



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)

In general terms, Enagás considers that the methodologies proposed appear to be well grounded.

Enagás would like to point out that the timeframe provided by ACER to answer to the public consultation is too short (4 weeks only), whereas the extension and the detail contained within the consultation is very large and needs further time if wanted to be properly analysed.

Furthermore, Enagás believes that key stakeholders in the implementation of Network Codes should have been involved in the study undertaken by the consultant since its initial phase, namely, ENTSOG, TSOs, NRAs, etc.

With regards to the CAM NC on Incremental Capacity (Incremental proposal) and the Network Code on Tariffs ("TAR NC"), Enagás believes it is too early to have indicators to monitor the implementation of these codes, as they are currently under development and subject to constant changes.

Last, the selection of recommended indicators among potential indicators is not properly explained in all cases.

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)

8 Please add any comments

CMP Guideline. Enagás considers that the proposed set of indicators can correctly monitor the implementation of the CMP Guidelines. However the following considerations should be addressed:

- As regards the interpretation and thresholds, Enagás considers that the first step before calculating the indicators is to identify the occurrence of contractual congestion; in absence of contractual congestion, indicators will not be relevant and could be misleading. On contrary, the public consultation seems to propose the opposite, first to calculate the indicators and then, if results are low or zero explain the absence of congestion. For the purpose of calculating the existence of contractual congestion some of the potential market monitoring indicators to measure efficient market functioning considered in table 6.5 could be taken into account, for example: capacity utilisation at each IP (average day and peak flow/technical capacity) or value of congestion at each IP (euros/IP/year).The increase of technical capacity

is not in itself a goal of the CMP guidelines, but the ease of congestion at network points. Therefore Enagás wonders if the increase of technical capacity is the correct indicator to look at. Especially taking into account that technical capacity at an IP can decrease over time, regardless the implementation of CMP (e.g. due to technical reasons in the network, like a pressure reduction or changes in demand).

- The desired effect “coherent application of CMP”, understood as the application of the same mechanism with the same detailed rules, is not a goal of the CMP Guidelines. The CMP guidelines specifically allow the application of two different mechanisms at the sides of a network point.

NC CAM. Enagás considers that neither the problems nor the desired effects of the CAM NC are correctly addressed. The analysis included in the document focuses too much in the calculation of technical capacity which is not the objective of the CAM NC.

- The following statement in page 17: “Prevailing capacity allocation mechanisms often favour incumbents over new entrants” is not substantiated and is not true under all circumstances. FCFS has demonstrated to be more effective in absence of congestion than market based procedures such as auctions.

- The number of TSOs following ENTSOG’s auction calendar is not an indicator that proves the effective implementation of the CAM NC. It should be noted that not all TSOs are subject to CAM NC as CAM NC is only applicable at IPs. Thus, in case this indicator is to be considered in the final version, it should be measured at IP level not at TSO level. Besides, this indicator is not addressed in the Annex A.2.2.

- Enagás does not fully agree that the “increase in offered technical capacity, all else equal” is necessarily a desired effect of the CAM NC. Article 6 of CAM NC desired effect is the maximization of the offer of bundled capacity through the optimization of the technical capacity which might not be the same in all cases.

- The traded volumes at hubs / VTP is not an indicator of elimination of trading at flange (all trading forced to virtual hubs). Some countries have implemented the CAM NC in such a way that flange trading is allowed, and this trading will not be reflected by the proposed indicators. CAM NC defines bundled capacity as “standard capacity product offered on a firm basis which consist of corresponding entry and exit capacity at both sides of every interconnection point”. However, some TSOs have implemented this in the following way: only one shipper is allowed to bid for bundled capacity at an IP in the booking platform, however, when signing the contract with the TSOs at each side of the IP, the shipper that has bid and won capacity is allowed to transfer this capacity to an affiliate or even to a different shipper. In this case, the Member State is compliant with CAM NC as bundled capacity is offered according with CAM NC rules but flange trading is allowed.

