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COMMISSION REGULATION (EU) .../...

of **XXX**

establishing a network code on harmonised transmission tariff structures for gas

(Text with EEA relevance)

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005 ⁽¹⁾, and in particular Article 6(11) thereof,

Whereas:

- (1) In line with Regulation (EC) No 715/2009, it is necessary to establish a network code on harmonised transmission tariff structures for gas, and set out the Union-wide rules which have the objectives of contributing to market integration, enhancing security of supply and promoting the interconnection between gas networks.
- (2) A crucial step in reaching these objectives is to increase the transparency of transmission tariff structures and procedures towards setting them. Therefore it is necessary to set out the requirements for publishing the information related to the determination of the revenues of transmission system operators and to the derivation of different transmission and non-transmission tariffs. These requirements should enable network users to understand better the tariffs set for both transmission services and non-transmission services, as well as how such tariffs have changed, are set and may change. Additionally, network users should be able to understand the costs underlying transmission tariffs and to forecast transmission tariffs to a reasonable extent.
- (3) After the introduction of the concept of the entry-exit system by Regulation (EC) No 715/2009, transmission costs are no longer directly associated to one specific route as entry and exit capacity can be contracted separately, and network users can have gas transported from any entry to any exit point. Under this framework, the transmission system operator decides the most efficient way of flowing gas through the system. Hence, in order to achieve and ensure a reasonable level of cost reflectivity and predictability in such a system, transmission tariffs need to be based on a reference price methodology using specific cost drivers such as distance, technical capacity or forecasted contracted capacity. The guiding principles in order to apply a consistent and transparent reference price methodology should be set out. The obligation to consult on the proposed reference price methodology should be laid down. Where the proposed reference price methodology is other than the capacity weighted distance

⁽¹⁾ OJ L 211, 14.8.2009, p. 36.

reference price methodology, the latter should serve as a counterfactual for comparison with the proposed reference price methodology.

- (4) Transmission system operators in certain entry-exit systems transport significantly more gas into other systems than for consumption into their own entry-exit system. Consequently, to shelter such captive customers from risks related to large transit flows, an asset cost split would be an appropriate mechanism applied to delineate transmission assets between their use for the purposes of supplying customers within the entry-exit system and their use for transporting gas across the system.
- (5) In order to promote stability of transmission tariffs for network users, to foster financial stability and to avoid detrimental effects on the revenue and cash flow positions of transmission system operators, principles for revenue reconciliation should be set out.
- (6) In addition, rules should be set out on tariff principles for incremental capacity realised in a market-based manner according to the process set out in Articles 22 to 26 of Commission Regulation (EU) No NEWCAM XXX. In case realisation of incremental capacity leads to a level of cross-subsidisation that cannot be justified, as captive costumers would be exposed to a large share of the volume risk, this Regulation should introduce mechanisms to alleviate such risks.
- (7) This Regulation should be applied taking into account the specific nature of interconnectors. In cases where this specific nature has been acknowledged at European level by an exemption in accordance with Article 36 of Directive 2009/73/EC of the European Parliament and of the Council² or by other means, national regulatory authorities should have the power to grant a derogation from requirements of this Regulation which would jeopardise the efficient operation of such interconnectors. However, this Regulation should be applicable to the non-exempted part of major new infrastructures which have received an exemption pursuant to Article 36 of Directive 2009/73/EC from Article 41(6), (8) and (10) of that Directive.
- (8) This Regulation should be without prejudice to application of Union and national competition rules, in particular the prohibitions of restrictive agreements (Article 101 of the Treaty on the Functioning of the European Union) and of abuse of a dominant position (Article 102 of the Treaty on the Functioning of the European Union). The harmonised transmission tariffs put in place should be designed in such a way as to avoid foreclosure of downstream supply markets.
- (9) National regulatory authorities and transmission system operators should have regard to best practices and endeavours to harmonise processes for the implementation of this Regulation. Acting in accordance with Article 7 of Regulation (EC) No 713/2009 of the European Parliament and of the Council³, the Agency for the Cooperation of Energy Regulators and the national regulatory authorities should ensure that rules on harmonised transmission tariff structures for gas are implemented across the Union in the most effective way.

⁽²⁾ Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (OJ L 211, 14.8.2009, p. 94).

⁽³⁾ Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators (OJ L 211, 14.8.2009, p. 1).

- (10) The measures provided for in this Regulation are in accordance with the opinion of the Committee established in accordance with Article 51 of Directive 2009/73/EC,

HAS ADOPTED THIS REGULATION:

CHAPTER I GENERAL PROVISIONS

Article 1 Subject matter

This Regulation establishes a network code setting out the rules on harmonised transmission tariff structures for gas, including rules on the application of a reference price methodology, the associated consultation and publication requirements as well as the calculation of reserve prices for standard capacity products.

Article 2 Scope

1. This Regulation shall apply to all entry points and all exit points with the exception of Chapters III, V, VI, Article 28, Article 31(2) and (3) and Chapter IX which shall apply only to interconnection points. Chapters III, V, VI, Article 28 and Chapter IX shall apply to entry points from or exit points to third countries, or both, where the national regulatory authority takes a decision to apply Commission Regulation (EU) NEWCAM XXX at those points.
2. This Regulation shall not apply in Member States which have been granted a derogation under Article 49 of Directive 2009/73/EC, for the duration of derogation.

Article 3 Definitions

For the purposes of this Regulation, the definitions in Article 2 of Regulation (EC) No 715/2009, Article 3 of Commission Regulation (EU) NEWCAM XXX, Article 3 of Commission Regulation (EU) No 312/2014⁴, Article 2 of Commission Regulation (EU) No 2015/703⁵ as well as Article 2 of Directive 2009/73/EC shall apply. In addition, the following definitions shall apply:

1. 'reference price' means the price for a capacity product for firm capacity with a duration of one year, which is applicable at entry and exit points and which is used to set capacity-based transmission tariffs;
2. 'reference price methodology' means the methodology applied to the part of the transmission services revenue to be recovered from capacity-based transmission tariffs with the aim of deriving reference prices;

⁽⁴⁾ Commission Regulation No 312/2014 of 26 March 2014 establishing a Network Code on Gas Balancing of Transmission Networks (OJ L 91, 27.3.2014, p. 15).

⁽⁵⁾ Commission Regulation No 2015/703 of 30 April 2015 establishing a network code on interoperability and data exchange rules (OJ L 113, 1.5.2015, p. 13).

3. 'non-price cap regime' means a regulatory regime, including the revenue cap, rate of return and cost plus regime, under which the national regulatory authority sets the allowed revenue for the transmission system operator;
4. 'non-transmission services revenue' means the part of the allowed or target revenue which is recovered by non-transmission tariffs;
5. 'regulatory period' means the time period for which the national regulatory authority sets the general rules for the allowed or target revenue;
6. 'transmission services revenue' means the part of the allowed or target revenue which is recovered by transmission tariffs;
7. 'transmission tariffs' means the charges payable by network users for transmission services provided to them.
8. 'homogeneous group of points' means a group of one of the following types of points: entry interconnection points, exit interconnection points, domestic entry points, domestic exit points, entry points from storage facilities, exit points to storage facilities, entry points from liquefied natural gas facilities (hereinafter, referred to as 'LNG facilities'), exit points to LNG facilities and entry points from production facilities;
9. 'allowed revenue' means the sum of transmission services revenue and non-transmission services revenue for the provision of services by the transmission system operator for a specific time period within a given regulatory period which such transmission system operator is entitled to obtain under a non-price cap regime and which is set or approved by the national regulatory authority;
10. 'transmission services' means the regulated services that are provided by the transmission system operator within the entry-exit system for the purpose of transmission;
11. 'non-transmission tariffs' means the charges payable by network users for non-transmission services provided to them;
12. 'target revenue' means the sum of expected transmission services revenue calculated in accordance with the principles set out in Article 13(1) of Regulation (EC) No 715/2009 and expected non-transmission services revenue for the provision of services by the transmission system operator for a specific time period within a given regulatory period under a price cap regime;
13. 'non-transmission services' means the regulated services other than transmission services and other than services regulated by Regulation (EU) No 312/2014 that are provided by the transmission system operator;
14. 'multiplier' means the factor applied to the respective proportion of the reference price in order to calculate the reserve price for a non-yearly standard capacity product;
15. 'price cap regime' means a regulatory regime under which the national regulatory authority sets a maximum transmission tariff based on the target revenue;
16. 'cost driver' means the factor of the transmission system operator's activity which is correlated to the costs of that transmission system operator;
17. 'cluster of entry or exit points' means a homogeneous group of points or group of entry points or of exit points located within the vicinity of each other and which are

considered as, respectively, one entry point or one exit point for the application of the reference price methodology;

18. 'flow scenario' means a combination of an entry point and an exit point for which there is at least one pipeline route allowing to flow gas into the transmission network at that entry point and out of the transmission network at that exit point, irrespective of whether the capacity is contracted at that entry point and that exit point;
19. 'seasonal factor' means the factor reflecting the variation of demand within the year which may be applied in combination with the relevant multiplier;
20. 'fixed payable price' means a payable price calculated in accordance with Article 24(2) where the reserve price is not subject to any adjustments;
21. 'tariff period' means the time period during which a particular level of reference price is applicable, which minimum duration is one year and maximum duration is the duration of the regulatory period;
22. 'regulatory account' means the account aggregating at least under- and over-recovery of the transmission services revenue under a non-price cap regime;
23. 'auction premium' means the difference between the clearing price and the reserve price in an auction;
24. 'floating payable price' means a payable price calculated in accordance with Article 24(1) where the reserve price is subject to adjustments such as revenue reconciliation, adjustment of the allowed revenue or adjustment of the forecasted contracted capacity;
25. 'non-transmission service tariff methodology' means the methodology applied to the associated non-transmission services revenue with the aim of deriving a tariff for a given non-transmission service;
26. 'f-factor' means the minimum share of the present value of binding commitments of network users for contracting capacity calculated as set out in Article 33(1)(a) to be covered by the present value of the estimated increase in the allowed or target revenue of the transmission system operator associated with the incremental capacity included in the respective offer level as set out in Article 33(1)(b).

