ACER Public Consultation on the Draft Framework Guidelines on Capacity Allocation Mechanisms for the European Gas Transmission Network

Evaluation of responses

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Table of Contents

1 Introduction

On 3rd March 2011, Agency for Cooperation of Energy Regulators (ACER) launched a public consultation on the Framework Guidelines on Capacity Allocation Mechanisms for the European Gas Transmission Network. The purpose of this consultation is to collect the views of the stakeholders in order to develop the Framework Guidelines pursuant to Article 8(6)(g) of the Regulation (EC) No 715/2009.

The public consultation launched by ACER sollicited feedback from various stakeholders on the Draft ACER Framework Guidelines as published on 3rd March 2011 on ACER's website. The public consultation lasted two months and closed on 2nd May 2011.

The Draft ACER Framework Guidelines were based on the former work of ERGEG, the Pilot Framework Guidelines on Capacity Allocation on European Gas Transmission Networks, which have been developed in the course of 2009.

The consultation on the Draft ACER Framework Guidelines resulted in a total of 35 responses, out of which 9 were confidential and one arrived late in the process of evaluation. 4 of the 9 confidential respondents agreed to reveal their identity, but did not agree to disclose their answers. ACER's evaluation thus will only address those responses, where confidentiality has not been claimed by the stakeholders. The Annex lists the names of all the respondents who agreed to reveal their identity including their country of origin and the nature of activity.

2 Responses

The ACER public consultation aimed to collect the views of the stakeholders on the Draft Framework Guidelines in general. The consultation did not address particular questions to the stakeholders. This consultation is the third in row for the preparation of the Draft Framework Guidelines: two previous consultations were launched by ERGEG in the pilot phase of the work (in 2009 and 2010). In this context, ACER sensibly requested the stakeholders to provide comments that were not expressed in the previous consultations. This evaluation of comments focuses alone on the consultation launched by ACER. Those interested in the previous discussions could read the responses of the last ERGEG consultation[1].

Since there were no questions guiding the stakeholders, ACER compiled their responses in relation to the sections of the Framework Guidelines.

[1] Ref.: E10-GWG-67-03, E09-GNM-07-03, http://www.energy-regulators.eu/portal/page/portal/EER_HOME/EER_CONSULT/CLOSED%20PUBLIC%20CONSULTATIONS/GAS/Pilot_Framework_Guideline_Gas_CAM/RR

The following table provides an exhaustive analysis on the non-confidential responses received in the consultation and focuses on key issues raised by the respondents, in compliance with Article 10(3) of Regulation (EC) No 713/2009.

