

Response to ERGEG's Public consultation on a Pilot Framework Guideline on capacity allocation on natural gas transmission networks

EDF welcomes the opportunity given by ERGEG to anticipate the application of the Third Energy Package and thereby participate in the process of developing some pilot Framework Guidelines during the interim period before the Agency for Cooperation of Energy Regulators (ACER) starts effective work.

Indeed, the Pilot Framework Guideline presented by ERGEG on capacity allocation on natural gas transmission networks is of crucial importance since new entrants on the gas market need to secure capacity in order to organise their supply.

This implies as proposed in the Framework Guideline

- to organise and design the release of the unused capacity,
- to organise and design the allocation of free capacity in a transparent and fair way,
- and to prevent new congestion.

It should also establish a framework that enables investment and harmonises products in order to create a European liquid market.

EDF therefore regrets that there has been a split of treatment between capacity allocation on the one hand and congestion management principles on the other, whereas they were considered as a single issue in the previous consultations. The issue of capacity allocation is being treated through the Framework Guideline to be adopted by ACER in 2011 and will be followed by a Network Code to be adopted by ENTSO-G whereas the issue of congestion management is being treated through a Guideline to the Gas Regulation to be adopted through comitology by autumn this year. EDF believes that both subjects deeply interact and would have preferred to keep considering them in the same "package".



General

• What are your main views of the proposed measures? Do you think Network codes based on these guidelines can achieve non-discriminatory and transparent capacity allocation and the fulfilment of the capacity allocation principles set out in the Third Package of Energy legislation?

EDF, as a European Group, is present in many countries and has to organize the gas supply of customers through national markets, at a European scale. Therefore, EDF supports every measure which would allow gas to flow more freely across Europe and which would foster harmonised processes between TSOs. This is the reason why EDF welcomes the Pilot Framework Guideline presented by ERGEG which aims at harmonising capacity products and allocation procedures at interconnections.

The principles proposed mainly aim at stopping or preventing contractual congestions. However, real physical congestions might sometimes appear and, in this case, there is a need to launch the proper investments and build the necessary infrastructures.

EDF points out that capacity allocations resulting from the Network Code to come need to be non-discriminatory and transparent. This should apply to capacity to be created as well as to that already developed. In order to remove barriers to competition, the Guideline has to be linked with capacity releases by the incumbents as it is already implemented in some European countries, especially in France with GDF Suez.

• What are your views of the implications of each of the measures for the sector in which you operate? In particular, we are interested to understand the nature of the implications in a qualitative way (and, if available, any quantitative evidence on costs and benefits would be extremely welcome).

Among the positive expected consequences of the proposed measures on the gas market, we can underline the following :

- Gas will flow more freely around Europe, increasing competition and therefore having a positive impact also on security of supply.
- This set of measures could solve contractual congestions when they are identified and, therefore prevent infrastructures to be built where they are not needed.
- By fostering gas trading and reinforcing capacity availability, the Guideline will allow the further development of competition. In particular, it is crucial for new entrants that a percentage of the available capacity be set aside for firm short term capacity products.



Because they have less visibility on their needs and supplies than the incumbents, this will allow new entrants to react more effectively to the market, to take advantage of supply opportunities and improve their position when competing with the incumbent.

- Last but not least, these principles should enable a European gas index to emerge. There is a close link between liquidity and capacity allocation, as ERGEG underpins it. By breaking contractual congestion and freeing capacity at interconnections and thereby gas flows, gas prices at the different hubs across Europe shall be less volatile and more correlated. This could put an end to the decoupling of prices as it has been seen in the past. This will make the European market more attractive for gas producers at an international level and therefore reinforce security of supply by increasing gas flows to Europe.

Scope of the Arrangements

- **Do you support the scope of the draft framework guidelines proposed?**

EDF supports the scope proposed.

Moreover EDF would find it important that the harmonization may concern adjacent TSO's even if they are not Member states of the European Union.

Existing contracts

- **What are in your views of the challenges that existing contractual arrangements create with regard to capacity allocation? What would be the possible ways to overcome those challenges?**

Existing contractual arrangements do often constitute a long term lock-down of the technical capacity which makes it difficult, if not impossible, for new entrants to secure needed capacity.

Capacities, under such long term contracts, which have been unused for a certain time should be released compulsorily to benefit all market participants.

As for short term capacity, most of the time it is not available either. New entrants often do not have a clear long term vision of their capacity needs. It is therefore essential that they have access to firm short term capacity which enables them to adapt their positions depending on supply opportunities or market changes.



- **Should relevant clauses in existing contracts be amended if they contradict the new legally binding set of rules (which will be based on the framework guideline) in order to create a level playing field for all shippers?**

Where possible, existing contracts should be updated and amended to be consistent with the new legally binding set of rules, once these are adopted.