Article 4

Transmission and non-transmission services and tariffs

1. A given service shall be attributed to transmission services where both of the following criteria are met:
 - (a) the costs of such service are caused by the cost drivers of both technical or forecasted contracted capacity and distance;
 - (b) the costs of such service are related to the investment in and operation of the regulated asset base for the provision of transmission services.

Where any of the criteria set out in points (a) and (b) are not complied with, a given service may be attributed to either transmission or non-transmission services subject to the findings of the periodic consultation by the transmission system operator(s) or the national regulatory authority and decision by the national regulatory authority, as set out in Articles 26 and 27.

2. The transmission services revenue shall be recovered by capacity-based transmission tariffs.

As an exception, subject to the approval of the national regulatory authority, a part of the transmission services revenue may be recovered only by the following commodity-based transmission tariffs which are set separately from each other:

- (a) a flow-based charge, which shall comply with all of the following criteria:
 - (i) levied for the purpose of covering the costs mainly driven by the quantity of the gas flow;
 - (ii) calculated on the basis of forecasted or historical allocations, or both, and set in such a way that it is the same at all entry points and the same at all exit points;
 - (iii) expressed in monetary terms or in kind.
 - (b) a complementary revenue recovery charge, which shall comply with all of the following criteria:
 - (i) levied for the purpose of managing revenue under- and over-recovery;
 - (ii) calculated on the basis of forecasted or historical allocations, or both;
 - (iii) applied at points other than interconnection points;
 - (iv) applied after the national regulatory authority has made an assessment of its cost-reflectivity and its impact on cross-subsidisation between interconnection points and points other than interconnection points and has submitted this assessment to the Agency for the Cooperation of Energy Regulators (hereinafter, 'the Agency') for information.
3. The non-transmission services revenue shall be recovered by non-transmission tariffs applicable for a given non-transmission service. Such tariffs shall be as follows:
 - (a) cost-reflective, non-discriminatory, objective and transparent;
 - (b) charged to the beneficiaries of a given non-transmission service with the aim of minimising cross-subsidisation between network users within or outside a Member State, or both.

Where according to the national regulatory authority a given non-transmission service benefits all network users, the costs for such service shall be recovered from all network users.

Article 5

Cost allocation assessments

1. The transmission system operator or the national regulatory authority, as decided by the national regulatory authority, shall perform the following assessments and shall publish them as part of the consultation referred to in Article 26:
 - (a) a cost allocation assessment relating to the transmission services revenue to be recovered by capacity-based transmission tariffs and based exclusively on the cost drivers of technical or forecasted contracted capacity or technical or forecasted contracted capacity and distance;

- (b) a cost allocation assessment relating to the transmission services revenue to be recovered by commodity-based transmission tariffs, if any, and based exclusively on the cost drivers of the amount of gas flows or the amount of gas flows and distance.
2. The cost allocation assessments shall indicate the degree of cross-subsidisation between domestic and cross-border network users based on the proposed reference price methodology.
3. The cost allocation assessment referred to in paragraph 1(a) shall be carried out as follows:
- (a) the transmission services revenue to be obtained from domestic network users at both all entry points and all exit points shall be divided by the value of the relevant cost driver(s) for domestic network users in accordance with the following formula:

$$(Rca : CDca)_{DM} = \frac{Rca_{DM}}{CDca_{DM}}$$

Where:

Rca_{DM} is the revenue from domestic network users;

$CDca_{DM}$ is the value of cost driver(s) for domestic network users.

- (b) the transmission services revenue to be obtained from cross-border network users at both all entry points and all exit points shall be divided by the value of the relevant cost driver(s) for cross-border network users in accordance with the following formula:

$$(Rca : CDca)_{CB} = \frac{Rca_{CB}}{CDca_{CB}}$$

Where:

Rca_{CB} is the revenue from cross-border network users;

$CDca_{CB}$ is the value of cost driver(s) for cross-border network users.

- (c) the comparison between the ratios referred to in points (a) and (b) shall be calculated in accordance with the following formula:

$$\frac{|(Rca : CDca)_{DM} - (Rca : CDca)_{CB}|}{[(Rca : CDca)_{DM} + (Rca : CDca)_{CB}] / 2}$$

4. The cost allocation assessment referred to in paragraph 1(b) shall be carried out as follows:
- (a) the transmission services revenue to be obtained from domestic network users at both all entry points and all exit points shall be divided by the value of the relevant cost driver(s) for domestic network users in accordance with the following formula:

$$(Rco : CDco)_{DM} = \frac{Rco_{DM}}{CDco_{DM}}$$

Where:

Rco_{DM} is the revenue from domestic network users;

$CDco_{DM}$ is the value of cost driver(s) for domestic network users.

- (b) the transmission services revenue to be obtained from cross-border network users at both all entry points and all exit points shall be divided by the value of the relevant cost driver(s) for cross-border network users in accordance with the following formula:

$$(Rco : CDco)_{CB} = \frac{Rco_{CB}}{CDco_{CB}}$$

Where:

Rco_{CB} is the revenue from cross-border network users;

$CDco_{CB}$ is the value of cost driver(s) for cross-border network users.

- (c) the comparison between the ratios referred to in points (a) and (b) shall be calculated in accordance with the following formula:

$$\frac{|(Rco : CDco)_{DM} - (Rco : CDco)_{CB}|}{[(Rco : CDco)_{DM} + (Rco : CDco)_{CB}] / 2}$$

5. The transmission services revenue to be obtained from domestic network users at entry points referred to in paragraphs 3(a) and 4(a) shall be calculated as follows:
- the amount of allocated capacity or, respectively, flows attributed to the provision of transmission services to cross-border network users at all entry points shall be deemed equal to the amount of capacity or, respectively, flows attributed to the provision of transmission services to cross-border network users at all exit points;
 - the capacity and, respectively, flows, determined as set out in point (a) of this paragraph shall be used to calculate the transmission services revenue to be obtained from cross-border network users at entry points;
 - the difference between the overall transmission services revenue to be obtained at entry points and the resulting value referred to in point (b) of this paragraph shall be equal to the transmission services revenue to be obtained from domestic network users at entry points.
6. Where distance is used as a cost driver in combination with technical or forecasted contracted capacity or flows, the capacity weighted average or, respectively, commodity weighted average distance shall be used. Where the results of the assessments referred to in paragraph 3 or, respectively paragraph 4, exceed 10 percent, the national regulatory authority shall provide the justification for such results in the decision referred to in Article 27(3).

7. Where the asset cost split referred to in Article 9 is applied, the cost allocation assessments shall be applied to the entire regulated asset base of the transmission system operator.

CHAPTER II REFERENCE PRICE METHODOLOGIES

Article 6

Reference price methodology application

1. The reference price methodology shall be set or approved by the national regulatory authority as set out in Article 27. The reference price methodology to be applied shall be subject to the findings of the periodic consultation by the transmission system operator(s) or the national regulatory authority, as decided by the national regulatory authority, as set out in Article 26.
2. The application of the reference price methodology shall provide a reference price.
3. The same reference price methodology shall be applied to all entry and exit points in a given entry-exit system within the same Member State subject to the following exceptions:
 - (a) the same or different reference price methodologies may be applied separately for each group of network users – supplying gas to customers within an entry-exit system or to network users in other entry-exit system(s) – where an asset cost split is applied in accordance with Article 9;
 - (b) the same reference price methodology may be applied separately where more than one transmission system operator is active in an entry-exit system within a Member State and the national regulatory authority has made a decision in accordance with to Article 11(2);
 - (c) different reference price methodologies may be applied separately where more than one transmission system operator is active in an entry-exit system within a Member State and the national regulatory authority has made a decision in accordance with Article 11(3);
 - (d) the same reference price methodology may be applied jointly or separately or different reference price methodologies may be applied separately where more than one transmission system operator is active in an entry-exit system covering more than one Member State.
4. Adjustments to the application of the reference price methodology to all entry and exit points may only be made as a result of one or more of the following:
 - (a) benchmarking by the national regulatory authority whereby the reference prices at a given entry or exit point are decreased so that the resulting values meet the competitive level of reference prices;
 - (b) equalisation by the transmission system operator(s) or the national regulatory authority, as decided by the national regulatory authority, whereby the same reference price is applied to some or all points within a homogeneous group of points;

- (c) rescaling by the transmission system operator(s) or the national regulatory authority, as decided by the national regulatory authority, whereby the reference prices at all entry or all exit points, or both, are adjusted either by multiplying their values by a constant or by adding to or subtracting from their values a constant;
- (d) application of a discount to capacity-based transmission tariffs at entry points from and exit points to storage facilities in accordance with Article 10.

