

EnBW Energie Baden-Württemberg AG · Großkunden-PLZ: 76180 Karlsruhe



ACER
Agency for the Cooperation of
Energy Regulators
via E-Mail:
consultation2014G03@acer.europa.eu

Durlacher Allee 93
D-76131 Karlsruhe
Großkunden-PLZ: 76180 Karlsruhe
Telefon +49 721 63-06
Telefax +49 721 63-12725
www.enbw.com

Name Dr. Bernhard Walter
Bereich V-HM
Telefon +49 721 63-17731
Telefax +49 721 91-420069
E-Mail b.walter@enbw.com

Public Consultation for the preliminary scoping on potential Framework Guidelines "Rules for Trading related to technical and operational provisions of network access services and system balancing (FG RfT)"

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EnBW welcomes the opportunity to discuss open issues concerning the implementation of Network Codes and possible new Framework Guidelines to tackle existing flaws in the current pan-European regulatory framework. As an active partner in the FG and consequently NC development in recent years both in electricity and in gas we understand that not every single detail can be dealt with in the NC however we also see the need to get the basics regarding cross-border rules and processes right. Even more so as we see the danger that - if certain issues such as harmonized terms and conditions by TSOs on either side of adjacent markets are not dealt with - this unclarity gives way for everyone to question bundled capacity contracts as the default condition in the European gas market which would eventually harm competition in the gas market.

Regarding this consultation we do not see the need for a new Framework Guideline on Rules for Trading of Capacity product. We would like to underline as we have done in previous consultations that a constant monitoring in the implementation of existing FG via NC should be done to flag critical issues which have to be solved by either the TSOs, regulators (national or ACER level) or as ultima ratio by the European Commission. Only an honest analysis and tackling of the problems protects the new competitive market design with a bundled-only world in view from being torn apart. ACER and the EU Commission together with the TSOs should rather adapt current NC than set out new FG which may overlap with existing NC. We consider this consultation as one element of the analytic exercise.

Sitz der Gesellschaft: Karlsruhe
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Vorsitzender des Aufsichtsrats:
Dr. Claus Dieter Hoffmann

Vorstand:
Dr. Frank Mastiaux (Vorsitzender)
Dr. Bernhard Beck
Thomas Kusterer
Dr. Dirk Mausbeck
Dr. Hans-Josef Zimmer



Q1. Are the topics identified above the most relevant ones when it comes to Rules for Trading at EU level? Please specify which issue - if any - would merit further elaboration and rank the three most important Rules for Trading aspects

The topics identified by ACER are essential ones for capacity trading. In an ideal world we would have harmonized capacity products including a harmonized set of terms and conditions in the contracts. This is not only an issue of two adjacent markets, it goes further when one imagines that gas is traded over more than one border. If capacity products and their terms and conditions are not harmonized this multi-market trading will simply not be attractive enough to draw the full set of market participants into those trading operations. In this respect we would like to underline that specific national capacity products with unique limitations to free allocability are clearly a hindrance to European market development caused by regulators rather than by market participants. With a set of harmonized capacity products and terms and conditions which reflect the needs of the commodity market resulting from commodity products we see the necessary basis for a secondary capacity market to flourish if needed by market participants. Secondary capacity markets are an essential tool for the cross-border commodity market to work well but at the same time we do not see the need to further regulate them. The issue of licensing is in so far important as ACER should prevent national regulators to set up unnecessary barriers, i.e. if a market party is allowed to operate in one market it should automatically be granted access without further approval in other markets. This easy market access is one essential element for the success of a bundled-only hub-to-hub trading world. This practice is applied in other markets such as for food and pharmaceuticals and should hence also be the European leitmotiv in the energy market.

Capacity products and terms and conditions of capacity contracts

Q2: Do you agree that the key features of capacity products (besides its location, its direction and its duration) are as follows:

- Firmness: unconditional firm / conditional firm (e.g. depending on temperatures) / interruptible
- Allocability: free allocability / restricted allocability to designated points / restricted to designated points but combined with interruptible free allocability to all points including VTP
- Tariff relations between different capacity products. Please rank the most important aspects of capacity products for your business. If there are other aspects you find more important, please name them and explain why.

The allocability of capacity and the firmness are truly key features of capacity products. In commodity trading both products, firm and interruptible, have their use. The difference in quality has however to be reflected in the tariff. The issues of allocability is a tricky one as specific national allocability regimes question the



feasibility of a non-complex, easy-to-use cross-border capacity trading framework.

Q3: Do you think that certain user categories (e.g. power plants, household suppliers, traders, gas producers, storage users etc.) have specific requirements/needs regarding capacity products? If so, which?

