is addressed to the European Commission and issued in accordance with Article 70(3) of the Gas Regulation.

2. Procedure

- 8 On 5 February 2026, ACER received from the Slovak NRA Úrad Pre Reguláciu Sieťových Odvetví ('ÚRSO') in written form via electronic post a request for a derogation from the application of network codes and guidelines pursuant to Article 70(3) of the Gas Regulation.
- 9 Upon the submission of the derogation request, and after an in-depth analysis thereof, ACER has requested additional information to the involved NRA to further clarify elements of its derogation request. ACER has taken due account of the additional information provided by the Slovak NRA in its assessment complementing its argumentation.
- 10 On 1 April 2026, ACER shared the draft version of the reasoned opinion with the involved NRA for a factual check and to verify the completeness of the information provided.
- 11 On 30 April 2026, ACER adopted this reasoned opinion and sent it to the European Commission in accordance with Article 70(3) of the Gas Regulation following the prescribed timeline.

3. Summary of Derogation Request

- 12 ÚRSO has submitted a derogation request concerning two interconnection points connecting Slovakia and Ukraine, namely Budince and Veľké Kapušany. The Budince and Veľké Kapušany interconnection points are operated on the Ukrainian side by the Gas Transmission System Operator of Ukraine ('GTSOU'). On the Slovak side, both interconnection points are operated by Eustream. The national regulatory authority of Ukraine is the National Energy and Utilities Regulatory Commission ('NEURC').
- 13 As a Contracting Party to the Energy Community Treaty, Ukraine is required to align its national legislation with, and implement relevant parts of the EU energy acquis, as transposed into the Energy Community acquis.⁶
- 14 ÚRSO has submitted to ACER a derogation request prepared by the Slovak TSO Eustream, providing the justifications for the derogation request. According to the Slovak TSO, the need for a derogation has been identified with respect to certain provisions that cannot be effectively implemented at the two aforementioned interconnection points by 5 August 2026. ACER understands that the position presented in this document prepared by Eustream reflects the position of ÚRSO.
- 15 On the Slovak side, capacity at the Budince and Veľké Kapušany interconnection points is offered by Eustream via its own web platform and allocated on a first-come, first-served basis, rather than through the auction procedures set out in the Commission Regulation (EU) 2017/459⁷ ('CAM NC').⁸ A broader range of products is currently offered compared to those provided under the CAM NC, with the possibility for network users to acquire tailored products of non-standard duration. Furthermore, the auction allocation timeline does not follow the standard auction

⁶ This may cause a delayed implementation of EU energy acquis by the Energy Community Contracting Parties.

⁷ Commission Regulation (EU) 2017/459 of 16 March 2017 establishing a network code on capacity allocation mechanisms in gas transmission systems and repealing Regulation (EU) No 984/2013. C/2017/1660. Official Journal L 72, 17.3.2017.

⁸ Before the implementation of the Gas Regulation national regulatory authorities could decide not to apply the provisions of the CAM NC to entry points from and exit points to third countries, now this possibility is only foreseen until 5 August 2026.

calendar, but rather a process set up by the transmission system operator.⁹ The capacity is made available on an unbundled basis.

16 As regards the CAM NC, ÚRSO has requested a derogation from the following provisions:

- Article 8 – Allocation methodology;
- Article 9 – Standard capacity products;
- Article 19 – Bundled capacity products;
- Article 37 – Capacity booking platforms.

17 In ÚRSO's view, the effective implementation of the CAM NC provisions referred above is impeded, within the meaning of Article 70(3)(a) of the Gas Regulation, at the Budince and Velké Kapušany interconnection points by 5 August of 2026 for the following reasons, as described by the regulator:

- Firstly, the flexibility provided by the applied methodology and capacity products is considered necessary for network users, who operate under specific market and legislative conditions and are likely affected by the Russia's aggression against Ukraine. Moreover, gas purchases by network users at the border are often centrally determined by state authorities and decisions on gas procurement are significantly influenced by the availability of financial resources. As a result, capacity bookings at these points do not take place simultaneously with those at other EU interconnection points, but are typically made at a later stage, often close to delivery.
- Secondly, there is a significant obstacle to the application of bundled capacity at the points between Slovakia and Ukraine, which is the different use of capacity units at the border: volume units are applied on the Ukrainian side, while energy units are used on the Slovak side.
- Thirdly, the virtualisation of the interconnection points would present technical challenges. Notably, the border delivery stations Velké Kapušany and Budince have different technical designs and operate at different delivery pressures. Due to this configuration, virtualising the capacity of the two interconnection points into a single virtual interconnection point would reduce the technical capacity available at the virtual interconnection point. Furthermore, the virtualisation would entail additional costs and implementation time, as well as the need to modify the existing interconnection agreement.
- Finally, the implementation of a booking platform at the interconnection points with Ukraine would require the completion of several additional operational and contractual steps, including the conclusion of relevant agreements with the Ukrainian transmission system operator and a booking platform, the adjustment of IT systems, the performance of technical and functional testing, and the notification of market participants.

18 With reference to the Commission Regulation (EU) 2017/460¹⁰ ('TAR NC'), ÚRSO has requested a derogation from the following provisions:

- Chapter III – Reserve prices;
- Chapter V – Pricing of bundled capacity and capacity at virtual interconnection points;

⁹ For more details on the allocation process please refer to Section 3.5 of the Operational Order of Eustream.

¹⁰ Commission Regulation (EU) 2017/460 of 16 March 2017 establishing a network code on harmonised transmission tariff structures for gas. C/2017/1657 Official Journal L 72, 17.3.2017.

- Chapter VI – Clearing price and payable price;
- Article 28 – Consultation on discounts, multipliers and seasonal factors;
- Article 31(2) and (3) – Form of publication;
- Chapter IX – Incremental capacity.

19 In ÚRSO's view, the effective implementation of the TAR NC provisions referred above is impeded, within the meaning of Article 70(3)(a) of the Gas Regulation, at the Budince and Veľké Kapušany interconnection points by 5 August of 2026 for the following reasons, as described by the regulator:

- Firstly, Ukraine is not a Member State of the European Union, therefore not falling under the full EU legal and institutional framework. As a result, only partial implementation of the EU legal framework is possible at the interconnection points with Ukraine.
- Secondly, ÚRSO has not applied yet the CAM NC to entry and exit points at the border with Ukraine. As a result, TAR NC Chapter III, Chapter V, Chapter VI, Article 28, Article 31(2) and (3), and Chapter IX do not apply in Slovakia to these points. Capacity is currently not offered on the basis of allocation methodology and the standard capacity products prescribed in the CAM NC. Moreover, in relation to the pricing of bundled capacity and capacity at virtual interconnection points, at present, there is no virtual interconnection point between Slovakia and Ukraine, and the capacity is not offered as bundled.
- Lastly, in the event of full implementation of the TAR NC, the relevant legislation and any subsequent national decisions would first need to be amended before the practical implementation of the required changes.

20 Another element that has been brought forward by ÚRSO, as a limitation in relation to the offer of bundled capacity products, is the risk of placing network users from the EU Member States in a discriminatory position comparing to the network users from Ukraine: this is due to the fact that EU companies must establish a branch company to obtain a license in Ukraine to acquire bundled capacity products, creating additional costs and obstacles, especially relevant during Russia's aggression against Ukraine.

21 ÚRSO does not indicate a time limit to its derogation request, stating that the condition should be relevant until all the network codes are fully and effectively implemented on the Ukrainian side and all identified regulatory, technical, and administrative barriers, that currently prevent their proper application, have been removed.

22 ÚRSO further states that the requested derogation from applying the aforementioned provisions at the entry and exit points between Slovakia and Ukraine does not negatively affect the proper functioning of the internal gas market and does not jeopardize gas supply security, either at the EU level, at the level of individual Member States or on the Ukrainian side.

4. ACER assessment

4.1. Derogation request from the provisions of CAM NC

23 ACER is of the opinion that CAM NC Article 19 cannot be effectively applied at the Budince and Veľké Kapušany interconnection points until the units of measurement are harmonized by the Ukrainian NRA and TSO GTSOU to the energy units in accordance with CAM NC Article 10. In addition, in relation to the derogation request from the application of CAM NC Article 19(9), specifically on the virtualisation of the interconnection points connecting Slovakia and Ukraine, ACER does not have sufficient information to provide a complete assessment.