Article 7

Choice of a reference price methodology

The reference price methodology shall comply with Article 13 of Regulation (EC) No 715/2009 and with the following requirements. They shall:

- (a) enable network users to reproduce the calculation of reference prices and their accurate forecast;
- (b) take into account the actual costs incurred for the provision of transmission services considering the level of complexity of the transmission network and having regard to the comparison against the capacity weighted distance reference price methodology set out in Article 8;
- (c) ensure non-discrimination and prevent undue cross-subsidisation including by taking into account the cost allocation assessments set out in Article 5;
- (d) ensure that the resulting reference prices do not distort cross-border trade.

Article 8

Capacity weighted distance reference price methodology

1. The parameters for the capacity weighted distance reference price methodology shall be as follows:
 - (a) the part of the transmission services revenue to be recovered from capacity-based transmission tariffs;
 - (b) the forecasted contracted capacity at each entry point or a cluster of entry points and at each exit point or a cluster of exit points;
 - (c) where entry points and exit points can be combined in a flow scenario, the shortest distance of the pipeline routes between an entry point or a cluster of entry points and an exit point or a cluster of exit points;
 - (d) the relevant combinations of entry points and exit points, where some entry points and some exit points cannot be combined in a flow scenario;
 - (e) the entry-exit split referred to in Article 30(1)(b)(iv)(2) shall be 50/50.

Where entry points and exit points cannot be combined in a flow scenario, this combination of entry and exit points shall not be taken into account.
2. The reference prices shall be derived in the following sequential steps:
 - (a) the weighted average distance for each entry point or each cluster of entry points and for each exit point or each cluster of exit points shall be calculated, taking into account, where relevant, the combinations referred to in paragraph 1(d), in accordance with the following respective formulas:

- (i) for an entry point or cluster of entry points, as the sum of the products of capacity at each exit point or cluster of exit points and the distance from this entry point or cluster of entry points to each exit point or cluster of exit points, divided by the sum of capacities at each exit point:

$$AD_{En} = \frac{\sum_{all\ Ex} CAP_{Ex} \times D_{En,Ex}}{\sum_{all\ Ex} CAP_{Ex}}$$

Where:

AD_{En} is the weighted average distance for an entry point or cluster of entry points;

CAP_{Ex} is the forecasted contracted capacity at an exit point or cluster of exit points;

$D_{En,Ex}$ is the distance between a given entry point or cluster of entry points and a given exit point or cluster of exit points referred to in paragraph 1(c).

- (ii) for an exit point or cluster of exit points, as the sum of the products of capacity at each entry point or cluster of entry points and the distance to this exit point or cluster of exit points from each entry point or cluster of entry points, divided by the sum of capacities at each entry point or cluster of entry points:

$$AD_{Ex} = \frac{\sum_{all\ En} CAP_{En} \times D_{En,Ex}}{\sum_{all\ En} CAP_{En}}$$

Where:

AD_{Ex} is the weighted average distance for an exit point or cluster of exit points;

CAP_{En} is the forecasted contracted capacity at an entry point;

$D_{En,Ex}$ is the distance between a given entry point or cluster of entry points and a given exit point or cluster of exit points referred to in paragraph 1(c).

- (b) the weight of cost for each entry point or each cluster of entry points and for each exit point or each cluster of exit points shall be calculated in accordance with the following respective formulas:

$$W_{c,En} = \frac{CAP_{En} \times AD_{En}}{\sum_{all\ En} CAP_{En} \times AD_{En}}$$

$$W_{c,Ex} = \frac{CAP_{Ex} \times AD_{Ex}}{\sum_{all\ Ex} CAP_{Ex} \times AD_{Ex}}$$

Where:

$W_{c,En}$ is the weight of cost for a given entry point or a cluster of entry points;

$W_{c,Ex}$ is the weight of cost for a given exit point or a cluster of exit points;

AD_{En} is the weighted average distance for an entry point or a cluster of entry points;
 AD_{Ex} is the weighted average distance for an exit point or a cluster of exit points;
 CAP_{En} is the forecasted contracted capacity at an entry point or a cluster of entry points;
 CAP_{Ex} is the forecasted contracted capacity at an exit point or a cluster of exit points.

- (c) the part of the transmission services revenue to be recovered from capacity-based transmission tariffs at all entry points and the part of the transmission services revenue to be recovered from capacity-based transmission tariffs at all exit points shall be identified by applying the entry-exit split;
- (d) the part of the transmission services revenue to be recovered from capacity-based transmission tariffs at each entry point or each cluster of entry points and for each exit point or each cluster of exit points shall be calculated in accordance with the following respective formulas:

$$R_{En} = W_{c,En} \times R_{\Sigma En}$$

$$R_{Ex} = W_{c,Ex} \times R_{\Sigma Ex}$$

Where:

$W_{c,En}$ is the weight of cost for a given entry point or a cluster of entry points;

$W_{c,Ex}$ is the weight of cost for a given exit point or a cluster of exit points;

R_{En} is the part of the transmission services revenue to be recovered from capacity-based transmission tariffs at an entry point or a cluster of entry points;

R_{Ex} is the part of the transmission services revenue to be recovered from capacity-based transmission tariffs at an exit point or a cluster of exit points;

$R_{\Sigma En}$ is the part of the transmission services revenue to be recovered from capacity-based transmission tariffs at all entry points;

$R_{\Sigma Ex}$ is the part of the transmission services revenue to be recovered from capacity-based transmission tariffs at all exit points.

- (e) the resulting values referred to in point (d) by the forecasted contracted capacity at each entry point or each cluster of entry points and at each exit point or each cluster of exit points shall be divided in accordance with the following respective formulas:

$$T_{En} = \frac{R_{En}}{CAP_{En}}$$

$$T_{Ex} = \frac{R_{Ex}}{CAP_{Ex}}$$

Where:

T_{En} is the reference price at an entry point or each entry point within a cluster of entry points;

T_{Ex} is the reference price at an exit point or each exit point within a cluster of exit points;

CAP_{En} is the forecasted contracted capacity at an entry point or a cluster of entry points;

CAP_{Ex} is the forecasted contracted capacity at an exit point or a cluster of exit points.

Article 9 *Asset cost split*

1. An asset cost split, as set out in paragraph 2 may be applied, subject to the approval of the national regulatory authority, as a part of the reference price methodology where the following conditions are complied with:

- (a) the application of asset cost split removes the risks related to under-recovery for a respective asset for domestic customers in a given transmission system;
- (b) the ratio between the total technical cross-border exit capacity and the daily peak demand of domestic network users occurring with a statistical probability of once in 20 years is equal to at least 3:1.

Alternatively, subject to the approval of the national regulatory authority, an asset cost split, as set out in paragraph 2 may be applied as a part of the reference price methodology where the asset cost split is applied in case of gas flows between one or more third country(ies) across the territory of a Member State.

2. The asset cost split shall constitute the first step of the application of the reference price methodology and shall be applied by the transmission system operator or the national regulatory authority, as decided by the national regulatory authority, in accordance with the following sequential steps:

- (a) identification of the following aspects:
 - (1) the respective groups of network users supplying gas to customers within an entry-exit system or to other entry-exit system(s);
 - (2) the primary assets, meaning core transmission system assets that are directly linked to the provision of transmission services, such as pipelines and compressor stations;
 - (3) the supporting assets, meaning other operational assets that are indirectly linked to the provision of transmission services, such as dispatching centres and headquarters of the transmission system operator;
 - (4) the values of the assets referred to in points (2) and (3), calculated in accordance with the regulatory principles applied when determining the regulatory asset base.
- (b) allocation of the value of the primary assets to the groups of network users referred to in point (a) according to the use of these assets for providing transmission services to each such group, taking into account at least:

- (1) the relevant characteristics of the transmission system, including the quantity and the direction of the gas flows to cover gas demand under peak conditions;
 - (2) the necessary surplus capacities defined in line with the objectives for security of supply, diversification of sources and promotion of competition in the gas commodity market.
- (c) where primary assets are jointly used for the provision of transmission services to different groups of network users as set out in point (b), allocation of the value of these assets according to the ratio of technical capacity necessary for the provision of transmission services to those groups through the associated pipeline segments;
 - (d) allocation of the value of the supporting assets to the groups of network users referred to in point (a) according to the ratio established in point (c) or in proportion to the values of the primary assets allocated to the respective groups of network users as set out in point (b);
 - (e) summing up of the values of the primary and the supporting assets allocated to each group of network users in accordance with points (b) to (d) and setting the associated transmission services revenues based on the annual costs comprising the return on the identified asset value and associated operational costs and depreciation;
 - (f) identification, for each group of network users referred to in point (a), of the relevant entry and exit points and the corresponding forecasted contracted capacity.