- As regards the progression towards maximum capacity sold as a bundled product, Enagás considers that a new indicator should be added. Mismatches of bundled capacity not only occur due to differences in technical capacity at both sides of the IP, but also to differences in booking levels due to reductions of capacity because of national

regulation. For example: in Spain users are still allowed to reduce their capacity without paying anything (no Ship-or-Pay clauses).

- The secondary market is not specifically addressed in the CAM NC. The secondary market was going to be tackled in the potential NC Rules for Trading although ACER disregarded the idea of developing it. Thus, Enagás considers that no indicator about secondary market should be included for monitoring the implementation of the CAM NC, although this indicator might be useful for other purposes.

NC BAL. Enagás agrees with the main objectives and the desired effects of the NC BAL identified. However, due to the nature of the NC BAL, as explained below, Enagás finds complicated the establishment of indicators to assess to which degree these main objectives of NC BAL have been reached. Moreover, Enagás would like to highlight that there is a strong relation between the BAL NC indicators and the high-level policy goal Indicators for Effective Competition and the Indicators of Market Integration.

NC CAM amendment for INC. Enagás agrees to the general objective of the Incremental Capacity Proposal as set out in the report, namely to establish a transparent, efficient, standardised and non-discriminatory processes, timelines and methods for capacity demand assessment and capacity allocation for incremental or new gas transmission capacity. However, Enagás would also like to point out that the Incremental Capacity Proposal as an amendment to NC CAM and a chapter of the TAR NC is still under development and not yet undergoing the comitology procedure. The provisions of the Incremental Capacity Proposal are still under discussion between TSOs, Regulators and market participants and have changed frequently over the last weeks and months. Having said this, Enagás would like to address the following issues regarding the proposed indicators:

- The latest changes in the discussions on Incremental Capacity make the indicator “Incremental and new capacity offered through open seasons (auctions or alternative CAMs)” as currently proposed useless since a differentiation into OSP and auction is not done. If the general principle of this indicator is to be kept, the indicator should compare how many incremental capacity projects end with a capacity allocation based on the normal CAM auction and how many with an alternative allocation mechanism.

- Proportion of proposed incremental/new capacity projects that pass/fail the economic test. It is desirable that incremental capacity projects are financially viable and have a fair chance of success. Nonetheless, the question whether an economic test passes or fails only depends on whether network users are willing to underwrite an investment under the framework given by the NRA and therefore does not indicate at all whether the process in general is efficient or not. Whether or not network users are willing to commit long term for an investment depends to a large extent also on factors that neither the TSO nor the NRA can influence. This would however not indicate that the process itself is not functioning. Therefore, this indicator must be interpreted cautiously.

NC TAR. Enagás finds it a premature to establish the criteria for the NC TAR since the text has not yet reached a robust and stable level. Enagás

considers that the monitoring methodology cannot be properly evaluated before the final NC TAR has been passed comitology. Whether the proposed set of indicators is complete and suitable to assess the achievement of the desired effects of the Regulation is therefore too early to judge. Besides, table 5.7 proposes a very detailed list of potential indicators (14) whereas table 7.1 only includes a few (6 recommended indicators). The selection of recommended indicators among potential indicators is not properly explained.

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)

12 Please add any comments

The high-level policy goals indicators are in some areas replicating the set of criteria of the reviewed Gas Target Model. If the fulfillment of high-level policy goals is to be measured through this “methodology for implementation monitoring and evaluation of the impact of the gas Network Codes and Guidelines on the internal gas market”, it would be worth considering merging this methodology with the self-evaluation process to be proposed by regulators in relation with the GTM2.

Otherwise these exercises might lead to different, inconsistent conclusions and unnecessary duplication of work.

Furthermore, as part of the high-level policy goals, it could be useful to include a set of indicators related to “good regulatory practices” across Member States, possibly inspired by the “Better Regulation guidelines” approved in May 2015. These set of indicators could include attempt at measuring, for example; whether public consultations are performed or not by NRAs when implementing or transposing European regulation, the duration of the consultation, whether or not a summary of responses is provided and to what extent NRAs have taken into account comments, indicators on the independence of NRAs, including an assessment of stakeholders of the degree of independence of the regulators, and in general indicators related to proportionality, accountability, consistency, transparency and targeting

13 Please add any comments and suggest indicators to be added

14 Please add any comments and indicators to be removed

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

CMP Guidelines.