- **Experts have discussed if existing / legacy contracts should be questioned if certain conditions are met, in order to free up capacity, which would then be reallocated. Do you consider such a proposal appropriate?**

The gas industry is based on long term supply contracts.

The most important issue is to solve congestions in the long run, by triggering Open Seasons at the congested points : this will make capacity available for all stakeholders needing some.

In the short run, solutions have to be found with incumbents (mandatory capacity releases, UIOLI), and with the TSOs involved (conditional and/or interruptible capacity).

In case of lack of capacity related to existing contractual arrangements and of discriminatory access to the network, unused capacities, which were mainly acquired on a First Come First Served basis, have to be temporary released, until infrastructures are built. Then the released capacity would need to be reallocated in a transparent and non-discriminatory manner.

TSO cooperation

- **Is the scope of the identified areas for TSO cooperation appropriate to ensure efficient allocation of cross-border capacity in order to foster cross-border trade and efficient network access?**

The scope seems appropriate. The key issue to foster cross-border trade and ensure an efficient network access is to make the access to transit capacity through the different gas networks transparent to the users (bundle or combined products, harmonized commercial rules for capacities,...).



Contracts, codes and communication procedures

- **Should a European network code on capacity allocation define a harmonised content of transportation contracts and conditions of access to capacity?**

EDF is in favour of the harmonisation of allocation procedures including conditions of access to capacity. The European network code on capacity allocation would be the best way to define general stable and predictable rules to be applied, and ensure harmonisation between upstream and downstream access. However, it should not be too detailed in order to allow specific situations to be dealt with. Such an approach would be consistent with the stepwise approach chosen by ERGEG (due to current gaps existing between countries and TSOs) as well as with the proposal to keep room for tailor-made contracts adapted to specific situations.

- **Should a European network code on capacity allocation standardise communication procedures that are applied by transmission system operators to exchange information between themselves and with their users?**

Yes, a standardized communication is needed. In fact, EDF fully agrees with the need of a binding code which implies for TSOs a harmonised set of rules and conditions in regard to capacity allocation procedures. This is a prerequisite to enhance the ease of shippers' entrance into the European gas markets and the non-discriminatory treatment between shippers. Moreover, standardised communication procedures between TSOs and network users is highly relevant.

Capacity products

- **What are your views of our proposals regarding capacity products?**

A harmonised set of standardised capacity products is required at every interconnection point across Europe. This set of capacity products should cover various timeframes (annual, quarter, monthly, etc.) and those products should be defined in accordance with the network users requirements via consultation.

- **Do you agree with the idea of defining a small set of standardised capacity products that do not overlap?**

The same duration capacity products must not overlap but, of course, different duration capacity products could overlap (e.g. Calendar 2010, Q1 2010 and January 2010).

Transparency on the process of backhaul capacity allocation (availability, etc.) is amongst the top priorities for the gas market development

- **Should TSOs offer day-ahead and within-day capacity products?**

Yes, even if the gas market is not focussed on the short-term, it will be necessary to offer day-ahead and within-day capacity products in the purpose of balancing the remaining positions close to real-time for each network user.

- **Should European TSOs offer the same capacity products at every interconnection point across Europe?**

We fully agree that all the capacity offered shall be expressed in energy units for a time period and that the offer and the use of transfer capacity shall not be separated.

- **Should TSOs offer interruptible capacity also in cases where sufficient firm capacity is available?**

First of all, all types of capacity products (short, medium and long term) have to be proposed on a firm basis.

Then, interruptible capacity may be proposed even if it may be upgraded to firm capacity once such capacity is available. However, UIOLI and Interruptible capacity with a high risk of interruptions are more useful for shippers already having access to important flexibilities. Hence, UIOLI and Interruptible capacity with a high risk of interruptions shall not be considered as a sufficient way to improve market access for new entrants.

Breakdown and offer of capacity products

- **Should a reasonable percentage of the available capacity be set aside for firm short term capacity products?**

Keeping firm capacity for short term maturities (e.g. one year or one month) is important in order to make sure that new entrants and small companies can develop their activities and also in order to improve arbitrages between markets and hence efficient flows at European level. At the same time, it is also important for companies to be able to secure their portfolio on a long term. Hence, the good balance should be to keep a small but significant part of firm capacity for shorter term period and to upgrade interruptible capacity to firm capacity if such firm capacity for short term maturities are not bought. The amount of capacity to be set aside for firm short-term products should be decided by NRAs after consulting the market and ensuring a high level of coordination, in order to ensure a reasonable level of harmonization within the EU market.