Article 10

Discounts applied at entry points from and exit points to storage facilities and at entry points from LNG facilities

1. As part of the decision referred to in Article 27(3), when the national regulatory authority sets or approves the capacity-based transmission tariffs at entry points from and exit points to storage facilities, a discount of at least 50% shall be applied to the respective capacity-based transmission tariffs. National regulatory authorities, coordinating with national regulatory authorities in neighbouring Member States with a view to ensuring a level playing field between storage operators, may approve discounts higher than 50%.
2. Subject to the approval of the national regulatory authority a lower discount of less than 50% may be applied at entry points from and exit points to storage facilities that are directly connected:
 - (a) to the transmission system of two or more transmission system operators in adjacent entry and exit systems; or
 - (b) to a transmission system or a distribution system.
3. As part of the decision referred to in Article 27(3), when the national regulatory authority sets or approves the capacity-based transmission tariffs at entry points from LNG facilities, that authority may apply a discount to the respective capacity-based transmission tariffs.

Article 11
Rules for entry-exit systems within a Member State
where more than one transmission system operator is active

1. The same reference price methodology shall be applied jointly to all transmission system operators within an entry-exit system within a Member State.

In order to allow for the proper application of the same reference price methodology jointly, the national regulatory authority shall establish an effective inter-transmission system operator compensation mechanism.

2. As an exception to the first subparagraph of paragraph 1 and subject to paragraph 4, the national regulatory authority may decide that the reference price methodology is applied separately by each transmission system operator within an entry-exit system. As a result of applying the reference price methodology separately, the transmission services revenue of the transmission system operators involved shall be adjusted accordingly.

3. As an exception to Article 6(4), when planning entry-exit system mergers, the national regulatory authority may decide on intermediate steps allowing for different reference price methodologies to be applied separately to each transmission system operator within the entry-exit systems concerned. Such a decision shall set out the time period for the application of the intermediate steps. The national regulatory authority or the transmission system operators, as decided by the national regulatory authority, shall carry out an impact assessment and a cost benefit analysis prior to implementing such intermediate steps.

As a result of applying different reference price methodologies separately, the transmission services revenue of the transmission system operators involved shall be adjusted accordingly.

4. The decision referred to in paragraph 2 or, respectively, paragraph 3 may be taken where the following conditions are complied with:

- (a) an effective inter-transmission system operator compensation mechanism is established with the aim to:
 - (i) prevent detrimental effects on the transmission services revenue of the transmission system operators involved;
 - (ii) avoid cross-subsidisation between different groups of network users supplying gas to customers within an entry-exit system or to network users in other entry-exit system(s);
- (b) such separate application ensures that the costs correspond to those of an efficient transmission system operator.

5. The maximum time period set out in the decision referred to in paragraph 2 or, respectively, paragraph 3 shall be no later than five years as from the date referred to in Article 42(2). Sufficiently in advance of the date set out in that decision, the national regulatory authority may decide to postpone this date in the following sequential steps:

- (a) the national regulatory authority shall send to the Agency a request for an opinion on the duration of such extension accompanied by the following documents:
 - (i) a detailed explanation of the measures taken towards applying the reference price methodology as set out in paragraph 1;
 - (ii) a reasoned justification for the necessity to postpone the date set out in the decision referred to in paragraph 2 or, respectively, paragraph 3.
- (b) the Agency shall deliver its opinion within three months following the receipt of the request referred to in point (a);
- (c) the national regulatory authority shall take and publish a motivated decision within one month following the receipt of the opinion referred to in point (b).

The national regulatory authority shall submit the decision referred to in paragraph 2 or, respectively, in paragraph 3 and, if applicable, the decision to postpone referred to in the second subparagraph to the Agency for information.

- 6. At the same time as the consultation in accordance with Article 26, the national regulatory authority shall conduct a consultation on the principles of an effective inter-transmission system operator compensation mechanism referred to in paragraphs 1 and 4 and its consequences on the tariff levels. Together with the decision referred to in Article 27(3), the national regulatory authority shall take a motivated decision on the inter-transmission system operator compensation mechanism to be applied and shall publish this decision together with the consultation responses received.
- 7. The reserve price referred to in Article 22(1) shall be calculated as set out therein. Where paragraph 2 or paragraph 3 is applied, the following two calculations shall be carried out:
 - (a) the calculation set out in Article 22(1) shall be carried out by each transmission system operator involved;
 - (b) the weighted average of the resulting values referred to in point (a) shall be calculated in accordance with the formula set out in Article 22(1)(b), mutatis mutandis.
- 8. The consultation referred to in Article 26 shall be conducted by all transmission system operators jointly or by the national regulatory authority. Where paragraph 2 or paragraph 3 is applied, such consultation shall be conducted by each transmission system operator separately or by the national regulatory authority.
- 9. The information referred to in Articles 29 and 30 shall be published on an aggregated level for all transmission system operators involved. Where paragraph 2 or paragraph 3 is applied, the following two actions shall be carried out:
 - (a) such information shall be published individually for each transmission system operator involved;
 - (b) the information on the entry-exit split referred to in Article 30(1)(b)(v)(2) for the entry-exit system shall be published by the national regulatory authority.

CHAPTER III RESERVE PRICES

Article 12
General provisions

1. For yearly standard capacity products for firm capacity, the reference prices shall be used as reserve prices. For non-yearly standard capacity products for firm capacity, the reserve prices shall be calculated as set out in this Chapter. For both yearly and non-yearly standard capacity products for interruptible capacity, the reserve prices shall be calculated as set out in this Chapter. The level of multipliers and of seasonal factors, set out in accordance with Article 13, and the level of discounts for the standard capacity products for interruptible capacity, set out in accordance with Article 16 may be different at interconnection points.
2. The respective reserve prices published according to Article 29 shall be binding for the first gas year, beginning as from 1 October, or beyond the first gas year in case of fixed payable price, beginning after the annual yearly capacity auction unless:
 - (a) the discounts for monthly and daily standard capacity products for interruptible capacity are recalculated within the tariff period if the probability of interruption referred to in Article 16 changes by more than twenty percent;
 - (b) the reference price is recalculated within the tariff period due to exceptional circumstances under which the non-adjustment of tariff levels would jeopardise the operation of the transmission system operator.

Article 13
Level of multipliers and seasonal factors

1. The level of multipliers shall fall within the following ranges:
 - (a) for quarterly standard capacity products and for monthly standard capacity products, the level of the respective multiplier shall be no less than 1 and no more than 1.5;
 - (b) for daily standard capacity products and for within-day standard capacity products, the level of the respective multiplier shall be no less than 1 and no more than 3.

By 1 April 2023, the level of multipliers for daily standard capacity products and for within-day standard capacity products shall be no less than 1 and no more than 1.5.

In duly justified cases, for daily standard capacity products and for within-day standard capacity products the level of the multiplier may be less than 1 but higher than 0.

2. Where seasonal factors are applied, the arithmetic mean over the gas year of the product of the multiplier applicable for the respective standard capacity product and the relevant seasonal factors shall be within the same range as for the level of the respective multipliers set out in paragraph 1.
3. By 1 April 2021, the Agency shall publish a report assessing the appropriateness of the ranges referred to in the first subparagraph of paragraph 1. Such report shall examine the following aspects related to the use of multipliers and seasonal factors before and as from 31 May 2019:
 - (a) changes in booking behaviour;

- (b) impact on the transmission services revenue and its recovery;
- (c) differences between the level of transmission tariffs applicable for two consecutive tariff periods;
- (d) cross-subsidisation between network users having contracted yearly and non-yearly standard capacity products;
- (e) impact on cross-border flows.

Without prejudice to Article 7(1) of Regulation (EC) No 715/2009, the Agency shall include in the report an opinion, based on the conclusions of the report, as to whether an amendment to this Article and Article 15 is necessary.

4. Within two years as from the date of publication of the report referred to in paragraph 3, the Agency shall publish an update thereof examining the aspects set out therein. The second subparagraph of paragraph 3 shall apply, *mutatis mutandis*.

Article 14

Calculation of reserve prices for non-yearly standard capacity products for firm capacity in absence of seasonal factors

The reserve prices for non-yearly standard capacity products for firm capacity shall be calculated as follows:

- (a) for quarterly standard capacity products, for monthly standard capacity products and for daily standard capacity products, in accordance with the following formula:

$$P_{st} = (M \times T / 365) \times D$$

Where:

P_{st} is the reserve price for the respective standard capacity product;

M is the level of the multiplier corresponding to the respective standard capacity product;

T is the reference price;

D is the duration of the respective standard capacity product expressed in gas days.

For leap years, the formula shall be adjusted so that the figure 365 is substituted with the figure 366.

- (b) for within-day standard capacity products, in accordance with the following formula:

$$P_{st} = (M \times T / 8760) \times H$$

Where:

P_{st} is the reserve price for the within-day standard capacity product;

M is the level of the corresponding multiplier;

T is the reference price;

H is the duration of the within-day standard capacity product expressed in hours.

For leap years, the formula shall be adjusted so that the figure 8760 is substituted with the figure 8784.