Issues	Stakeholders' feedback	ACER's view
1. General Provisions		
1.2 Application	16 responses were provided, 2 of them being confidential. The majority of them considered that allocation of incremental capacity should be explicitly included in the long term auctions. Few respondents called the attention of ACER to take into account that incremental capacity introduced to auctions could replace open season procedures in the future. Some respondents thought that overbooking procedures and enhanced capacity allocation seemed to require further explanations in the Framework Guidelines (FG). The exclusion of the most important downstream exit points from the scope of the FG was considered inadequate by one respondent, who claimed that this would create capacity mismatches between upstream and downstream systems.	ACER partially agrees to the responses brought forward. Incremental capacity is not directly included in the allocation mechanism; however ACER recommends that processes for determining incremental capacity, i.e. capacity to be made available above the prevailing level of existing technical capacity, are consistent with the provisions of these Framework Guidelines. Stakeholders shall keep in mind that Section 1 and 2 of the Framework Guidelines apply to incremental capacity as well. Further explanation on the principles of overbooking and enhanced capacity calculation were not included in the Framework Guidelines; however ACER agrees that a detailed set of rules should be developed. The principle in ACER's view is clear: *the maximum available capacity shall be allocated* according to the principles outlined by the FG. With regard to downstream exit points, ACER is of the opinion that there is no direct link between the allocation method and a possible mismatch, since end consumers at downstream exit points can also be supplied by the virtual trading point, from within the entry exit zone. The Framework Guidelines aimed to harmonise cross-border issues in the first place and downstream exit points are not necessarily qualifying as a cross-border issue.
1.3 Adaptation of existing transport agreements	10 responses were provided, 3 of them being confidential. 3 of the 7 non confidential responses claimed inconsistency between the adaptation requirements and the scope of the FG. some requested explicitly, on the one hand, to wait for the expiration of the existing contracts for commercial reasons while on the other hand to respect the sanctity of contracts. Some respondents claimed that market integration has occurred in the past years even without regulatory measures. 3 of the 7 non confidential responses requested 12 months for changing the clauses in their contracts, instead of the 6 months proposed by the FG. 2 respondents argued that the adaptation should serve for creating a level playing field between incumbents and other market participants.	It is important to highlight that ACER does not question the existence of long-term capacity contracts. ACER's proposal aims *only at amending these contracts*. The amendment of existing capacity contracts with regard to bundling provisions is dealt with in Section 2.4.1. This section applies to amendments that are minor in nature, like changes to lead times, features of interruption, etc. At the request of stakeholders, the six months deadline have been extended. ACER found the 12 month request lengthy and proposes nine months for amending general terms of contract in the current text of the FG. A nine month adaptaation period seems more sensible for the amendments of minor terms and conditions which is additional to the implementation period the network code itself may offer (12-18 months). ACER also notes that amendments to existing contracts have been witnessed in the past in many European countries. It is not out of scope that regulatory measures could lead to amendments of existing contracts, once these measures are enforced through appropriate legal provisions.
1.4 Contracts and communication	Only 2 responses were received: one claiming that NCs should aim at harmonising contracts, while the other respondent expressed just the opposite view.	Given that there is no clear steer from the public consultation, ACER does not aim to take the discussion further on this item.
1.5	6 responses were provided, 2 of them being	ACER welcomes the positive reactions of the stakeholders concerning TSO cooperation.

Issues	Stakeholders' feedback	ACER's view
Cooperation	confidential. Most of them were positive about the TSO cooperation and the results it could give. Few mentioned that ACER should facilitate the process when no agreement has been reached between the TSOs. Few respondents warned that market mergers might contribute to the reduction of firm available capacity. 1 respondent claimed that impact on small but from a supply point of view critical interconnection points should be looked at carefully at the implementation stage of the FG.	The detailed rules on cooperation between TSOs shall be laid down in the network codes. With regard to the impact on small but critical interconnection points, the principle of cooperation shall also apply. ACER's view is that a strong cooperation between TSOs is a key issue with regard to efficient capacity allocation. Market mergers are outside the scope of the FG.
1.6 Stakeholder involvement	2 responses were provided, 1 of them claimed that the responses of stakeholders were not captured efficiently by ACER. The other answer proposed to allow for national instruments in CAM designed to increase efficient use of assets, like I/C inventories.	Given that there is no clear steer from the public consultation, ACER does not aim to take the discussion further on this item.
2. Capacity Services		
2. Capacity services	3 responses were provided. All 3 were supportive, 2 out of 3 underlined the importance of standard products. 1 explicitly requested to have clear definitions for firm and interruptible products, while the other mentioned that standard products should not overlap.	ACER agrees that standard products do play an important role in the market, however the definition of firm and interruptible products cannot be part of the FG, it is more a matter to be dealt with by the TSOs in the network codes. With regard to the definition of interruptible products, the FG requires that classes of interruption and a definition of interruption lead times shall be defined in the network codes.
2.1 Firm capacity services	7 responses were received, 2 of them being confidential. Most answers were in favour of standardisation. Few mentioned that synchronisation of the gas day was a step ahead and further synchronisation with CCGTs could be envisaged, in particular with adjacent TSOs. Pros and cons of CCGT synchronisation should be evaluated, said one respondent. Another respondent mentioned that non-standard products could also benefit the market.	ACER agrees to the importance of having a *harmonised gas day* and takes into account the possible alignment with the electricity market. The FG is clear about what the aim of a standard gas day is and the proposal follows largely already established business practices. Nevertheless ENTSOG is free to revise the start-up time as long as keeps it harmonised, this may include also synchronisation to the electricity market.
2.2 Interruptible capacity services	4 responses were received, 2 of them confidential. Most of the answers proposed further guidance to be given for interruptible products, but all of them proposed different measures, like publishing probability ratios, or other measures.	No clear steer comes from these answers in ACER's view. ACER thus does not aim to take the discussion further on this item. The network codes may give further guidance on this issue.

