



Public Consultation on the methodology for implementation monitoring and evaluation of the impact of the gas Network Codes and Guidelines on the internal gas market

Fields marked with * are mandatory.

Introduction

From 12 June 2015 to 10 July 2015 the Agency for the Cooperation of Energy Regulators ('ACER', 'the Agency') is running a public consultation on the future methodology for implementation monitoring and evaluation of the impact of the gas network codes and guidelines on the internal gas market.

Article 9 of Regulation (EC) No 715/2009 lays down rules for the Agency to monitor and analyse the implementation of the network codes and the Guidelines adopted by the European Commission. Under the article the Agency is responsible for assessing the effects of the codes in facilitating market integration, as well as on non-discrimination, effective competition and the efficient functioning of the market.

Based on Article 10 of Regulation (EC) No 713/2009 the Agency presents for public consultation the consultancy study from Cambridge Economic Policy Associates (CEPA), commissioned by the Agency, which proposes a methodology to be used for implementation monitoring and evaluation of the impact of the gas network codes and guidelines on the internal gas market.

In order to test and improve the outcome of the study the Agency invites stakeholders to share their views on this work, in particular on the proposed indicators. Well founded comments which will lead to improvements of the report outcome in particular the proposed indicators will be taken into account by CEPA in its final compilation of the study.

The Agency invites stakeholders to reply to the following questions.

Contact details

*1 Family name, first name

*2 Email

3 Name of organisation

*4 Area of activity

- Shipper or energy trading entity
- Interconnector
- Storage
- LNG
- Distribution
- Producer
- End-user
- Transmission system
- Other

Consultancy Study

6 Do you consider the methodology well founded? If not, what should be improved? (Chapters 1-4)

- EconGas has in general doubts about the accuracy of the proposed indicators to measure a target-oriented implementation of the respective network codes. In our view the term “indicator” by definition only assumes that the measured/published values are not reflecting the full complexity of the European gas sector.

o Those indicators will, depending on different national regulations, not be perfectly comparable country-by-country. This is mainly due to an expected divergence in the implementation on a national level, wherein each country can elect to adopt the proposals amended to suit their situation.

o Indicators will only show what the impact of certain implementation measures effectively was. However, what is not revealed is what the potential maximum effect of a certain measure could/should have been after all. As an example, an “indicator” showing how much capacity was offered on a bundled basis on interconnection point X, does in no way reveal how much capacity could in the ideal case have been offered by the TSOs if their internal capacity calculation methodology is not made public.

o We understand this “indicator concept” as a very academic approach to assess the “successful implementation” of the network codes and amendments under observation. The indicator approach might provide a quantitative analysis of the impacts resulting from the network codes. What cannot be offered is the qualitative (and much more important) analysis to find out WHY certain mechanisms were not as successful as initially intended. Our view is that the indicator analysis will support or (in best case) confirm a qualitative assessment which ideally comes from market participants upon which the network code will be imposed

In this respect, the fact that NC CAM and especially the mandatory bundling of firm available capacity significantly discriminates against capacity holders of long term contracts with mismatched volumes on two sides of a border point, is not covered by any of the indicators provided. We would therefore invite ACER and the respective NRA’s to especially take into account such feedback by shippers, and also to collect such opinions on a regular basis.

Likewise, the fact that CMP measures like DA UIOLI or long term UIOLI are a serious intrusion into (long term) capacity rights cannot be properly covered by the indicator concept. There is further a significant topic regarding the pricing of UIOLI capacity rights, which we find not adequately addressed and equally poorly covered by the indicator concept. Nevertheless it was openly communicated on multiple occasions that the majority of shippers are strongly against those measures. A high degree of dissatisfaction among market participants will not be made visible by applying the indicator concept as a stand-alone measure.