CMP.1: Yes

CMP.2: Concerning the capacity utilization per shipper Enagás would like to stress that the confidentiality of individual network users' data has to be taken into account.

Moreover, if a user holds entry and exit capacity at an IP and nominates both sides at the same time, the user may transfer a netted nomination, which does not reflect the actual use of the booked capacity in both directions.

CMP.3: same comment as CMP.2: if a user holds entry and exit capacity at an IP and nominates both sides at the same time, the user may transfer a netted nomination, which does not reflect the actual use of the booked capacity in both directions.

NC CAM

CAM.1: No. As previously mentioned, this indicator should be deleted taking into account that this is not an objective of the NC CAM.

CAM.2 and CAM.3: Enagás is of the opinion that the volumes of bundled capacity offered (indicator CAM.2) and the share of bundled capacity sold (compared to total booked capacity at each IP) (indicator CAM.3) on capacity booking platforms (e.g. per product type, per IP/direction) are in combination efficient indicators to measure the desired outcome of an easier acquisition of (bundled) capacities at IPs.

CAM.4: As previously mentioned, the secondary market is not specifically addressed in the NC CAM. The secondary market was going to be tackled in the potential NC Rules for Trading although ACER disregarded the idea of developing it. Thus, Enagás considers that no indicator about secondary market should be included for monitoring the implementation of the NC CAM.

CAM.5 and CAM.6: The desired effect of eliminating unrealized cross-border trades and unused capacity due to mismatches in capacity allocation processes are not fully covered by these indicators.

NC BAL

BAL.1: Yes.

BAL.2: The primary balancing responsibility to the network users is one of the general principles of the NC BAL, while the TSO has a residual balancing role. However, in Enagás opinion the proposed calculation of this indicator should be modified. On one hand, the report defines that the indicator is calculated by dividing the total quantity of gas traded by the TSO for balancing purposes though the total volume of all balancing trades. On the other hand, balancing trades are defined as trades for which delivery takes place on a given gas day D with

transaction concluded after 1PM on D-1 and physical settlement method. Not all trades falling under this definition are solely done for balancing purposes but could be for many different reasons.

BAL.3: No. This indicator does not seem the best one to assess whether the overall system is in balance on a day-on-day principle, since the linepack is not only influenced by the portfolio status of network users but to a very large extent by technical parameters that are fully independent from the activities of network users in a specific system. It should also be considered that a high linepack change might often be the result of minimizing balancing actions by the TSO.

BAL.4: Yes. The principle of neutrality of the TSO, to be ensured by the NRA, is one of the key principles of NC BAL. We suggest extending the proposed scope to include all relevant neutrality cash flows. In addition, Enagás would like to highlight that it is desirable that the TSO has a sufficient level of financial flexibility in its neutrality arrangements in order to be able to act in times of high balancing needs. This should also be ensured by the NRA.

NC CAM amendment for INC

INC.1: The latest changes in the discussions on Incremental Capacity make the indicator "Incremental and new capacity offered through open seasons (auctions or alternative CAMs)" as currently proposed useless since a differentiation into OSP and auction is not done. If the general principle of this indicator is to be kept, the indicator should compare how many incremental capacity projects employ a capacity allocation based on the normal CAM auction and how many use an alternative allocation mechanism.

INC.2: No. See question 8

INC.3: Yes

NC TAR.

TAR.1, TAR.2 and TAR.3: the main data source of these proposed indicators on NC TAR is a survey. On the one hand, stakeholders will already have the opportunity to comment on these aspects during the consultations held by NRAs. On the other hand, stakeholders might have interests that differ from the criteria of the NC TAR.