Article 15

Calculation of reserve prices for non-yearly standard capacity products for firm capacity with seasonal factors

1. Where seasonal factors are applied, the reserve prices for non-yearly standard capacity products for firm capacity shall be calculated in accordance with the relevant formulas set out in Article 14, multiplied by the respective seasonal factor calculated as set out in paragraphs 2 to 6.
2. The methodology set out in paragraph 3 shall be based on the forecasted flows unless the quantity of the gas flow at least for one month is equal to 0. In such case, the methodology shall be based on the forecasted contracted capacity.
3. For monthly standard capacity products for firm capacity, the seasonal factors shall be calculated in the following sequential steps:
 - (a) for each month within a given gas year the usage of the transmission system shall be calculated on the basis of forecasted flows or forecasted contracted capacity using:
 - (i) the data for the individual interconnection point, where the seasonal factors are calculated for each interconnection point;
 - (ii) the average data, where the seasonal factors are calculated for some or all of the interconnection points.
 - (b) the resulting values referred to in point (a) shall be summed up;
 - (c) the usage rate shall be calculated by dividing each of the resulting values referred to in point (a) by the resulting value referred to in point (b);
 - (d) each of the resulting values referred to in point (c) shall be multiplied by 12. Where the resulting values are equal to 0, these values shall be adjusted to the lower of 0.1 or the lowest of the resulting values other than 0;
 - (e) the initial level of the respective seasonal factors shall be calculated by raising each of the resulting values referred to in point (d) to the same power which is no less than 0 and no more than 2;
 - (f) the average of the products of the resulting values referred to in point (e) and the multiplier for monthly standard capacity products shall be calculated;
 - (g) the resulting value referred to in point (f) with the range referred to in Article 13(1) shall be compared, as relevant:
 - (i) if this value falls within this range then the level of seasonal factors shall coincide with the respective resulting values referred to in point (e);
 - (ii) if this value falls outside of this range then point (h) shall apply.
 - (h) the level of seasonal factors shall be calculated as the product of the respective resulting values referred to in point (e) and the correction factor calculated as follows:

- (i) where the resulting value referred to in point (f) is more than 1.5, the correction factor shall be calculated as 1.5 divided by this value;
 - (ii) where the resulting value referred to in point (f) is less than 1, the correction factor shall be calculated as 1 divided by this value.
4. For daily standard capacity products for firm capacity and within-day standard capacity products for firm capacity, the seasonal factors shall be calculated by carrying out the steps set out in paragraph 3(f) to (h), mutatis mutandis.
 5. For quarterly standard capacity products for firm capacity, the seasonal factors shall be calculated in sequential steps as follows:
 - (a) the initial level of the respective seasonal factors shall be calculated as either of the following:
 - (i) equal to the simple average of the respective seasonal factors applicable for the three relevant months;
 - (ii) no less than the lowest and no more than the highest level of the respective seasonal factors applicable for the three relevant months.
 - (b) the steps set out in paragraph 3(f) to (h) shall be carried out, using the resulting values referred to in point (a), mutatis mutandis.
 6. For all non-yearly standard capacity products for firm capacity, the values resulting from the calculation referred to in paragraphs 3 to 5 may be rounded up or down.

Article 16

Calculation of reserve prices for standard capacity products for interruptible capacity

1. The reserve prices for standard capacity products for interruptible capacity shall be calculated by multiplying the reserve prices for the respective standard capacity products for firm capacity calculated as set out in Articles 14 or 15, as relevant, by the difference between 100% and the level of an ex-ante discount calculated as set out in paragraphs 2 and 3.
2. An ex-ante discount shall be calculated in accordance with the following formula:

$$D_{i_{\text{ex-ante}}} = \text{Pro} \times A \times 100\%$$

Where:

$D_{i_{\text{ex-ante}}}$ is the level of an ex-ante discount;

Pro factor is the probability of interruption of the type of standard capacity product for interruptible capacity;

A is the adjustment factor applied to reflect the estimated economic value of the type of standard capacity product for interruptible capacity, which shall be no less than 1 and may differ per standard capacity product for interruptible capacity of a certain duration or for interruptible capacity products offered in the direction opposite to the physical gas flow at unidirectional interconnection points where technical capacity is offered only in one direction as set out in Article 28 of Commission Regulation (EU) NEWCAM XXX.

3. The Pro factor referred to in paragraph 2 shall be calculated for each, some or all interconnection points per type of standard capacity product for interruptible capacity offered in accordance with the following formula on the basis of forecasted information related to its components:

$$\text{Pro} = \frac{N \times D_{\text{int}}}{D} \times \frac{\text{CAP}_{\text{av. int}}}{\text{CAP}}$$

Where:

N is the expectation of the number of interruptions over D;

D_{int} is the expected average duration of each interruption expressed in hours;

D is the total duration of the respective type of standard capacity product for interruptible capacity expressed in hours;

$\text{CAP}_{\text{av. int}}$ is the expected average amount of interrupted capacity for each interruption related to the respective type of standard capacity product for interruptible capacity;

CAP is the total amount of interruptible capacity for the respective type of standard capacity product for interruptible capacity.

4. As an alternative to applying ex-ante discounts in accordance with paragraph 1 the national regulatory authority may decide to apply an ex-post discount, whereby network users are compensated after the actual interruptions incurred. Such ex-post discount may only be used where there was no interruption of capacity due to physical congestion in the transmission system in the preceding gas year.

The ex-post compensation paid for each day on which an interruption occurred shall be equal to three times the reserve price for daily standard capacity products for firm capacity.

CHAPTER IV RECONCILIATION OF REVENUE

Article 17 *General provisions*

1. Where and to the extent that the transmission system operator functions under a non-price cap regime, the following principles shall apply:
 - (a) the under- or over-recovery of the transmission services revenue shall be minimised;
 - (b) the level of transmission tariffs shall ensure that the transmission services revenue is recovered by the transmission system operator in a timely manner;
 - (c) significant differences between the levels of transmission tariffs applicable for two consecutive tariff periods shall be avoided to the extent possible.
2. Where and to the extent that the transmission system operator functions under a price cap regime or applies a fixed payable price approach set out in Article 24(2), no revenue reconciliation shall occur and all risks related to under- or over-recovery

shall be covered exclusively by the risk premium. In such case Articles 18, 19(1) to (3) and 20 shall not apply.

3. Subject to the requirements of periodic consultation by the transmission system operator(s) or the national regulatory authority, as decided by the national regulatory authority, and the approval by the national regulatory authority as set out in Articles 26 and 27, non-transmission services revenue may be reconciled as set out in this Chapter, *mutatis mutandis*.

Article 18

Under- and over-recovery

1. The under- or over-recovery of the transmission services revenue shall be equal to:

$$R_A - R$$

Where:

R_A is the actually obtained revenue related to the provision of transmission services;
R is the transmission services revenue.

The values of R_A and R shall be attributed to the same tariff period and, where an effective inter-transmission system operator compensation mechanism referred to in Article 11(1) and (2) is established, shall take such mechanism into account.

2. Where the difference calculated in accordance with paragraph 1 is positive, it shall indicate an over-recovery of the transmission services revenue. Where such difference is negative, it shall indicate an under-recovery of the transmission services revenue.

Article 19

Regulatory account

1. The regulatory account shall indicate the information referred to in Article 18(1) for a given tariff period and may include other information, such as the difference between the anticipated and the actual cost components.
2. All of the transmission system operator's under- or over-recovery shall be attributed to the regulatory account, unless otherwise decided by the national regulatory authority. Where incentive mechanisms for capacity sales are implemented in accordance with the decision of the national regulatory authority, only a part of the transmission system operator's under- or over-recovery shall be attributed to the regulatory account. In such case, the residual part thereof shall be met by the transmission system operator.
3. Each transmission system operator shall use one regulatory account. Where an asset cost split pursuant to Article 9 is applied the following rules shall apply:

- (a) where the transmission system operator functions under both price cap and non-price cap regimes, one regulatory account shall be used for assets attributed to the non-price cap regime;
- (b) where the transmission system operator functions only under a price cap regime, no regulatory account shall be used;
- (c) where the transmission system operator functions only under a non-price cap regime, more than one regulatory account shall be used.

A regulatory account may be split into a number of sub-accounts for the purpose of recording the under- or over-recovery originating from a particular group of points or from a particular type of transmission tariff.

4. Subject to the decision of the national regulatory authority, the earned auction premium, if any, may be attributed to a specific account separate from the regulatory account referred to in paragraph 3. The national regulatory authority may decide to use this auction premium for reducing physical congestion or, where the transmission system operator functions only under a non-price cap regime, to decrease the transmission tariffs for the next tariff period as set out in Article 20(1).

Article 20

Reconciliation of regulatory account

1. The full or partial reconciliation of the regulatory account shall be carried out in accordance with the applied reference price methodology and, in addition, by using the charge referred to in Article 4(2)(b), if applied.
2. The national regulatory authority shall set or approve the manner in which the reconciliation of the regulatory account shall be carried out as referred to in paragraph 1, including the reconciliation period, meaning the time period over which the regulatory account referred to in Article 19(3) shall be reconciled.
3. The regulatory account shall be reconciled with the aim of reimbursing to the transmission system operator the under-recovery and of returning to the network users the over-recovery.

CHAPTER V

PRICING OF BUNDLED CAPACITY AND CAPACITY AT VIRTUAL INTERCONNECTION POINTS

Article 21

Pricing of bundled capacity

1. The reserve price for a bundled capacity product shall be equal to the sum of the reserve prices for the capacities contributing to such product. The reserve prices for corresponding entry and exit capacities shall be made available when the bundled capacity product is offered and allocated by means of a joint booking platform referred to in Article 33 of Commission Regulation (EU) NEWCAM XXX.