Issues	Stakeholders' feedback	ACER's view
2.3 Breakdown and offer of capacity services	9 responses were received. 2 respondents criticised capacity reservation for short term bookings. Their view was that antihoarding mechanisms or appropriate congestion management procedures can resolve the short-term liquidity problems and no further measures are necessary. The breakdown could lead to over-investment, said one of them. For another respondent, the standard set of capacity products should include multi-year products with long duration (e.g. 15-20 years) or it should give the possibility to bid for a set of consecutive annual products (in annual blocks).	ACER disagrees that the *reservation for short-term capacity* should be dealt with in congestion management procedures or antihoarding provisions. ACER aimed with a moderate 10% reservation for short term capacity services to guarantee that newcomers could also procure some capacity and the proposal received broad support during the last ERGEG consultation. The 10 % is a minimum threshold and could move upwards flexibly according to the needs of the markets. Regarding the definition of long-term products, ACER considers that this should be developed and addressed by the network codes. This process is already reached the phase of public consultation. Based on the Regulation (EC) No 715/2009, ACER shall give an opinion on the final network codes.
2.4.1 Cross-border services/ Bundled capacity services	24 responses were received, 1 of them claimed confidentiality. 17 responses of the 23 non confidential answers requested to keep bundling optional, by allowing coexistence of bundled and unbundled products. 5 respondents pointed out that mandatory bundling would be a barrier to entry for those shippers that preferred to trade only in one legal, regulatory and fiscal regime (instead of two). 2 further pointed out that it may lead for some stakeholders to stop shipping gas, which eventually would decrease the number of shippers active in Europe. 3 pointed out that the measure was not suitable to achieve greater liquidity at hubs. 2 other mentioned that the measure may amend essential elements of the Regulation (EC) No 715/2009 and the proportionality of the measure proposed was questionable. 1 other response underlined that flange trading was not prohibited by the Regulation. Yet another respondent complained about the administrative burden this measure might create. 2 more responses were uncertain on how bundling could be carried out to backhaul capacity and 1 respondent put in question the relevance of the measure for non-congested points. 5 respondents supported the measure. 2 respondents were in favour of gas trades taking place at hubs. 1 pointed out that the combined offer of bundled and	The responses clearly support the introduction of bundled capacity products, however, the majority of the respondents want trading to be allowed at the flange as well. After careful consideration, which was based on the analysis provided internally and through external experts, ACER came to the conclusion that on the longer term, *exclusive bundling of cross-border capacity* will positively and significantly contribute to the integration of the European gas markets and to increased gas flows between European hubs. ACER's view is that making bundling optional would not be a sufficient measure to ensure full market integration. ACER considers bundled capacity to be a prerequisite to allow for prices between different markets to converge further, contribute to the functioning of flexible capacity markets while softening the barriers between upstream and downstream hubs that limit efficient wholesale markets to develop. Bundling clearly facilitates the creation of functioning markets for flexible short-term capacity across Europe and optional bundling could limit the process to emerge. Bundled products in general facilitate market entry from the demand side, like the entry of industrial customers. The measure removes the risk of being stranded at one side of the border. From a supply side perspective, smaller shippers who do not have any capacity today, could in the future choose whether they buy directly at the VIP or whether they buy bundled capacity. Should simplified procedures from the users' perspective be eventually developed, a shipper could sign the general grid code for the countries he is active in and buy bundled capacity with his preferred TSO, as it is offered by the GATRAC platform. Once capacity is fully bundled, the liquidity that is currently fragmented to hundreds of bookable points in the EU will be allocated to a number of trading points, reducing fragmentation and promoting the integration of the European gas markets. A genuine effort from the stakeholders however is necessary to reach this objective.