We think that requirements of any market participant shall be reflected in a set of commodity products. Consequently capacity products shall allow cross-border trading of exactly those commodity products. In respect of satisfying customer needs (households, power plants etc.) cross-border trading is one of the means to trigger the necessary flexibility. We understand that if the framework for capacity products reflects what the market needs any requirements should be met without the need for tailor-made capacity products which can cause negative effects for the trading markets.

Q4: Do you have experience with different levels of product firmness and allocation restrictions (i.e. different capacity designs¹⁰)? Please provide examples.

As our core trading business is centered in the NW European market we have deep experience in that market. As for the German market, we have flagged our concerns at numerous occasions regarding the implementation of specific capacity usage restrictions aimed at power plants and storage facilities. As much as we understand the associated concerns of TSOs we also see the danger for the pan-European gas market to implement specific national allocability features which do not correspond to anything in adjacent markets and interfere with the functioning market.

Q5: Are different types of product features (in terms of firmness and freedom of allocation) barriers for cross-border trading? If yes, please provide an example of such a barrier. If yes, do you think that a set of "standard capacity products" in terms of quality (e.g. firmness rules, allocability) enshrined in a network code would provide a solution? Do you believe that the benefit of implementing such a solution outweighs the costs? Could you provide examples of such solutions?

As we have already mentioned, the more complexity results from different types of product features the bigger the barriers are for cross-border trading. Indeed, standard capacity products will foster cross-border trading, this includes harmonized qualities (firmness, allocability) as well as the same contractual arrangements on either side of the border (unless – even better - TSOs offer cross-border bundled products as one product via the capacity allocation platform as the counterpart rather than a combination of two different TSO contracts).

Q6: In your view, is the way capacity is allocated (primary market) or traded (secondary market) expected to create any problem or barrier to gas wholesale trading after the full implementation of the NC CAM? (Please differentiate in your answer between IPs covered by NC CAM and those outside its scope, e.g. LNG, stor-



age)? If not, what outstanding barriers remain after NC CAM implementation?
Please provide specific cases and examples, if possible.

We believe that having a primary allocation of bundled capacity products in place for cross-border IPs and encouraging TSOs to support and facilitate secondary trading will increase liquidity in the wholesale markets and therefore lower barriers.

Q7: Do non-harmonised contract definitions or terms between neighbouring entry-exit zones limit cross border trade? If yes, please provide examples. Do you think that equal contractual definitions of product characteristics (in terms of firmness or freedom of allocation) can be achieved by compatible contract terms alone (product description along certain parameters) or can this only be achieved by a single standard contract established at EU level?

Achieving a single standard contract should definitely be an aim as this would take away much complexity in today's market conditions yet we also understand that the status quo is due to special characteristics and national legislative regimes. While the task to tackle this issue seems daunting we see the clear need to overcome any of the obstacles to reach a more harmonized set of capacity products including harmonized terms and conditions.

Q7a: Considering the variety of private law regimes across EU, do you believe a single standard contract established at EU level is feasible? If yes, do you believe that the benefit of such standard contract established at EU level outweighs the costs of its implementation?

A single standard contract is a difficult task but should be aimed at by the regulators and the EU Commission alike. A result along the way should be compatible key contract terms.

Q8: Have you experienced inefficiencies and risks which make it necessary to harmonise certain clauses in capacity contracts and/or contractual terms and conditions of different TSOs at EU level (given the variety of private law regimes applied across Europe)? If so, what are the inefficiencies and risks experienced that require harmonisation and why?

Generally, we believe that the more harmonized contractual terms and conditions are, the better for market development as market participation is made easier and fostered.



Q9: Assuming everything else being equal (e.g. tariffs), do you prefer:

a) firm products with limited allocability/locational restrictions (ex-ante information on conditions of use) or

b) interruptible products (with ex-post information on actual occurrence of interruptions)?

In order to take a clear decision on the a.m. options it is necessary to take into consideration the peculiarities and the extend of the restrictions in case of option a). The expected costs to cope with these restrictions (e.g. procuring or selling gas locationally) would then need to be compared to the associated risk premium to cover the interruptibility of variant b).

Q10: Given the Balancing NC implementation, which should foresee within-day obligations as an exception, do within-day standard capacity products ("rest-of-day capacity products"¹³) create any barrier to trade?

We consider within-day standard capacity products a valuable optimisation tool for the commodity market to foster trading nationally and internationally.

Q11: Are there any differences in the legal framework/capacity contracts that undermine the concept of a bundled capacity product (treatment after allocation)? If yes, please describe the differences as well as the risk for market participants resulting from those. Please provide specific examples.