Cross-border products

- **Recital 19 of Regulation (EC) 715/2009 states that gas shall be traded independently of its location in the system. Do you think that cross-border products will facilitate the exchange of gas between virtual hubs of adjacent markets?**

Yes, cross-border products will facilitate the exchange of gas because they increase the liquidity of the markets and the correlation between them. One single procedure is quicker and more efficient than two non-simultaneous procedures at each side of the border.

- **Do you support full bundling of cross-border capacity into one single capacity product, including a limitation of the possibility to trade at the border so that gas is traded at virtual hubs only in order to boost their liquidity?**

Bundles are extremely important. They should be the rule at the interfaces between networks, prior to the merger of networks, which should be the medium to long term objective.

- **Do you consider combined products to be an appropriate interim step towards bundled products?**

Combined products are the best appropriate interim step towards bundled products. The interim period should be as short as possible.

- **Should capacity at two or more points connecting the two same adjacent entry-exit systems be integrated into one single capacity product representing one single contractual interconnection point?**

Yes, but **only if the products are exactly the same in both systems concerned.**

Capacity allocation

- **Should auctions be the standard mechanism to allocate firm capacity products?**

The system of capacity allocation should fulfil the following principles :

- The system of capacity allocation has to be fair, transparent and non-discriminatory.
- It should allow all the shippers to get capacities, whatever they are incumbents or new entrants



- It should reflect if the congestion is physical or contractual :

- in case of physical congestion, the system of capacity allocation should lead to enabling **new investments** in order to increase capacity ;
- in case of contractual congestion, the system of capacity allocation should be an incentive for the incumbents to **release capacities**.

Following the previous considerations, the auction mechanism is the best mechanism to implement **as long as the market is mature enough in terms of liquidity, and number of actors**.

Moreover, from experiences of countries where this mechanism has been already used, auctions should be **accompanied** by measures in order to avoid side effects like artificial high price due to over-bidding of some actors (to secure their capacities or block the market to other actors).

That's why, if the auction mechanism is the target to implement, it is really important to consider when and how it has to be implemented, in order not to penalise security of supply, that relies on long term supply contracts coming along with long term reservation capacity : the idea is to go towards a better mechanism when the market is mature, not to break the actual one.

In the meantime, first of all release of unused capacity should be enhanced, then open subscription period with an allocation in relation to the end user needs of each supplier should be preferred as an interim step when there is enough capacity and open season mechanisms if physical capacity is missing should be used as transition system to enable new investments for the capacity required.

• What would be the implications of using auctions for capacity allocation in the markets in which you operate? Is there any way in which auctions can be designed to overcome potential issues resulting from their introduction in those markets?

The only non-discriminatory way is that all capacity to access to one single transportation zone is allocated by the same mechanism : auctions. Of course this means that gas price to end users in that zone will be adjusted.

• Do you support pro rata allocation as an interim step? If yes, should pro rata allocation only be used in given situations or market conditions?

Pro-rata allocation is one possible way but this solution should be avoided as much as possible. An allocation in relation to the end user needs - i.e. market share in final users market - of each supplier should be preferred as interim step.



Re-Marketing Booked Capacity

- **Should the network code define harmonised firm secondary capacity products and anonymous procedures for offer and allocation of secondary capacity products in line with those on the underlying primary capacity market?**

The role of secondary capacity trading is to contribute to maximise the use of the existing capacity by bringing back to the market the unused capacity.

The three main ways to improve secondary capacity market are :

- to make sure that there are no costs when capacity exchanges are nominated to TSOs. Indeed, such costs relatively to primary capacity costs may generally be far too high and prevent any interest to trade. Of course, broker fees may be charged when shippers chose (but are not forced) to use their services ;
- to harmonise the rules to exchange capacity (i.e. via complete cession or cession of rights to use, delays to nominate such exchanges...) at European level ;
- to let TSOs check the actual use of primary capacity made by their owners and ask them to release such capacity when they obviously do not use it. Bulletin boards should be made available by all TSOs.

Booking platforms

- **Do you think that all capacity connecting systems of two adjacent transmission system operators should be allocated via a joint, anonymous, web-based platform?**

Yes, we think it is the right way to allocate cross-border capacity.

However, in certain cases, at one interconnection point we can find several TSOs (e.g., Emden, Oude) and in those, it is important to us to maintain the current flexibility in terms of operator choice (allowing better optimisation and favouring competition in the secondary market). In these cases, it might be necessary to de-correlate capacity allocation at each side of the border.



• Do you agree that joint allocation of primary and secondary capacity products on these platforms would strengthen capacity markets?

Yes, we believe that these platforms will strengthen capacity markets.

However, the platform itself is just a tool and in order to ease interconnections capacity trading it is even more important to standardise some key contractual aspects, such as Force Majeure definitions and application at both sides of the border (should be identical); or the units used for capacity - in order to make sure we are acquiring the same amounts at each side.

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