Issues	Stakeholders' feedback	ACER's view
	unbundled capacity products would hamper efficient and competitive cross-border trading. Another respondent underlined that bundling would prevent to be stranded on one side of the border. Yet another respondent expected that bundling with the implementation of virtual interconnection points would increase the level of flexibility for shippers and decrease transaction costs.	ACER's view is that bundling is an important feature in the development of day-ahead and intraday capacity products. These products shall stimulate further price convergence across the EU . It should be mentioned as well that the shorter the duration of a capacity service is, the larger is the impact of transaction costs on the overall product price. Bundling, along with some other provisions provided for in the FG, is an instrument to reduce the above-mentioned transaction costs for cross-border trading. Bundling is also an important measure as regards long-term capacity. In some countries, for instance, shippers are only allowed to buy entry capacity, if they can show that they already have corresponding exit capacity or undertake the obligations to supply at least the market for a full year. Putting in place bundled products one could eliminate such problems and prevent restrictive national rules to be applied at cross-border points. The FG also provides for other measures facilitating market development. In this context, capacity will be allocated via auctions regularly following a predefined timetable for all relevant cross-border points throughout Europe. Exclusive bundling would allow booking entry and exit capacity at once and reduce the amount of auctions, whereas optional bundling would imply separate entry-exit bookings. Bundling increases transparency, which is yet another instrument to reduce barriers to smaller companies aiming to enter the markets. This proposal has been analysed extensively by ACER and ERGEG. Several public consultations and numerous stakeholder discussions, involving network users, network operators, ENTSOG and the European Commission were followed. An impact assessment has been provided to analyse in depth the potential impact of mandatory bundling imposed on existing contracts (as explained later in the text).
2.4.2 Amendment of existing capacity contracts	19 responses were provided, out of which 6 claimed confidentiality. 11 non-confidential responses were against amending existing contracts. 4 respondents explicitly requested to remove this provision from the FG. 2 further respondents asked for the removal of the section until a positive impact assessment would not support it. TSOs pointed out that existing long term capacity contracts underpin investments, essential for security of supply and contract termination could expose parties to such contracts to losses of revenue and risk of stranded assets. 1 respondent found unrealistic to achive the goal without the support of contract counterparties. Another respondent claimed that the sunset clause will not give sufficient guarantees	ACER partially agrees to the respondents and proposes. In this context, ACER *modified the default rule*, while has kept the *sunset clause unchanged*. *The sunset clause* ACER is of the view that a sensible implementation period shall be provided for existing contracts and to all participants in the market. The benefits of exclusive bundling for cross-border capacity however cannot be postponed until all existing contracts expire. The "sunset clause" simply means that by approximately 2017/2018, the technical (firm) capacity at all the interconnection points in Europe shall be bundled. This provision *does not mean* that the holders of entry and/or exit capacity contracts will *lose their capacity rights* at interconnection points. Rather, it means that *trading at the flange becomes impossible* and therefore flange delivery points of the contracts shall be redefined. The new delivery points could be set in the upstream and/or downstream hubs. ACER considers that without the "sunset clause" capacity bundling will not support

