

This document is a working document. It was prepared by ACER and ENTSOG for the European Commission to facilitate discussions about policy options at the Gas Committee meeting of the 20th June 2018. Following the meeting, ACER and ENTSOG sought the views of the European Commission, given the Commission's power to monitor the correct implementation of the EU law.

The definitive interpretation of Article 19(9) of Regulation 459/2017 is ultimately up to the European Court of Justice.

Implementation of Virtual Interconnection Points

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1. Introduction

The NC CAM introduces Virtual Interconnection Points: the merging of physical IPs connecting two adjacent entry-exit systems into one bookable VIP, which connects neighbouring E/X zones. The idea behind this concept is to reduce complexity for the network users particularly by providing a single capacity service to network users. They just choose from which hub/market area to which neighbouring hub/market area they want gas to be transported, not having to care about the selection of an IP anymore.

Overview of existing and potential Virtual Interconnection Points:

- Existing VIPs on the ES-PT, FR-ES, BE-FR and DE-PL borders
- Potential VIPs on the NL-DE, NL-BE, DE-BE, DE internal, DE-PL, DE-CZ, DE-AT, AT-SK, DE-FR, DE-CH and RO-BG borders

According to the current Regulation, VIPs have to be established by 1 November 2018. However, when implementing this provision, a few issues have arisen whereupon the underlying Art. 19.9 (a) NC CAM was brought up to the FUNC platform with the request to clarify it accordingly.

2. Issue posted to FUNC platform by GTS/GUD

Issue subject as described by GTS and GUD on FUNC platform:

Ambiguity in text of Regulation 459/2017 (NC CAM) regarding the way of implementation of virtual interconnection points (VIPs)

Abstract on FUNC platform:

In art. 19.9 of NC CAM it is stated that TSOs shall implement functional virtual interconnection points (VIPs) where two or more Interconnection Points (IPs) connect the same two adjacent entry-exit systems. Because of a recent letter from the European Commission (EC) containing its interpretation of the condition in art. 19.9 (a) NC CAM, TSOs are faced with uncertainty about the implications hereof for the implementation process. The EC interpretation differs from the chosen approach of TSOs and introduces the risk that shippers could challenge the way TSOs implement VIPs or even challenge the introduction itself, with the aim to cancel their capacity contracts. We think this ambiguity should be taken away by adapting the NC CAM.

3. Legal framework

Article 19(9) of NC CAM:

*where two or more interconnection points connect the same two adjacent entry-exit systems, the adjacent transmission system operators concerned shall offer the **available capacities** at the interconnection points at one virtual interconnection point. In case more than two transmission system operators are involved because capacity in one or both entry-exit systems is marketed by more than one transmission system operator, the virtual interconnection point shall include all of these transmission system operators, to the extent possible. In all cases a virtual interconnection point shall be established only if the following conditions are met:*

- (a) the total technical capacity at the virtual interconnection points shall be equal to or higher than the sum of the technical capacities at each of the interconnection points contributing to the virtual interconnection points;*
- (b) they facilitate the economic and efficient use of the system including but not limited to rules set out in Article 16 of Regulation (EC) No 715/2009.*

Adjacent transmission system operators shall start the necessary analysis and shall establish functional virtual interconnection points no later than 1 November 2018.

And Regulation 715/2009, Article 2 defines:

- 19) 'contracted capacity' means capacity that the transmission system operator has allocated to a network user by means of a transport contract;*
- 20) 'available capacity' means the part of the technical capacity that is not allocated and is still available to the system at that moment;*

And CAM NC 459/2017, Article 3 defines:

- 2) 'interconnection point' means a physical or virtual point connecting adjacent entry-exit systems or connecting an entry-exit system with an interconnector, in so far as these points are subject to booking procedures by network users;*

And CAM NC 459/2017, Article 3 defines:

- 23) 'virtual interconnection point' means two or more interconnection points which connect the same two adjacent entry-exit systems, integrated together for the purposes of providing a single capacity service;*

4. Potential risks stemming from current version of CAM NC Article 19.9

GTS and Gasunie Deutschland point out in their issue description on the FUNC platform, that TSOs intend(ed) to implement different models regarding the implementation of VIPs which vary in particular on how to deal with existing capacity contracts at those IPs to be merged into a VIP:

- models where the existing contracts are transferred from the IP to the VIP, or
- models where the existing contracts remain on the IP and only available capacities are marketed on the VIP, or
- models where all capacity is marketed on the VIP as soon as the last existing contract at the relevant IPs has ended and capacity is marketed until then at the IPs (implying that the date up to which new contracts on the IP can be concluded is defined by the longest lasting existing contract at that IP on the date of the VIP implementation set out by the NC).