TAR.4: Yes

TAR.5: Yes

TAR.6: This indicator seems not to be suitable to assess the overall short-term and long-term balance as it aims to assess the divergence in the actual multiplier level for each product at either side of IP. The difference in the final price of the particular product at either side of the IP is a result of the asset structure, topology, age of network etc. and therefore different amount of allowed revenue as well as other elements such as reference price methodology, secondary adjustments and any seasonal factors is also impacting the situation. Hence, the assessment of the differences in multiplier level at different IP-sites seems to have limited indicative value unless evaluated in a context including other parameters.

Enagás suggests to develop indicators which focus on the short-term long-term balance within a given entry-exit zone. For that purpose the evolution in booking structure of each particular TSO as well as level

of cross-subsidisation between long-term and short-term network users could be used to assess the achievement of desired effects.

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

CMP Guideline. Enagás agrees with the proposed data sources. Concerning the proposed indicator CMP.2, the individual use of contracted capacity per user can only be captured with data publication obligations under REMIT, which are confidential.

NC CAM. Enagás agrees with the suggested data sources.

NC BAL. Enagás agrees with the suggested data sources.

NC CAM amendment for INC. As highlighted in Q8, it is too early to define concrete indicators for assessing whether the incremental capacity process functions efficiently since the concrete functioning of the process is not yet clear. Nevertheless, Enagás agrees that data on incremental capacity projects should directly be collected from TSOs and NRAs given the specific nature of each project.

NC TAR. Enagás considers that indicators based on surveys should be limited since stakeholders might have interests that differ from the NC TAR criteria.

General Indicators:

Indicators of Effective Competition:

CO.10 Simulation model

A consistent simulation model would take time to develop and would be costly. ACER would not be in the best position to develop such model.

Indicators of market integration

MI.1 Price convergence MI.2 Price correlation, and MI.3 Price volatility correlation

Enagás agrees with the utilisation of MI.1, MI.2, and MI.3, to evaluate the degree of market integration between markets. However a sufficiently long timeframe should be considered for this purpose. Price convergence at a certain point in time does not necessarily mean that markets are getting integrated.

A metric on price convergence and/or price alignment is useful to assess market functionality. Enagás has already defended the inclusion of this metric in the context of the GTM2 because, while the existence of price convergence is not an indisputable proof that market integration has occurred, the lack of price convergence clearly shows that market integration has failed. Thus, though price convergence is but not sufficient condition for proving the existence market integration, it still is a necessary condition, and should not be disregarded. Therefore it is useful, at least, as a metric to assess whether market integration has failed.

MI.6 Number of supply sources

This indicator does not take into account the market share of each source and therefore its robustness is questionable. This aspect shall be added.

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

The report states that the BAL NC will need to be implemented by October 2015. However, the BAL NC provides the possibility of an extended implementation time until October 2016 and the possibility of applying interim measures until April 2019 subject to the approval of the NRAs. Therefore, the implementation of the BAL NC in all Europe will not be completed before April 2019. On the other hand, according to the figure 8.1 the proposed implementation workplan for the BAL indicators is 2016, Enagás suggest to wait until the BAL NC is completely implemented, in order to ensure the effectiveness of the results of these indicators.

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)

CMP

As previously mentioned, the calculation of CMP.2 and CMP.3 should be adjusted, in case users hold entry and exit capacity at an IP and nominate both sides at the same time, the Shippers may transfer netted nominations, which do not reflect the actual use of the booked capacity in both directions.

CAM

See Q8, Q9, Q10 and Q15

BAL

The description of the indicators is quite clear, although some modifications have been proposed (Please see previous answers). NC CAM amendment for INC. As highlighted in Q8, it is too early to define concrete indicators for assessing whether the incremental capacity process functions efficiently since the concrete functioning of the process is not yet clear. For this reason, Enagás regards the description of the indicators in the annex as less relevant.

NC TAR. As mentioned in Q8 it seems premature to establish performance indicators without having a finalised text of NC TAR. In general the description of the indicators in the Annex seems to be clear and the execution of the indicators appears to be comprehensible.

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

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

Background Documents

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

Contact

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