Issues	Stakeholders' feedback	ACER's view
	to capacity contract holders that their rights will be respected and this may affect future investment decisions in the market as well as security of supply. 4 more respondents questioned the legality of the amendment of existing contracts. 1 respondent underlined that difficulties may arise when contracts with non EU companies need to be amended. 1 other response pointed out that the rule requesting the TSOs to impose the split rule should be replaced by an act of state /EU. In addition, it is pointed out that this unilateral power of adaptation is not counterbalanced by any right available to shippers to amend or cancel their capacity contract. 5 respondents mentioned that capacity contract renegotiations would have implications on supply contracts and supply structures, in particular risks and commercially unbalanced renegotiations, unpredictable changes, complex renegotiation processes and uncertainties were mentioned to cause problems. It is pointed out that the supply point is an element that is difficult to separate from other essential clauses of a long-term contract: contract price (given in particular the determination of new related transport costs), flexibility or price indexation formula linked to the new supply point. Another respondent questioned whether the measure would increase liquidity at hubs. 6 non confidential responses commented on the capacity split rule proposed. 2 clearly stated that the split should not be in TSO competence. Some found the time limits imposed ambitious. Another respondent underlined that IP entry and exit fees did differ and the contracts might thus have different terms and conditions at either side of the border. 1 respondent questioned the role of NRAs as moderators in the process. This respondent missed appropriate appeal procedures defined by the FG to be used when contesting the new allocations provided by the TSOs. 2 respondents were supporting the amendment of existing contracts and asked for capacity reset.	significantly market integration as the expiry of capacity contracts at many interconnection points is due in 10-20 years only. The current provision gives a *five year adjustment period* after the entry into force of the legally binding network code. ACER finds the measure appropriate as it offers market participants a reasonable transitional period for implementation. *Legality of the sunset clause and the default/split rule* Two consultancy reports were conducted in this context: one on the economic aspects and another on the legal implications of the sunset clause and split rule ("the default rule"), which will apply if the concerned parties to a capacity contract disagree on how to amend their capacity contract. The legal consultant concluded that the proposed measures do not amend essential elements of Regulation (EC) No 715/2009, as claimed by some stakeholders in their response to the public consultation. The consultant proposed the *modification of the default rule to reduce the legal risks* TSOs would face, if they were the ones imposing the split rule on the holders of existing capacity contracts. In this context, ACER amended the text of the FG and refined it further to facilitate the negotiation process. The economic study came to the conclusion that bundling of existing capacity contracts could improve competition by providing for the more efficient use of the capacity. According to the study, liquidity would increase at virtual trading points. The study assumes that companies' behaviour will change under exclusive bundling. Furthermore, the study concluded that bundling clearly contributed to greater transparency in the markets making it easier for regulatory and competition authorities to supervise gas markets. *Security of supply is not at stake*, as the consultants conclude that supply contracts are not "frustrated" due to smaller adaptations, like *a change in the point of delivery*.

Issues	Stakeholders' feedback	ACER's view
2.4.3 Virtual interconnection points	7 responses were provided, 1 of them being confidential. The majority of these answers pointed out the need for feasibility or cost-benefit analysis for the implementation of virtual trading points. Some of them called upon the implementation difficulties. 1 respondent noted that arrangements for non-locational charges should be in line with virtual connections. 1 respondent liked the measure proposed.	ACER partially agrees to the responses provided by the stakeholders. ACER considers that the feasibility of virtual interconnection points is adequately addressed in the FG, as the FG requires the *implementation or virtual interconnection* points within a 5 year period and *only if it does not lead to a reduction in the firm capacity* offered. Since the rule itself provides for reaching a better outcome, ACER has not contemplated a cost-benefit analysis. ACER expects that the introduction of virtual interconnection points will decrease the number of auctions while providing more, or at least the same amount of available capacity for shippers. From a TSO perspective this proposal on the one hand requires further cooperation, but on the other hand enables TSOs to manage their networks more efficiently and independently than in the past. In this context, *TSOs may decide which interconnection point is the most suitable for the netted transports* of all shippers' nominations. The proposal also creates additional possibilities of shifting the points in time for the gas to be transported and (thus) eventually increase the overall capacity offer. With regard to non-locational charges, ACER is of the opinion that no distinction shall be made between bundled interconnection points and virtual interconnection points.
3. Capacity Allocation		
Capacity allocation	8 respondents expressed a view. 2 were favourable to the proposal. 1 underlined the importance to involve stakeholders if rules on CAM need to be reviewed. 2 other respondents criticised the measure for non-congested IPs, where in their view, auctions would not be necessary. Another respondent pointed out that auctions were a preferred mechanism in principle, and the design of auction should not be part of the FG. 2 other responses favoured auctions, but had reservations about the methodologies applied and the potential abuse of incumbents. In their view, the principle of keeping the capacity rights with the customer could be an alternative.	In ACER's view, issues arising from market structure and behaviour of market participants (such as vertical integration or market dominance) largely exist regardless of the allocation method, and in principle should be addressed by the competent authorities on a case by case basis. Further to this, in ACER's view, an *appropriate auction design* could reduce incentives of anticompetitive behaviour.
3.1.1 Auction design	10 responses were provided, out of which 1 was confidential. 4 commented on auctions as standard allocation mechanism. Few out of them mentioned that in an ideal world auctions could increase the number of new players, but this would not be the case in Europe. They also seemed concerned about overvalued capacity	ACER welcomes the overall support given by stakeholders to auctions, as preferred method for allocating capacity. ACER considers that the standard allocation mechanism shall generally apply within the EU, regardless whether an interconnection point is congested or not. A uniform approach as this one may contribute to reroute flows, within reasonable costs from congested to non-congested points.