2. The revenue originating from the bundled capacity product sales corresponding to the reserve price for such product shall be attributed to the respective transmission system operators as follows:
 - (a) after each transaction for a bundled capacity product;
 - (b) in proportion to the reserve prices for the capacities contributing to such product.
3. The auction premium originating from the bundled capacity product sales shall be attributed in accordance with the agreement between the respective transmission system operators which is subject to the approval by the national regulatory authority or authorities to be granted no later than three months before the start of the annual yearly capacity auctions. In absence of such approval by all national regulatory authorities involved, the auction premium shall be attributed to the respective transmission system operators equally.
4. Where the interconnection point concerned connects adjacent entry-exit systems of two Member States, the respective national regulatory authorities shall submit the agreement referred to in paragraph 3 to the Agency for information.

Article 22

Pricing of capacity at a virtual interconnection point

1. The reserve price for an unbundled standard capacity product offered at a virtual interconnection point shall be calculated in accordance with either of the following approaches:
 - (a) calculated on the basis of the reference price, where the applied reference price methodology allows for taking into account the established virtual interconnection point;
 - (b) equal to the weighted average of the reserve prices, calculated on the basis of the reference prices for each interconnection point contributing to such virtual interconnection point, where the applied reference price methodology does not allow for taking into account the established virtual interconnection point, in accordance with the following formula:

$$P_{st, VIP} = \frac{\sum_i^n (P_{st, i} \times CAP_i)}{\sum_i^n CAP_i}$$

Where:

$P_{st, VIP}$ is the reserve price for a given unbundled standard capacity product at the virtual interconnection point;

i is an interconnection point contributing to the virtual interconnection point;

n is the number of interconnection points contributing to the virtual interconnection point;

$P_{st, i}$ is the reserve price for a given unbundled standard capacity product at interconnection point i ;

CAP_i is technical capacity or forecasted contracted capacity, as relevant, at interconnection point i .

2. The reserve price for a bundled standard capacity product offered at a virtual interconnection point shall be calculated as set out in Article 21(1).

CHAPTER VI CLEARING PRICE AND PAYABLE PRICE

Article 23

Calculation of clearing price at interconnection points

The clearing price for a given standard capacity product at an interconnection point shall be calculated in accordance with the following formula:

$$P_{cl} = P_{R,au} + AP$$

Where:

P_{cl} is the clearing price;

$P_{R,au}$ is the applicable reserve price for a standard capacity product which is published at the time when this product is auctioned;

AP is the auction premium, if any.

Article 24

Calculation of payable price at interconnection points

The payable price for a given standard capacity product at an interconnection point shall be calculated in accordance with either of the following formulas:

- (a) where the floating payable price approach is applied:

$$P_{flo} = P_{R,flo} + AP$$

Where:

P_{flo} is the floating payable price;

$P_{R,flo}$ is the reserve price for a standard capacity product applicable at the time when this product may be used, as set or approved by the national regulatory authority;

AP is the auction premium, if any.

- (b) where the fixed payable price approach is applied:

$$P_{fix} = (P_{R,y} \times IND) + RP + AP$$

Where:

P_{fix} is the fixed payable price;

$P_{R,y}$ is the applicable reserve price for a yearly standard capacity product which is published at the time when this product is auctioned;

IND is the chosen index;

RP is the risk premium reflecting the benefits of certainty regarding the level of transmission tariff, which shall be no less than 0;

AP is the auction premium, if any.

Article 25

Conditions for offering payable price approaches

1. Where [and to the extent that] the transmission system operator functions under a non-price cap regime, the conditions for offering payable price approaches shall be as follows:
 - (a) for cases where only existing capacity is offered:
 - (i) the floating payable price approach shall be offered;
 - (ii) the fixed payable price approach shall not be allowed.
 - (b) for incremental capacity and existing capacity offered in the same auction or same alternative allocation mechanisms:
 - (i) the floating payable price approach may be offered;
 - (ii) the fixed payable price approach may be offered where either of the following conditions is met:
 - (1) an alternative allocation mechanism set out in Article 26 of Commission Regulation (EU) NEWCAM XXX is used;
 - (2) the capacity stems from a project included in the Union list of projects of common interest as set out in Article 3 of Regulation (EU) No 347/2013 of the European Parliament and of the Council⁶.
2. Where and to the extent that the transmission system operator functions under a price cap regime, the floating payable price approach or the fixed payable price approach, or both, may be offered.

CHAPTER VII CONSULTATION REQUIREMENTS

Article 26

Periodic consultation

1. A consultation document shall be published in one or more of the official languages of the Member State and, unless one of the official languages is English, in English

⁽⁶⁾ Regulation (EU) No 347/2013 of the European Parliament and of the Council of 17 April 2013 on guidelines for trans-European energy infrastructure and repealing Decision No 1364/2006/EC and amending Regulations (EC) No 713/2009, (EC) No 714/2009 and (EC) No 715/2009 (OJ L 115, 25.4.2013, p. 39).

by the transmission system operator(s) or the national regulatory authority, as decided by the national regulatory authority. It shall include the following information:

- (a) the description of the proposed reference price methodology as well as the following items:
 - (i) where the proposed reference price methodology is preceded by the asset cost split set out in Article 9(2), the following information on the asset cost split:
 - (1) the identified groups of network users;
 - (2) the following information for the primary and the supporting assets allocated to each group of network users referred to in point (1):
 - (a) the supply scenarios used to identify the primary assets for such groups of network users;
 - (b) the description and the value of such assets;
 - (c) the date of the first activation of a given asset on the balance sheet and, if such dates are different, the date of its construction.
 - 3. the quantification of the financial risk for network users should the asset cost split not be applied.
 - (ii) the indicative information set out in Article 30(1)(a)(i), including:
 - (1) the justification of the parameters used that are related to the technical characteristics of the system;
 - (2) the corresponding information on the respective values of such parameters and the assumptions applied.
 - (iii) the value of the proposed discounts for capacity-based transmission tariffs at entry points from and exit points to storage facilities;
 - (iv) the indicative reference prices subject to consultation;
 - (v) the results, the components and the details of these components for the cost allocation assessments set out in Article 5;
 - (vi) the assessment of the proposed reference price methodology in accordance with Article 7;
 - (vii) where the proposed reference price methodology is other than the capacity weighted distance reference price methodology detailed in Article 8, its comparison against the latter accompanied by the information set out in point (iv);
- (b) the indicative information set out in Article 30(1)(b);
- (c) the following information on transmission and non-transmission tariffs:
 - (i) where commodity-based transmission tariffs referred to in the second subparagraph of Article 4(2) are proposed:
 - (1) the manner in which they are set;
 - (2) the share of the allowed or target revenue forecasted to be recovered from such tariffs;

- (3) the indicative commodity-based transmission tariffs;
 - (ii) where non-transmission services provided to network users are proposed:
 - (1) the non-transmission service tariff methodology therefor;
 - (2) the share of the allowed or target revenue forecasted to be recovered from such tariffs;
 - (3) the manner in which the associated non-transmission services revenue is reconciled as referred to in Article 17(3);
 - (4) the indicative non-transmission tariffs for non-transmission services provided to network users;
 - (d) the indicative information set out in Article 30(2);
 - (e) where the fixed payable price approach referred to in Article 24(2) is considered to be offered under a price cap regime for existing capacity:
 - (i) the proposed index;
 - (ii) the proposed calculation and treatment of the risk premium;
 - (iii) at which interconnection point(s) and for which tariff period(s) such approach is proposed;
 - (iv) the process of offering capacity at an interconnection point where both fixed and floating payable price approaches referred to in Article 24 are proposed.
- 2. The consultation initiated in accordance with paragraph 1 shall be open for at least two months.
- 3. Within one month following the end of the consultation, the transmission system operator(s) or the national regulatory authority, depending on the entity that publishes the consultation document referred to in paragraph 1, shall publish the consultation responses received in their original language as well as their summary in one or more of the official languages of the Member State and, unless one of the official languages is English, in English as well as the reply by the Agency.
- 4. The subsequent periodic consultations shall be conducted in accordance with Article 27(4).
- 5. After consulting the European Network of Transmission System Operators for Gas (hereinafter 'ENTSOG'), the Agency shall develop a template in English for the consultation document referred to in paragraph 1. The template shall be made available to national regulatory authorities and transmission system operators within 90 days from the entry into force of this Regulation *[specific date to be inserted by OP]*. The use of the template or a translation thereof shall be mandatory.

Article 27

National regulatory authority decision-making on reference price methodologies

1. Upon launching the consultation pursuant to Article 26, the national regulatory authority or the transmission system operator(s), as decided by the national regulatory authority, shall forward to the Agency all information referred to in Article 26(1).

2. The Agency shall analyse the following aspects of the consultation document:
 - (a) whether all the information referred to in Article 26(1) has been published;
 - (b) whether the elements consulted on in accordance with Article 26 comply with the requirements set out in this Regulation, in particular:
 - (1) whether the proposed reference price methodology complies with the requirements set out in Article 7;
 - (2) whether the criteria for setting commodity-based transmission tariffs as set out in Article 4(2) are met;
 - (3) whether the criteria for setting non-transmission tariffs as set out in Article 4(3) are met.
3. Within two months following the end of the consultation the Agency shall send to the national regulatory authority or transmission system operator and the Commission the conclusion of its analysis in accordance with paragraph 1 and in English, including any specific recommendations.