There are several factors undermining the concept of bundled capacity. The different understanding of "firmness" or different terms and conditions may undermine the concept of a bundle-capacity product – cross-border products must be coherent and consistent. Otherwise the complexity will drive market parties out of the cross-border commodity market and limit hub-to-hub trading to just a few market parties. The licencing issue as mentioned in Q1, Q31 and Q32 has major impact on the success for the creation of a bundled-only world. Any flaw in that world will be excuse for opponents of that new market design to call for a revival of unbundled capacity products. CMP is also key for the success of bundled capacity products. Only if correctly applied in the short and longer term it will maximize the offer of bundles capacity products both in the primary and consequently in the secondary market.

We do not see a major problem to apply the concept of bundled capacity products at interconnection points with countries outside the EU. We see the new market design as an encouragement for countries outside the EU to follow the way to open up towards market-based capacity allocation and competitive market frameworks.

Q12: Are there any other obstacles that hamper the use of capacity contracts across borders in the EU?

The fact that gas trading markets in the EU have different maturities currently hamper the optimal use of capacity products. An additional negative influence for the use of capacity contracts is the parallel world of bundled and unbundled capacity products as well as potential difficulties to apply CMP measures on longer



term bookings so that not all unused capacities become available for new bundling.

Q13: Do you think that a) binding EU rules, b) non-binding guidance or c) no rules at all (awaiting the implementation of existing NCs) address the above issues best? If needed, you can differentiate between different topics.

We suggest to aim for non-binding guidance to facilitate the current NC development and implementation phase and to assess the application of CMP measures. Furthermore we recommend a constant monitoring of problems arising from implementation to present these problems along and after the implementation phase to publicly discuss necessary next steps to overcome the flaws.

Secondary capacity markets

Q14. Do you think that rules are needed in order to stimulate secondary trading in Europe (taking into account the facilitation of trading already in place nationally or at EU-level, including joint booking platforms as demanded by NC CAM)?

We have not yet discovered major problems which deem it necessary to apply additional regulation to the secondary capacity market. It is well understood by us that only the process between TSO and the relevant market parties should be part of the regulated capacity regime. Harmonized rules and products from the primary capacity market shall apply in the secondary capacity market.

TSOs and regulators shall guarantee for different flavours of secondary capacity trading (e.g. assignment and subletting) and allow shippers to profit or lose from the sale of such capacity (i.e. a shipper can sell it for more than face value if the market is prepared to pay but may also have to sell at a loss).

Q15. Do you see a need for a fully anonymised secondary capacity market (including third-party clearing) or is a bilateral capacity transfer (with consistent information to the TSO) sufficient?

We do not see that „either or“ is the answer regarding secondary capacity trading but stress the need to leave the market an option to either go through bilateral capacity transfers or through an exchange. The choice shall not be limited by regulatory actions.



Q16. Do you see the need to harmonise the handling of secondary capacity transfers to the primary market with reference to e.g. contract durations, handling, deadlines etc.?

As mentioned above, we consider the harmonization of products and terms and conditions of primary capacity products as a prerequisite for a well-functioning secondary capacity market. The liquidity of the latter depends amongst other reasons mainly on how much use market parties are making of secondary capacity trading as an optimization tool (compared to surrendering of capacities in which case the TSO has to remarket the capacities as primary capacity products).

Q17. Are there any rules hampering secondary trading of bundled capacity products? If yes, which ones and where? (Please provide specific cases, examples.)

We would like to stress again the need for choice whether to bilaterally trade capacities or to go via an exchange to do so. It is clear that as long as there are still unbundled capacity products in the market the secondary capacity market is as influenced by that fact as the primary capacity market is. We therefore regret that the sunset clause could not be applied to ensure a quick transition to a fully market-based capacity allocation regime.

Q18. What would be, in your view, the most efficient way of secondary trading of capacity: a) mandatory trading on a limited number of liquid secondary platforms as for primary capacity or b) keep the current regime as is (e.g. many options, venues, etc.)?

We strongly believe that there is no need for regulatory action to limit the way of secondary capacity trading.

Q19. Would you support additional transparency rules for secondary trading and what should, in your view, those rules focus on (e.g. reporting on transactions, potentially incl. price)?

We support sufficient transparent reporting of transactions in the secondary capacity market via primary capacity allocation platforms as TSOs are the holders of all the information regarding the users and holders of capacity. Reporting via platforms shall not limit bilateral secondary capacity trading.

Q20: Do you think that a) binding EU rules, b) non-binding guidance or c) no rules at all (awaiting the implementation of existing NCs) address the above issues best? If needed, you can differentiate between different topics.