Issues	Stakeholders' feedback	ACER's view
	prices and speculation. Another respondent claimed to make difference between congested and non-congested points. Some other respondents further claimed that auctions should create value as opposed to additional complexity, and that auctions should be designed by NRAs taking into account the peculiarities of the various interconnection points and in order to prevent anti-competitive behaviour and support new entries.	
3.1.2 Reserve price	6 respondents were providing answers, and 2 of them were confidential. 2 respondents supported regulated tariffs as reserve price for auctions. 2 other views were in favour of reserve prices lower than the regulated tariffs. 1 respondent proposed to set similar prices for each kind of auction. Another respondent pointed out that regulated tariffs may vary across the EU due to the different incentive schemes and price control measures. 1 respondent was asking ACER to ensure market value for capacity products sold in auctions (being concerned of high prices).	The general rule in the FG is that the regulated tariff shall be used as reserve price. As part of its work on rules regarding harmonised transmission tariff structures, ACER may consider evaluating in which situations reserve prices lower than the regulated tariffs shall be used.
3.1.3 Auction revenues	6 responses were provided, 1 of them was confidential. 3 responses requested greater NRA involvement to either ensure that auction revenues were directly transferred to required investment projects or to avoid cross-subsidies between countries or parts of the value chain. 2 other answers supported the use auction revenues for incremental capacity, and in particular gave support to adjacent TSO and NRA cooperation. 1 respondent claimed to watch out for over-recovery.	ACER agrees with the respondents and clarifies that further details on the use of auction revenues exceeding the allowed revenue would be followed up either in Commission Guidelines or in the Framework Guidelines on rules regarding harmonised transmission tariff structures.
3.1.5 Within day capacity	3 responses were received. 2 of them preferred FCFS capacity allocation within day, claiming that it is a simple mechanism. 1 respondent did not support the FCFS measure, being incompatible with an efficient auction regime.	Stakeholders have not provided a clear view on the allocation of within day capacity; ACER therefore considers that both FCFS and auctions shall be allowed with an obligation for adjacent TSOs to implement the same allocation mechanism at each interconnection point.
3.1.6 Interim period	6 responses were received, 1 of them was confidential. 3 respondents requested step by step implementation, asking to take into account the different market needs. 1	ACER is of the opinion that the details in the network codes shall be clear before a decision, if any, on an interim period, can be taken.

Issues	Stakeholders' feedback	ACER's view
	respondent out of them underlined the importance of interim periods for those points, which are congested on the one side, but not on the other. Another respondent believed that interim periods could allow for a learning process for operators in the market. 1 respondent has claimed exemptions for fully opened markets. 2 other responses asked for shorter interim periods. These respondents claimed that FCFS was detrimental and requested a gradual release of capacity to new market players.	
3.3 Booking platforms	12 responses were received, out of which 3 were confidential. 2 responses pointed out the complexity and high costs relating to the establishment of one single platform for the EU. 2 respondents were clearly in favour of a single platform. 3 responses commented on the interaction between users and the platform; they underlined the importance to have simple, user friendly, accessible platform and one pointed out the importance of stakeholder involvement during the set-up phase of the platform. 3 other respondents proposed to keep the secondary trades outside the single platform, as secondary markets have a voluntary feature, and there bilateral trades should be allowed.	ACER considers that the FG provides the necessary flexibility for ENTSOG to define the most suitable action plan – in close involvement with the stakeholders – to reduce the number of platforms and eventually establish a single EU-wide platform. Although the offer of capacity on the secondary market is a voluntary feature, ACER considers that all transactions in the secondary market shall be performed over the booking platform(s) to have a single point of contact for both primary and secondary capacity services.
Additional comments		
Additional comments	15 responses were provided, 2 of them being confidential. The majority of the stakeholders supported the FG, as instrument for further market integration, auctions were in particular welcome.	ACER welcomes the overall support of the FG on CAM and especially the support for the use of auctions.
Linkage with other FGs or Guidelines	11 responses were provided, 3 of them being confidential. The majority of the respondents would like to understand better how the CAM and the CMP measures, which are the most closely related, would allow for a smooth alignment of the rules now when they are prepared and in the future, when the guidelines will be amended. Other responses underline that the FG CAM obviously links up with the Balancing and the	The CAM and CMP measures have been developed at the same time with a view to have a smooth alignment of the respective rules. ACER agrees that future amendments to the respective network codes and guidelines need to take into account potential effects on and interaction with rules laid down in the areas mentioned by the stakeholders.