Within the consultation period the Agency may send requests for further information necessary for its analysis to the national regulatory authority or the transmission system operator which shall be replied by the national regulatory authority or transmission system operator within fifteen days of its receipt.
4. Within five months following the end of the consultation the national regulatory authority shall take and publish a motivated decision on all aspects set out in Article 26(1). Upon publication, the national regulatory authority shall send to the Agency and the Commission its decision accompanied by a statement of its views on the Agency's specific recommendations, in case any recommendations have been made.
5. The procedure consisting of the consultation on the reference price methodology in accordance with Article 26, the decision by the national regulatory authority in accordance with paragraph 3, the calculation of tariffs on the basis of this decision, the approval of tariffs by the national regulatory authority and the publication of the tariffs in accordance with Chapter VIII may be initiated as from the entry into force of this Regulation and shall be concluded no later than 31 May 2019. The requirements set out in Chapters II, III and IV shall be taken into account in this procedure. This procedure shall be repeated at least every five years starting from 31 May 2019.

Article 28

National regulatory authority decision-making on discounts for interruptible capacity, multipliers and seasonal factors

1. At the same time as the consultation carried out in accordance with Article 26(1), the national regulatory authority shall conduct a consultation with the national regulatory authorities of all adjacent Member States and the relevant stakeholders on the following:
 - (a) the level of multipliers;
 - (b) if applicable, the level of seasonal factors and the calculations set out in Article 15;

- (c) the levels of discounts set out in Article 16.

After the end of the consultation and together with the decision referred to in Article 27(3), the national regulatory authority shall take and publish a motivated decision on the aspects referred to in points (a) to (c) of this paragraph. Each national regulatory authority shall take account of the adjacent national regulatory authorities' positions with a view to having a coordinated decision. Article 8(1) of the Regulation (EC) No 713/2009 shall apply.

2. The subsequent consultations shall be conducted every tariff period as from the date of the decision referred to in paragraph 1. After each consultation and as set out in Article 32(1), the national regulatory authority shall take and publish a motivated decision on the aspects referred to in paragraph 1(a), (b) and (c).
3. When adopting the decision referred to in paragraphs 1 and 2, the national regulatory authority shall take into account the consultation responses received and the following aspects:
 - (a) for multipliers:
 - (i) the balance between facilitating short-term gas trade and providing long-term signals for efficient investment in the transmission system;
 - (ii) the impact on the transmission services revenue and its recovery;
 - (iii) the need to avoid cross-subsidisation between network users and to enhance cost-reflectivity of reserve prices;
 - (iv) situations of physical and contractual congestion;
 - (v) the impact on cross-border flow;
 - (b) for seasonal factors:
 - (i) the impact on facilitating the economic and efficient utilisation of the infrastructure;
 - (ii) the need to improve the cost-reflectivity of reserve prices.

CHAPTER VIII PUBLICATION REQUIREMENTS

Article 29

Information to be published before the annual yearly capacity auction

For interconnection points and points other than interconnection points where the national regulatory authority takes a decision to apply Commission Regulation (EU) NEW CAM XXX, the following information shall be published by the transmission system operator or the national regulatory authority before the annual yearly capacity auction in accordance with the requirements set out in Articles 31 and 32 by the entity responsible for calculating the transmission tariffs:

- (a) for standard capacity products for firm capacity:
 - (i) the reserve prices;
 - (ii) the multipliers and seasonal factors applied to reserve prices for non-yearly standard capacity products;

- (iii) the justification of the national regulatory authority for the level of multipliers;
- (iv) where seasonal factors are applied, the justification for their application.
- (b) for standard capacity products for interruptible capacity:
 - (i) the reserve prices;
 - (ii) an assessment of the probability of interruption including:
 - (1) the list of all types of standard capacity products for interruptible capacity offered including the respective probability of interruption and the level of discount applied;
 - (2) the explanation of how the probability of interruption is calculated for each type of product referred to in point (i);
 - (3) the historical or forecasted data, or both, used for the estimation of the probability of interruption referred to in point (ii).

Article 30

Information to be published before the tariff period

1. The following information shall be published before the tariff period in accordance with the requirements set out in Articles 31 and 32 by the entity responsible for calculating the transmission and non-transmission tariffs:
 - (a) information on the applied reference price methodology:
 - (i) parameters used that are related to the technical characteristics of the transmission system, such as:
 - (1) technical capacity at entry and exit points and associated assumptions;
 - (2) forecasted contracted capacity at entry and exit points and associated assumptions;
 - (3) the quantity and the direction of the gas flow for entry and exit points and associated assumptions, such as demand and supply scenarios for the gas flow under peak conditions;
 - (4) the structural representation of the transmission network with an appropriate level of detail;
 - (5) additional technical information about the transmission network, such as the length and the diameter of pipelines and the power of compressor stations.
 - (ii) where an asset cost split is applied, the revenue recovered from the respective groups of network users defined in accordance with article 9(2)(a)(1).
 - (b) the following information on the revenue and expenditures of the transmission system operator:
 - (i) the allowed or target revenue, or both, of the transmission system operator;

- (ii) the information related to yearly changes in the revenue referred to in point (i);
 - (iii) the following parameters:
 - (1) types of assets included in the regulated asset base;
 - (2) cost of capital and its calculation methodology;
 - (3) capital expenditures, including:
 - (a) methodologies to determine the initial value of the assets;
 - (b) methodologies to re-evaluate the assets;
 - (c) explanations of the evolution of the value of the assets;
 - (d) depreciation periods and amounts per asset type.
 - (4) operational expenditures;
 - (5) incentive mechanisms and efficiency targets;
 - (6) inflation indices.
 - (iv) the transmission services revenue;
 - (v) the following ratios for the revenue referred to in point (iv):
 - (1) capacity-commodity split, meaning the breakdown between the revenue from capacity-based transmission tariffs and the revenue from commodity-based transmission tariffs;
 - (2) entry-exit split, meaning the breakdown between the revenue from capacity-based transmission tariffs at all entry points and the revenue from capacity-based transmission tariffs at all exit points;
 - (3) cross-border-domestic split, meaning the breakdown between the revenue from domestic network users at both entry points and exit points and the revenue from cross-border network users at both entry points and exit points calculated as set out in Article 5.
 - (vi) where and to the extent that the transmission system operator functions under a non-price cap regime, the following information on reconciliation of the regulatory account related to the previous tariff period:
 - (1) the actually obtained revenue, the under- or over-recovery of the allowed revenue and the part thereof attributed to the regulatory account and, if applicable, sub-accounts;
 - (2) the reconciliation period and the incentive mechanisms implemented.
 - (vii) the intended use of the auction premium.
- (c) the following information on transmission and non-transmission tariffs, accompanied by the relevant information related to their derivation:
- (i) where applied, commodity-based transmission tariffs referred to in Article 4(2);
 - (ii) where applied, non-transmission tariffs for non-transmission services referred to in Article 4(3);

- (iii) the reference prices and other prices applicable at points other than those referred to in Article 29.
- 2. In addition, the following information shall be published with regard to transmission tariffs:
 - (a) explanation of the following:
 - (i) the difference in the level of transmission tariffs for the same type of transmission service applicable for the prevailing tariff period and for the tariff period for which the information is published;
 - (ii) the estimated difference in the level of transmission tariffs for the same type of transmission service applicable for the tariff period for which the information is published and for each tariff period within the remainder of the regulatory period.
 - (b) at least a simplified tariff model, updated regularly, accompanied by the explanation of how to use it, enabling network users to calculate the transmission tariffs applicable for the prevailing tariff period and to estimate their possible evolution beyond such tariff period.
- 3. At the points excluded from the definition of relevant points referred to in point 3.2(1)(a) of Annex I to Regulation (EC) No 715/2009, the information on the amount of forecasted contracted capacity and the forecasted quantity of the gas flow shall be published as set out in point 3.2(2) of Annex I to Regulation (EC) No 715/2009.

Article 31

Form of publication

- 1. The information referred to in Articles 29 and 30 shall be published as set out in Article 32 via a link on the platform referred to in point 3.1.1(1)(h) of Annex I to Regulation (EC) No 715/2009 to the website of the respective entity.

Such information shall be accessible to the public, free of charge and of any limitations as to its use. It shall be published:

 - (a) in a user-friendly manner;
 - (b) in a clear, easily accessible way and on a non-discriminatory basis;
 - (c) in a downloadable format;
 - (d) in one or more of the official languages of the Member State and, unless one of the official languages of the Member State is English, in English.
- 2. The following information shall be published for interconnection points on the platform referred to in point 3.1.1(1)(h) of Annex I to Regulation (EC) No 715/2009:
 - (a) At the same time as set out in Article 29, the reserve prices for standard capacity products for firm capacity;
 - (b) At the same time as set out in Article 29, the reserve prices for standard capacity products for interruptible capacity;
 - (c) At the same time as set out in Article 30, a flow-based charge referred to in Article 4(2)(a), where applied.

3. The information referred to in paragraph 2 shall be published in the following manner:
- (a) as set out in paragraph 1(a) to (d);
 - (b) in English;
 - (c) in a standardised table which shall include at least the following information:
 - (i) the interconnection point;
 - (ii) the direction of the gas flow;
 - (iii) the names of the relevant transmission system operators;
 - (iv) the start and the end time of the product;
 - (v) whether the capacity is firm or interruptible;
 - (vi) the indication of the standard capacity product;
 - (vii) the applicable tariff per kWh/h and per kWh/d in the local currency and in the euro taking into account the following:
 - (1) where the applied capacity unit is kWh/h, the information on the applicable tariff per kWh/d shall be non-binding, and vice versa;
 - (2) where the local currency is other than the euro, the information on the applicable tariff in euro shall be non-binding.
- In addition, at the same time as set out in Article 30, such standardised table shall include the simulation of all the charges for flowing 1 GWh/day/year for each interconnection point in the local currency and in the euro subject to point vii(2).
4. Where the information referred to in paragraph 2 is different from the respective information referred to in paragraph 1, the respective information referred to in paragraph 1 shall prevail.