Such a variety of implementation models is mainly due to differing legal interpretations of Art. 19.9(a) in the light of positions of the EC and statements being made in the course of judicial procedures which eventually caused uncertainties amongst TSOs at least regarding some VIP implementation approaches in relation to existing contracts. In particular, the EC stated, following a literal interpretation of NC CAM, that only available capacity should be moved to the VIP and that NC CAM constitutes no obligation to move existing capacity contracts from the IP to the VIP.

Since, in addition, the condition of Art. 19.9 (a) NC CAM requires TSOs to only establish a VIP when the total technical capacity on the VIP is equal to or exceeds the sum of technical capacity - being both available and booked capacity - of the respective IPs, following a strictly literal interpretation TSOs risk either violating the Art. 19.9 (a) when they do not transfer existing contracts to the VIP (in this case, the total technical capacity at the VIP is always lower than the sum of technical capacity of respective IPs as only the available capacity at the IP can be transferred to the VIP and constitute the technical capacity at the VIP) or they transfer existing contracts to the VIP without having legal certainty. Either approach implies further risks to the TSOs:

- risk of transferred contracts being cancelled or the risk of network users not accepting VIP conditions specifically regarding tariffs,
- shippers complaining about higher VIP tariffs compared to the tariffs applicable to existing contracts at the IPs,
- cancellation of contracts may lead to an increase of other tariffs which may also constitute ground to appeal for affected network users.

In conclusion, the current wording of Art 19.9 is by some TSO perceived as associated with legal uncertainties and risks which may be mitigated by a legally secure clarification about how to implement VIPs.

5. General approaches:

From ACER and ENTISOG point of view the following general approaches exist:

Approach 1: All capacity goes to the VIP.

- Amend the NC to clarify that the sum of technical capacity of all IPs contributing to the VIP will create a single VIP.
- All existing contracts for capacity at IPs contributing to the VIP shall be transferred to the VIP.
- Postpone latest implementation date of VIP (from 1 November 2018) until an RPM is applicable that leads to harmonised IP tariffs (postage stamp methodology or equalisation of IPs).
- New implementation date:
 - 1 January 2020
 - 1. February 2020: As 1. January 2020 is challenging due to limited availability of resources for all market participants during December and due to operational challenges when switching from former IP related systems to VIP related systems not only from a marketing perspective but even from an infrastructural perspective the 1st of February 2020 might be more practical.

Approach 2: Dual system.

- Change the NC CAM to clarify that the existing contracts remain on the IP and available capacities are marketed on the VIP.
- The NC shall provide for the option (subject to NRA decision) to existing capacity contract holders to transfer on a voluntary basis their contracts from an IP to the respective VIP in those cases where the single IP tariffs are equal to the VIP tariff. NRA may add conditions related to the duration/applicability of this option in the decision stated above.
- Implementation date to be postponed (see option 1).

An alternative resort would be to only postpone the implementation date to find an applicable solution between TSOs, without modifying anything else in the Art. 19.9.

6. Evaluation of general approaches:

Approach 1: Amend the NC to ensure that all technical capacity should be brought to the VIP.

- Reason to wait until application of uniform tariffs based on NC TAR RPM: to mitigate the risk of cancellation because of an increase of tariffs **due to creation of VIP**. As described in NC TAR Art. 22, the VIP price is the weighted average of the IP prices. With harmonised IP tariffs, there won't be any difference between the IP tariffs and VIP tariffs. Therefore, there is no risk of tariff increase due to the creation of VIPs and the potential for challenging contracts due to tariff increases would be removed.
- However,
 - If another RPM is chosen, such as CWD without equalisation, the tariffs at IPs will be different than the tariff at the VIP and network users could challenge the existing contracts.
- Migrating all technical capacity, including capacity of existing long-term contracts, may not be justified legally even in case of equal tariffs at the IPs and VIPs, in particular due to grandfathering concepts.

Approach 2: Dual system.