- 24 ACER notes that CAM NC Article 19(9) sets specific requirements for the virtualisation of the interconnection points, therefore if these conditions are not met no further obligation is placed on the Slovak TSO, making the derogation request unnecessary. At the same time ACER invites the Slovak NRA to further investigate whether these conditions apply consulting the market and carrying out a cost-benefit analysis to assess whether the potential benefits, in terms of market desirability, outweigh the associated costs.
- 25 With regard to the request for derogation from the application of CAM NC Article 37 at the Budince and Veľké Kapušany interconnection points, ACER remarks that Article 37 prescribes the offering of capacity by means of one or a limited number of joint web-based booking platforms. Transmission system operators can operate such platforms themselves or via an agreed party. In addition, transmission system operators shall reach a contractual agreement to use a single booking platform to offer capacity on the two sides of their respective interconnection points or virtual interconnection points. Notably, CAM NC Article 37 prescribes the process for the establishment of a joint booking platform and sets out the conditions for establishment in case of disagreements between TSOs.
- 26 ACER notes that capacity on the Slovak side of the interconnection point is currently offered by the Slovak TSO through a proprietary platform while the Regional Booking Platform ('RBP') has already been implemented by the Ukrainian counterparty on its side of such interconnection points and used to offer and allocate standard capacity products.
- 27 ACER further notes that the establishment and joint use of a booking platform are requirements under the CAM NC and that constitute a necessary step towards the implementation of capacity bundling. Even though ACER acknowledges that the full joint utilization of the booking platform will be possible once the units of measurement are harmonized.
- 28 At the same time, ACER is of the opinion that the justifications provided by ÚRSO are not sufficient to sustain that CAM NC Article 37 cannot be effectively implemented within the meaning of Article 70(3)(a) of the Gas Regulation.
- 29 ACER is of the opinion that the requirements under Article 70(3) are not fulfilled in relation to the derogation request from the application of CAM NC Article 8 and Article 9. ACER notes that, based on the information collected, transmission capacity rights on the Ukrainian side are currently offered in line with the requirements of these articles, and standard capacity products are offered in accordance with the allocation methodology of CAM NC and the auction calendar prescribed therein.
- 30 ACER further notes that the current impossibility to fulfil the requirement under CAM NC Article 19 regarding capacity bundling does not prevent the Slovak NRA from complying with obligations related to the allocation methodology and standard capacity products. This entails the possibility to offer annual, quarterly, monthly, daily, and within-day capacity products on an unbundled basis until the technical requirements to allow the bundling of capacity products are fulfilled by the Ukrainian counterparty.
- 31 ACER considers that the rules set out in the CAM NC provide sufficient flexibility for network users to acquire transmission capacity rights, and highlights the benefits of standardising the allocation methodology in accordance with the CAM NC at such interconnection points, particularly in terms of transparency, predictability, and standardisation of capacity allocation, enhancing competition and integration in the broader European gas market and, by extension, to the Contracting Parties, committed to implement all NCs, as a condition for integration therein.
- 32 In relation to the potential limitation on capacity trading of bundled capacity products arising from the different licensing regimes and to which extent this limitation hinders the possibility for EU and non-EU companies to acquire bundled products, ACER notes that, based on the information provided, it is not possible to fully assess the impact of this development. Particularly, ACER considers this element as noteworthy and considers that further investigation is necessary from the Slovak NRA to adopt all measures that can mitigate the effects of licensing differences while ensuring seamless application of EU rules.

4.2. Derogation requests from the provisions of the TAR NC

- 33 ACER remarks that Article 70(2)(d) of the Gas Regulation extends the scope of all network codes to entry points from and exit points to third countries from 5 August 2026. Notably this refers to broadening the scope of application of the TAR NC included in Article 2, therefore, TAR NC Chapter III, Chapter V, Chapter VI, Article 28, Article 31(2) and (3), and Chapter IX need to be fully implemented as of 5 of August 2026¹¹.
- 34 In relation to the justification provided by ÚRSO, ACER is not able to establish a connection between the implementation status of the TAR NC in Ukraine and the impossibility manifested by ÚRSO to implement the TAR NC at the Slovak side of the two concerned interconnection points. ACER notes that the implementation status of the TAR NC in Ukraine does not directly affect the possibility for ÚRSO to implement the provisions of the TAR NC. Therefore, ACER is of the opinion that the implementation status of TAR NC in Ukraine does not represent an effective impediment within the meaning of Article 70(3)(a) of the Gas Regulation.
- 35 ACER is also of the opinion that the decision of ÚRSO not to implement the CAM NC at the interconnection point with a third country before the 5 of August 2026 does not constitute an effective impediment within the meaning of Article 70(3)(a) of the Gas Regulation to implement the TAR NC provisions.
- 36 Moreover, even though ACER acknowledges the need expressed by the Slovak TSO Eustream to amend the national legislative and regulatory provisions in order to implement the TAR NC at such interconnection points, ACER is of the opinion that this does not constitute a direct impediment to implement the TAR NC provisions within the meaning of Article 70(3)(a) of the Gas Regulation.
- 37 In relation to TAR NC Chapter V, specifically on the pricing of bundled capacity and capacity at virtual interconnection points, ACER is of the opinion that until the capacity bundling is not possible at such interconnection points, and such interconnections points will not be virtualized, the obligation arising for Chapter V are fulfilled to the extent possible.