Issues	Stakeholders' feedback	ACER's view
	Tariff FGs.	
Process and level of detail of FGs	5 responses were received, 1 of them being confidential. 1 respondent welcomed the high-level FGs, but was afraid that their current form could be misinterpreted. Another respondent questioned the process, by which FG and NC were proposed for parallel development. Yet another response called on ACER's responsibility to create FGs where there was technical evidence and robust cost-analyisis benefit to ensure that the outcome of the regulation was positive.	The FG CAM was selected as pilot to test the process outlined in the Regulation (EC) No 715/2009. ACER notes that the NC process is not a process on its own, but is based on the draft FG. While in an interim period, as of March 2011, the FG and NC has resulted in a parallel process, ACER made sure that the process foreseen in the regulation is followed and the provisions of the FG are efficiently translated in the NC. After the FG is issued this parallel process will end. ACER agrees that it is necessary to ensure consistency between the different areas of work. By carrying out initial impact assessments and discussions with experts, ACER ensures that only relevant cross-border network issues and market integration issues are addressed in a FG.
Implementation of the NC and other issues	7 responses were received, 3 of them were confidential. 1 respondent was concerned about the level of detail of the FG, which in the respondent's view was not providing sufficient input for implementation measures. Another respondent was worried that the FG places too much responsibility on TSOs without incentives to deliver. 2 respondents warned that leaving outside other elements of the gas infrastructure (like LNG and storage) may lead to a failure when establishing a single market. These 2 respondents claimed to ensure affordable systems that do not escalate costs unnecessarily.	ACER considers the level of detail of the FG to be sufficient. According to the Regulation (EC) No 715/2009, the network codes shall be developed for cross-border network issues and market integration issues. ACER agrees with the respondents on the important role of LNG and storage infrastructure plays in the internal gas market. Other measures are foreseen to improve the efficient use of these infrastructures.

3 Adjustments to the Framework Guidelines resulting from the public consultation and expert analysis

ACER found the public consultation an insightful exercise in collecting the views of the stakeholders. Further analysis on the sunset clause and default rule has been provided by two consultants, financed by the voluntary contribution of six NRAs.

As a result of the public consultation and in the light of the consultancy reports, ACER decided to review the text of the Framework Guidelines and propose changes to the text. The table below gives a summary of the most substantial changes ACER made to the Framework Guidelines.

General issues and needs for changes	**Changes in Framework Guidelines**
Scope (Section 1.1) and Application (Section 1.2)	The General provisions of the FG have been modified, aiming to provide for the better understanding of the text: (i) on the Scope: the FG now sets out what objectives motivated the regulatory measures proposed in the FG. (ii) on the Application: the wording of the FG is now clearer: existing capacity contracts are subject to the provisions of the FG after the sunset clause expires and open seasons are subject to the rules of bundling.
Adaptation of existing transportation arrangements (Section 1.3)	The adaptation has been extended from six months to nine months.
Cooperation (Section 1.6)	The text gives clarifies that bundled capacity services should be backed with appropriate service procedures.
Breakdown of capacities (Section 2.3)	A more appropriate definition for short term services has been proposed in the FG, in line with ENTSOG's draft CAM Network Code (NC), where the longest product is quarterly, based on industry preferences. The text is more openly formulated to allow for the appropriate implementation of CMP measures proposed at either EU level or national level, whichever may apply for a particular case.
Bundled capacity services (Section 2.4.1)	Based on ACER's evaluation the bundling principle shall be preserved for the reasons explained in the evaluation. The text of the section underwent some changes. The last sentence explains that already bundled products cannot be sold unbundled in secondary trading. The