- Creates a risk for those who already implemented VIPs (by migrating all contracts to the VIP). Unless it is codified that the already existing VIPs won't be touched.
- A dual system would avoid the legal uncertainty and risks regarding the transfer of existing contracts to a VIP by leaving existing contracts at the IPs for the duration they have been concluded for.
- From an operational perspective, a dual system can be more complex (e.g. nomination and matching procedure) for TSOs and network users to operate both IPs and VIP in parallel however it might be feasible solution for some TSOs and network users.
- In addition, there might be shippers that pay a different tariff at the VIP compared to shippers with a contract at an IP. A TSO or NRA might have to argue that such an approach is legitimate to apply. The NC CAM (and potentially also NC TAR) amendment should provide with clarity that such a tariff arrangement in a dual system is legitimate.
- In cases where the single IP tariffs are equal to the VIP tariff an option for existing capacity contract holders to transfer their contracts from an IP to the respective VIP on a voluntary basis shall be provided. This should be subject to NRA decision. Such a feature would give network users the right to request the migration of their existing contracts to the VIP on a voluntary basis. By definition, potential legal challenges by network users regarding the transfer won't occur. However, if applied in cases where the single IP tariffs are not equal to the VIP tariff, only network users benefitting from such a transfer from a monetary perspective would make use of this right. Hence, in countries where the single IP tariffs are not equal to the VIP tariff, this approach will cause shippers with higher IP-tariffs than VIP-tariffs transferring their capacities to the VIP. Contracts with lower IP-tariffs than VIP-tariffs will remain at the IP implying that VIP-tariffs would increase over time. Under a non-price cap regime, all transport tariffs – unless fixed tariffs are in place – also increase if contracts with IP tariffs higher than the VIP tariff are transferred to the VIP.

- Postpone implementation date: -TSOs need at least 6 months after entering into force for implementing. Only once entering into force the TSOs have certainty for investments. - The likelihood of voluntary transfer from IP's to VIP's will increase because of the proposed rpm and in some cases, result in having no more existing contracts at IP's. This would make the dual system obsolete.

7. Article 19.9 NC CAM amendment proposals:

Approach 1: All capacity goes to the VIP

Article 19(9) of NC CAM:

*where two or more interconnection points connect the same two adjacent entry-exit systems, the adjacent transmission system operators concerned shall offer the available **capacities** at the interconnection points at the VIP. More than one VIP may be established in case that the establishment of only one VIP is not possible under conditions a and b. Capacities contracted before creation of the VIP on the IPs contributing to the virtual interconnection point before creation of the latter, shall all be transferred to such virtual interconnection point as from the day of the establishment of the virtual interconnection point. In case more than two transmission system operators are involved because capacity in one or both entry-exit systems is marketed by more than one transmission system operator, the virtual interconnection point or virtual interconnection points shall include all of these transmission system operators, to the extent possible. In all cases a virtual interconnection point shall be established only if the following conditions are met:*

- (a) the total technical capacity after establishment of the virtual interconnection point which includes the sum of the available and the booked firm capacity at the IPs contributing to the VIP shall be equal to or higher than the sum of the technical capacity of the respective interconnection points before the establishment of such VIP*
- (b) they facilitate the economic and efficient use of the system including but not limited to rules set out in Article 16 of Regulation (EC) No 715/2009.*

Adjacent transmission system operators shall start the necessary analysis and shall establish functional virtual interconnection points by 1. January/ February 2020. The transmission system operators concerned may jointly decide to establish virtual interconnection points at an earlier date.

Approach 2: Dual system

Article 19(9) of NC CAM:

*where two or more interconnection points connect the same two adjacent entry-exit systems, the adjacent transmission system operators concerned shall offer the **available capacities** at the interconnection points at one VIP. More than one VIPs may be established in case that the establishment of only one VIP is not possible under conditions a and b. Capacities contracted on the IPs contributing to the virtual interconnection point before creation of the latter shall remain at the respective IP. Upon decision of the relevant NRA(s) and in cases where the single IP tariffs are equal to the VIP tariff, Network Users holding an existing capacity contract at the concerned IPs shall be entitled to transfer such contract to the VIP. Capacity contracts which have been concluded at or transferred to a VIP before and after entering into force of this provision cannot be transferred back to the relevant IPs.*

In case more than two transmission system operators are involved because capacity in one or both entry-exit systems is marketed by more than one transmission system operator, the virtual interconnection point shall include all of these transmission system operators, to the extent possible. In all cases a virtual interconnection point or virtual interconnection points shall be established only if the following conditions are met:

- (a) the total technical capacity after establishment of the virtual interconnection point which includes the sum of the available and the booked firm capacity at the IPs contributing to the VIP shall be equal to or higher than the sum of the technical capacity of the respective interconnection points before the establishment of such VIP*
- (b) they facilitate the economic and efficient use of the system including but not limited to rules set out in Article 16 of Regulation (EC) No 715/2009.*

Adjacent transmission system operators shall start the necessary analysis and shall establish functional virtual interconnection points no later than 1 January/ February 2020. The transmission system operators concerned may jointly decide to establish virtual interconnection points at an earlier date.