We recommend awaiting the implementation of new and/or existing NC to see their effects on secondary capacity trading.



Virtual trading point design/access and hub issues

Q21: Are there any design elements of hubs which provide a barrier to cross-border trade (e.g. independence of the hub operator from traders)? If yes, which ones? Please provide specific cases, examples.

We do not see major obstacles for cross-border trade at the hubs in NW Europe.

Q22: Are the fees (if any), the methods to calculate these fees, the general terms and conditions and/or contracts for service providers/intermediaries for transferring gas via trade notifications according to article 5 of the Balancing NC discriminatory and do they constitute a barrier to trade? If so, please state which of the elements above are problematic and which entry-exit systems are affected. Are there any other issues that create barriers to trade?

We do not see major obstacles resulting from fees for cross-border trade at the hubs in NW Europe. We therefore consider these operational modes as benchmark for other hubs.

Q23: Do non-standardised formats represent a barrier for cross-border trading? If yes, do you see a need to establish a standardised data exchange format for trading of wholesale gas products to be used as interface between all potential balancing and trading venues - including key inputs¹⁴ (e.g. trading parties, time, location of trade, trading volumes and price, etc.)-?

We do not see major obstacles resulting non-standardized formats for cross-border trade at the hubs in NW Europe. We therefore consider these operational modes as benchmark for other hubs.

Q24: How could the establishment of organised market places at hubs trading platform (via VTPs) be facilitated and should the Agency foresee rules to facilitate it?

Looking at the VTPs in NW Europe we do not see any need for the Agency to become active.

Q25: Do you think that a) binding EU rules, b) non-binding guidance or c) no rules at all (awaiting the implementation of existing NCs) address the above issues best? If needed, you can differentiate between different topics.

Looking the VTPs in NW Europe we do not see any need for the Agency to become active.



Transparency rules

Q26: Do you think that contractual conditions of capacity services (incl. usage conditions) are transparent and clear enough and easy to access (taking into consideration the establishment of joint booking platforms such as PRISMA)? If not, please name the TSOs/platforms where this is not the case and evaluate it along any of these three parameters (i.e. non-transparent, unclear or difficult to access).

We mainly use PRISMA and consider this platform as benchmark.

Q27: Do you consider that the contractual conditions of capacity products with limited allocability (e.g. interruptible hub access, but firm cross-border flow) are transparent and clear enough? If non-transparent and clear enough, what should be improved? (Please provide specific cases, examples.)

We mainly use PRISMA and consider this platform as benchmark. Furthermore we see a problem in country-specific capacity products in terms of allocability which are not connected to adjacent market conditions. This complexity such as specific capacity products for power plants and storage facilities may create distortion in cross-border trading.

Q28: Do you have access to sufficient information on the condition(s) for interruption of a capacity service and/or its probability? If not, please specify where this is not the case.

No, we generally do not have access to sufficient information (e.g. why was capacity being interrupted).

Q29: Do you have sufficient information on the occurrence of the condition(s) for interruption and/or its probability? If not, please specify, where this is not the case.

No, we generally do not have access to sufficient information.

Q30: Do you think that a) binding EU rules, b) non-binding guidance or c) no rules at all (awaiting the implementation of existing NCs) address the above issues best? If needed, you can differentiate between different topics.

Our impression is that PRISMA is seen as a benchmark for primary capacity trading amongst markets participants. The Agency should facilitate the expansion of its activities and encourage TSOs to participate. Besides that we see sufficient regulation in place in that respect.



Licensing requirements for market participants other than TSOs

Q31: Do you see a problem with regard to different licensing requirements in the EU? If yes, please name the Member State, explain the main issues and propose solutions (such as minimum requirements for licenses at EU level, etc).

Yes, we definitely see a problem if different national licensing requirements are implemented as they not only contradict the theme of a common EU market but in fact constitute additional entry barriers for foreign competitors in national markets. We do not see any additional need to implement specific national licensing regimes if already existing EU legislations e.g. on market integrity (REMIT) is implemented properly supported by e.g. KYC checks that are common practice.

Q32: Do you think that a) binding EU rules, b) non-binding guidance or c) no rules at all (awaiting the implementation of existing NCs) address the above issues best?

We think that at this point in time option c), i.e. awaiting the implementation of the existing NCs and monitoring the consequent implementation into relevant national regulations is the first choice: This should be done before setting up additional binding or non-binding rules/guidance. Additionally, as a supportive measure a proper process of Governance and Network Code amendment should be established.

Kind regards

EnBW Energie Baden-Württemberg AG

Dr. Bernhard Walter