General issues and needs for changes	Changes in Framework Guidelines
	provision aims to protect the bundling principle and hinders market players to open back doors and hamper the implementation of the principle.
Amendment of existing capacity contracts (Section 2.4.2)	Based on ACER's evaluation and the consultancy reports the amendment of existing capacity contracts seem to be legally feasible (see further details in the evaluation). ACER *rephrased the default rule* at the request of the stakeholders in order (i) to protect TSOs from potential legal challenges and from being charged for unilateral changes of contracts, (ii) to enforce the split rule with a more appropriate legal measure. In this context, <u>the network code, as a legal instrument</u> binds the capacity holders to use the split rule, if no agreement has been reached among them in the open negotiation process. The TSOs are requested to cooperate and support that bundled allocation is achieved. The capacity contract holders, TSOs and NRAs should provide the relevant information to support this process. Full respect of commercially sensitive information shall be provided along the process. After the expiry of the sunset clause the NRAs may impose appropriate sanctions on the non-complying parties. ACER may exercise its powers according to the Regulation (EC) No 713/2009. Overall, the section clarifies who the negotiating parties are (footnote 8), provides legal basis for the application of the default rule, and defines more accurately the roles the various parties play in the process of amending existing contracts, including the role of the regulatory authorities who have now a clear supporting role. The principle to protect capacity holders from unilateral changes in supply agreements remained unchanged.
Auctions design (Section 3.1.1)	The principles and measures provided by the section did not change. The only new element is a reference made to ACER's powers pursuant Article 8 of the Regulation (EC) No 713/2009.
Interaction with other FGs and NC on CAM (reserve price, auction revenues, within-day capacity)	ACER is aware of the difficulties that the interactions between the FGs may create. This is unavoidable as the FGs are

General issues and needs for changes	Changes in Framework Guidelines
	developed for the first time. An appropriate management of the process could avoid creating too large interferences between the FGs. An improved wording in the FG CAM at the points, where it links up to other FGs or the NC on CAM aimed to reach this objective.

Improvement in the wording of the FG with no impact on the provisions are not listed in this table. Such changes were introduced in almost all the sections, particular attention could be paid to Sections 2.2, 2.4.3, 3, 3.1.1, 3.1.2, 3.1.3, 3.1.5, where such changes a more explicit (in addition to what is mentioned in the table above).

Annex 1 – List of Respondents

Name	Organisation	Country of origin
CEDEC	Association	Netherlands
CEFIC	Association	Belgium
Centrica	Energy company	United Kingdom
DONG Energy	Energy company	Denmark
EDF SA	Energy company	France
EDF Energy	Energy company	United Kingdom
EDP Gas	Energy company	Portugal
EFET	Association	Belgium
EnBW	Energy company	Germany
Endesa Ireland	Energy company	Ireland
Eni G&P	Energy company	Italy
ENEL	Energy company	Italy
ENTSOG	Association	Belgium
E.On Germany	Energy company	Germany
ESB Energy International	Energy company	Ireland
Eurelectric	Association	Belgium
Eurogas	Association	Belgium
Europex (late submission)	Association	Belgium
ExxonMobil	Energy company	Netherlands
Gaslink	TSO	Ireland
Gazprom M&T	Energy trading company	United Kingdom
GDF Suez	Energy company	France
IFIEC	Association	Belgium
National Grid	TSO	United Kingdom
Naturgas Energia Comercializadora (EDP Group)	Energy company	Spain
Sorgenia	Energy company	Italy
SSE	Energy company	United Kingdom

Confidential respondents agreeing only to the disclosure of their names	Organisation	Country of origin
Direct Energie	Energy company	France
Edison	Energy company	Italy
Union Fenosa	Energy company	Spain
VNG	Energy company	Germany