7 Do you consider the **network code indicators** fit for purpose? (Please describe for which set of indicators you provide comments.) (Chapters 5,7)

- The proposed sets of indicators are **complete**
- The proposed sets of indicators are **incomplete** (please suggest indicators to be added)
- The proposed sets of indicators are **overcomplete** (please suggest indicators to be removed)

9 Please add any comments and suggest indicators to be added

- EconGas considers some of the offered indicators as useful auxiliary instruments to assess the implementation success of the network codes under discussion. However, an evaluation solely using the indicator concept will under any circumstance provide insufficient evidence concerning the implementation success of the network codes across Europe.

- This is mainly due to the fact that the key concept of the upcoming network codes is based on the idea of the market being a level playing field. However, at the moment (a situation expected to continue for the next 15–20 years) the gas market will still be distorted due to different historical reasons. The largest volumes of European gas are still delivered at flanges (under flange agreements) or at (non-relevant) production network points. Therefore, data collected to analyze the success of the EU network codes will only cover a relatively small part of gas actually consumed in Europe. In addition, those market participants responsible for security of supply via flange off-takes, will always be strongly discriminated by NC CAM (“mandatory bundling”) or CMP (use-it-or-lose-it clauses).

- In addition, the capacity market will always be experiencing phases of re-shuffling due to different national rulings. The German market based approach to allow shippers the termination of capacity contracts under worsening conditions should be the benchmark in this regard. If these clauses were standardized across the EU, an indicator approach to assess the impacts of NC CAM or CMP would be more representative. Under such conditions network users would, by their own choice, eliminate contractual congestion and thus both boost the acceptance of the regulations coming especially from NC CAM, while CMP would by default end up playing a minor role. It remains our strong opinion that it is not equitable to enforce the continuation of long-term transportation arrangements at historically agreed prices on shippers while the fundamental basis of the underlying transportation contract(s) is being completely changed to the detriment of the shipper.

11 Do you consider the **high-level policy goal indicators** fit for purpose? (Please describe for which set of indicators you provide comments.) (Chapters 6,7)

- The proposed sets of indicators are **complete**
- The proposed sets of indicators are **incomplete** (please suggest indicators to be added)
- The proposed sets of indicators are **overcomplete** (please suggest indicators to be removed)

13 Please add any comments and suggest indicators to be added

- EconGas does not focus too much on a final list of indicators. They seem to cover the most important aspects, but are not sufficient on a stand-alone basis. The best way to assess a successful achievement of high-policy goals would be a combined way of market feedback (qualitative), and in a supporting function the collection of hard facts and data.

15 Do you agree with the performance evaluation of the indicators? If not, please suggest an alternative evaluation. (Chapter7)

- EconGas appreciates that the indicators to evaluate NC TAR include the necessity of stakeholder assessments, which is of course in line with article 21 of the respective network code (TAR NC for ACER reasoned opinion submitted on 26 Dec 2014) . However, including a qualitative stakeholder assessment would be of utmost benefit also for the evaluation of the other regulations/decisions under scrutiny. As already stated before, outright numbers can never display the full complexity of the European gas market and the impact of respective regulatory frameworks. EconGas therefore proposes that qualitative feedback by market stakeholders should be taken into consideration mandatorily in order to assess the results of NC CAM, NC BAL, CMP and INC.

16 Do you consider the data sources proposed by the consultancy study adequate? If not, please suggest alternative data sources. (Chapter7)

Yes, they are adequate

17 Do you find the proposed implementation timelines of the methodology feasible? If not, please suggest how it can be improved. (Chapter 8)

EconGas is of the opinion that an impact of NC CAM and CMP can already be assessed before their respective dates of coming into effect on a qualitative basis. We would like to restate stakeholder concerns, that have been raised over recent years, that both regulatory frameworks would become much more effective and successful if all market participants had the chance to enter into this new era from an equal position. Therefore a proper evaluation would only be possible if network users were given the possibility to terminate transportation contracts before NC CAM comes into force.