4.3. Additional considerations on the derogation request

- 38 With reference to the measures adopted to alleviate the above-mentioned obstacles, ACER notes that ÚRSO's derogation request does not include information on the interactions between ÚRSO itself, or Eustream, and the Ukrainian counterparties.
- 39 ACER notes that the lack of coordination does not allow to foresee a clear timeline for the full implementation of the NC provisions, whereas Article 70(3) of the Gas Regulation requires that the derogation should be time limited. As a consequence, the implementation of the energy unit of measurement on the Ukrainian side and the possibility of bundling capacity cannot be aligned, agreed between the two parties and implemented in a timely manner.
- 40 ACER remarks that these interactions are considered necessary within the meaning of Article 70(3)(b) of the Gas Regulation in view to further coordinate the steps required to address the identified technical constraints and to implement the network code provisions to the extent possible within their respective jurisdictions.
- 41 ACER notes that the information provided by ÚRSO to demonstrate that the derogation is not detrimental to the proper functioning of the internal market for natural gas or the security of supply of the Union or of a Member State is limited.

¹¹ Please refer to 2026 ACER Tariff Report on the "Analysis of the consultation document on the gas transmission tariff structure for Slovakia" for more information.

- 42 ACER acknowledges the challenges associated with the implementation of the allocation procedures and standard capacity products prescribed in the CAM NC, the establishment of a joint booking platform, as well as the adoption of the necessary legislative steps to implement the TAR NC, together with the required technical system developments at entry from and exit to third countries by 5 August 2026. ACER understands that these changes require considerable time and effort and involve coordination among multiple stakeholders.
- 43 ACER therefore invites the Slovak NRA to establish a clear and consistent timeline for implementing the required changes, with a view to closing the implementation gap and ensuring the seamless application of EU rules, in order to fulfil the requirements of Article 70(3) of the Gas Regulation promptly after 5 August 2026.

5. Conclusions

- 44 With reference to the derogation request regarding Budince and Veľké Kapušany interconnection points, and taking into account all the aforementioned reasons, ACER is of the opinion that, in the case at issue, a derogation from the application of CAM NC Article 19, specifically with regard to the bundling of standard capacity products, should be granted as the requirements listed in Article 70(3) of the Gas Regulation are fulfilled to the extent possible. Moreover, ACER cannot conclude on the derogation request from the application of CAM NC Article 19(9), specifically on the virtualisation of the interconnection points connecting between Slovakia and Ukraine, lacking sufficient information.
- 45 In relation to the derogation from the application of CAM NC Article 8 and Article 9, specifically with regard to the allocation methodology and the standard capacity products, ACER is of the opinion that in this case, a one-side implementation is feasible and this derogation should not be granted based on Article 70(3) of the Gas Regulation, as its requirements are not fulfilled.
- 46 As regards the derogation from the application of CAM NC Article 37, specifically with regard to the establishment of a joint booking platform, ACER is of the opinion this derogation should not be granted based on Article 70(3) of the Gas Regulation as its requirements are not fulfilled.
- 47 Lastly, ACER is of the opinion that based on the reasons addressed in section 4.2, a derogation from the application of TAR NC Chapter III, Chapter V, Chapter VI, Article 28, Article 31(2) and (3), and Chapter IX should not be granted as the requirements listed in Article 70(3) of the Gas Regulation are not fulfilled.

This Opinion is addressed to the European Commission.

Done at Ljubljana, on 30 April 2026.

— SIGNED —

V. ZULEGER, *ACER Director ad interim*