18 Do you consider the description of the indicators in the Annex clear and the execution of the indicators easy to understand? If not, please suggest how it can be improved. (Annex A)

Notwithstanding our proposal from questions 15 and 17 that there is definitely a need for qualitative evaluation, we are fine with the descriptions

19 Overall, do you consider that the methodology would be suitable to meet the objectives of Article 9 of Regulation (EC) No 715/2009?

No. EconGas believes that an accurate analysis of implementing a network code must include qualitative assessments from stakeholders. At the moment the needs and requirements of the gas shipping community, which is paying for all the long-term contractual pipeline capacities that underpin the financial viability of the European gas network, have not been permitted an active participation in the dialogue. Such assessments should be duly considered by ACER when monitoring the implementation of network codes or amendments to EC regulations.

20 Are there any other views you would like to share with ACER in this context?

- The current contractual landscape in the European gas market grew historically whereas especially long term supply contracts represent the back bone of European gas consumption and security of supply targets. Such long term volumes are usually handed over via flange agreements, which automatically result in the importing entity to hold capacity rights only on the entry side of the respective border point. Most of this capacity was sold in the course of Open Season procedures, where capacity sometimes had to be purchased in excess of what was needed for specific off-take agreements. In addition, mismatches between capacity rights and off-take requirements partly also changed due to volume adjustments or changes in the determination of contractual flexibility Due to upcoming regulatory obligations especially caused by NC CAM ("Mandatory bundling of firm capacity"),

network users already holding capacity rights on one side of a border will be forced to pay twice for this side because they have to buy both sides in a bundled auction. Therefore it will be commercially largely unattractive to purchase any capacity on the primary market, which will also significantly affect the revenue position for TSOs because shippers will simply buy less capacity. Taking this fact into account, and comparing it to the main purposes NC CAM was designed for (effective price competition, non-discriminatory access conditions), NC CAM can only become a successfully implemented legal framework if markets can be reshaped into a level playing field upfront. To ensure this, EconGas strongly insists in a one-off step-out opportunity for long term transportation contract holders.

- Continuing infringements in contractual rights by (early implemented) CMP measures heavily affect the value and flexibility of (large) long term contracts. Short term UIOLI mechanisms significantly reduce the usability and commercial value of capacity contracts. Such a discrimination has not been in place when the majority of those contracts were concluded and was imposed on network users without taking respect of their initial business cases. In addition, long term UIOLI threatens network users to have their contractual rights withdrawn. It should be up to the shippers' decision and discretion how to use their capacity rights as long as they pay accordingly. With the new regulatory framework in place, the commercial value of long term contracts is put at risk or might even be reduced to zero. Therefore EconGas proposes that long term contract holders need to be granted the one-off chance to terminate their contracts.

- With the NC TAR framework to be implemented roughly within the next five years (including transitory periods), especially long term contract holders might face the risk to be burdened with the majority of network costs, while short term traders might be incentivized to wait for such opportunities when transport is cheaper than the respective market spreads between adjacent market areas. The outlook on the general booking situation by most TSOs is relatively bearish, which raises the likelihood that those volumes that are already contracted will remain the key source of income. This might also be worsened by the fact that in particular new grid investment projects will mainly be financed by projected (i.e. already committed) transportation customers. NC TAR also bears the risk that TSOs might impose relatively high annual increases on network tariffs without giving network users the chance to take action against. EconGas therefore openly proposes that also in respect of NC TAR and its risk to long term contracts and thus essential European customer suppliers, network users need to be given the opportunity to reset their long term contract agreements to zero. Fears of potential revenue cuts for TSOs can in our view be ignored because in the long run there will always be sufficient capacity bookings that are required to deliver gas into the member states of the EU.

Background Documents

CEPA study (/eusurvey/files/4f0fdd27-3241-4363-bbe3-31a256747f1e)

Contact

✉ gas_monitoring@acer.europa.eu