Article 32
Publication notice period

The deadline for the publication of the information set out in Articles 29 and 30 shall be as follows:

- (a) for the information set out in Article 29, no later than thirty days before the annual yearly capacity auction;
- (b) for the information set out in Article 30, no later than thirty days before the respective tariff period;
- (c) for the respective transmission tariffs updated within the tariff period as set out in Article 12(2), immediately after the approval by the national regulatory authority.

Each update of the transmission tariffs shall be accompanied by information indicating the reasons for the changes in their level. Where Article 12(2)(b) is applied, it shall also be accompanied by the updated report referred to in Article 29(2)(b) for the respective types of standard capacity products for interruptible capacity.

CHAPTER IX INCREMENTAL CAPACITY

Article 33 *Economic test*

1. The economic test set out in this Article shall be carried out by the transmission system operator(s) or by the national regulatory authority, as decided by the national regulatory authority, for each offer level of an incremental capacity project after binding commitments of network users for contracting capacity have been obtained by the involved transmission system operators and shall consist of the following parameters:
 - (a) the present value of binding commitments of network users for contracting capacity, which is calculated as the discounted sum of the following parameters:
 - (i) the sum of the respective estimated reference prices and a potential auction premium and a potential mandatory minimum premium multiplied by the amount of contracted incremental capacity;
 - (ii) the sum of a potential auction premium and a potential mandatory minimum premium multiplied by the amount of available capacity that was contracted in combination with the incremental capacity;
 - (b) the present value of the estimated increase in the allowed or target revenue of the transmission system operator associated with the incremental capacity included in the respective offer level, as approved by the relevant national regulatory authority in accordance with Article 24(2) of Commission Regulation (EU) NEWCAM XXX;
 - (c) the f-factor.
2. The outcome of the economic test application shall be:
 - (a) positive, where the value of the parameter set out in paragraph 1(a) is at least equal to the share of the parameter set out in paragraph 1(b) as defined by the f-factor;
 - (b) negative, where the value of the parameter set out in paragraph 1(a) is lower than the share of the parameter set out in paragraph 1(b) as defined by the f-factor.
3. An incremental capacity project shall be initiated if the economic test has a positive outcome on both sides of an interconnection point for at least one offer level that includes incremental capacity. In case more than one offer level results in a positive outcome of the economic test, the offer level with the largest amount of capacity that resulted in a positive outcome shall be used for proceeding with the incremental capacity project towards commissioning.

Article 34
The f-factor

1. When applying the economic test referred to in Article 33, the national regulatory authority shall set the level of the f-factor for a given offer level, taking into account the following:
 - (a) the amount of technical capacity set aside in accordance with Article 8(8) and (9) of Commission Regulation (EU) NEWCAM XXX;
 - (b) positive externalities of the incremental capacity project on the market or the transmission network, or both;
 - (c) the duration of binding commitments of network users for contracting capacity compared to the economic life of the asset;
 - (d) the extent to which the demand for the capacity established in the incremental capacity project can be expected to continue after the end of the time horizon used in the economic test.
2. If the economic test has a positive outcome then the actual investment costs associated with the incremental capacity shall be reflected in full in an increase in the allowed or target revenue in accordance with the applicable national rules.

Article 35
Combination into single economic test

1. In order to facilitate the offer of bundled capacity products, individual economic test parameters of the involved transmission system operators for a given offer level shall be combined into a single economic test.
2. The single economic test shall consist of the following parameters:
 - (a) the present value of binding commitments of network users for contracting bundled capacity, which is the sum of the values according to Article 33(1)(a) of the involved transmission system operators;
 - (b) the sum of the individual present values of the estimated increase in the allowed or target revenue of the involved transmission system operators that is attributable to the incremental capacity of a respective offer level;
 - (c) the f-factor that defines the share of the parameter set out in point (b) that needs to be covered by the parameter set out in point (a) and allows all the involved transmission system operators individually to cover their upfront defined respective shares.
3. The outcome of the single economic test application shall be positive where all underlying economic tests result in positive outcomes as set out in Article 33(2)(a) taking into account a possible redistribution of revenues according to paragraphs 4 and 5. Otherwise, the outcome of the single economic test application shall be negative.
4. In case a redistribution of revenues could potentially lead to a decrease in the level of binding commitments of network users for contracting capacity required for a positive single economic test outcome, transmission system operators may submit to

the relevant national regulatory authorities for co-ordinated approvals the mechanisms for a redistribution of revenues from incremental capacity.

5. A redistribution of revenues may be carried out as follows:
 - (a) during the process of integrating the individual economic test parameters into a single economic test;
 - (b) in case the single economic test has a negative outcome while at the same time the level of binding commitment of network users for contracting capacity exceeds the minimum required to cover the individual present value of the increase in the allowed or target revenue for at least one of the involved transmission system operators.

Article 36

Publication requirements relating to the economic test

1. For a given incremental capacity project, the transmission system operator(s) shall submit to the relevant national regulatory authority(-ies) for approval the following information for each offer level:
 - (a) the reference prices estimated for the time horizon of the initial offer of incremental capacity that are used for the calculation of the parameter set out in Article 33(1)(a) and 35(2)(a), respectively in case separate or a single economic test is applied;
 - (b) the parameters set out in Article 33(1)(b) to (c) and 35(2)(b) to (c), respectively in case separate or a single economic test is applied;
 - (c) if applicable, the mandatory minimum premium for each offer level and interconnection point applied in the first auction and possibly in subsequent auctions in which the incremental capacity is offered as defined in Article 37(3).
2. Following the approval by the relevant national regulatory authority(-ies), the information set out in paragraph 1 shall be published by the involved transmission system operator(s) as set out in Article 24(3) of Commission Regulation (EU) NEWCAM XXX.

Article 37

Tariff principles for incremental capacity

1. The minimum price at which transmission system operators shall accept a request for incremental capacity is the reference price. For the calculation of the economic test, reference prices shall be derived by including into the reference price methodology the relevant assumptions related to the offer of incremental capacity.
2. Where the fixed payable price approach set out in Article 24(2) is considered to be offered for incremental capacity the reserve price referred to in Article 24(2) shall be based on projected investment and operating costs. Once the incremental capacity is commissioned, such reserve price shall be adjusted proportionally to the difference,

irrespective whether positive or negative, between the projected investment costs and the actual investment costs.

3. In case the allocation of all incremental capacity at the reference price would not generate sufficient revenues for a positive economic test outcome, a mandatory minimum premium may be applied in the first auction in which the incremental capacity is offered. The mandatory minimum premium may also be applied in subsequent auctions when the capacity is offered that initially remained unsold or when capacity is offered that was initially set aside according to Article 8(8) and (9) of Commission Regulation No (EU) NEW CAM XXX. The decision on whether and in which auctions to apply a mandatory minimum premium is subject to the approval by the relevant national regulatory authority.
4. The level of the mandatory minimum premium shall enable a positive economic test outcome with the revenues generated by the allocation of all offered capacity in the first auction in which the incremental capacity is on offer.
5. A mandatory minimum premium approved by the national regulatory authority shall be added to the reference price for the bundled capacity products at the respective interconnection point and shall exclusively be attributed to the transmission system operators for which the mandatory minimum premium was approved by the respective national regulatory authority. This default principle for the attribution of a mandatory minimum premium is without prejudice to the split of a possible additional auction premium according to Article 21(3) or an alternative agreement between the involved national regulatory authorities.

CHAPTER X FINAL AND TRANSITIONAL PROVISIONS

Article 38

Regulatory accounting rules

1. Within two years as from the entry into force of this Regulation [*specific date to be inserted by OP*], the Agency shall undertake and publish a report on the respective regulatory accounting rules applied in the Union in order to determine the allowed or target revenue of transmission system operators. That report shall be based on at least the parameters referred to in Article 30(1)(b)(iii).
2. National regulatory authorities shall submit to the Agency, in accordance with the process defined by the Agency, all necessary information related to their regulatory accounting rules used to determine the allowed or target revenue.

Article 39

Existing contracts

1. This Regulation shall not affect the levels of the capacity-based transmission tariffs resulting from contracts or capacity bookings concluded before 29 November 2013

where such contracts or capacity bookings foresee no change of the levels of the capacity- or commodity-based transmission tariffs except for indexation, if any.

2. The contract provisions related to transmission tariffs and capacity bookings referred to in paragraph 1 shall not be renewed, prolonged or rolled over after their expiration date.
3. Within one month as from the entry into force of this Regulation [*specific date to be inserted by OPJ*], a transmission system operator shall send the contracts or capacity bookings, if any, referred to in paragraph 1 to the national regulatory authority for information.

Article 40

Implementation monitoring

1. In order to assist the Agency in its monitoring duties pursuant to Article 9(1) of Regulation (EC) No 715/2009, ENTSOG shall monitor and analyse how transmission system operators have implemented this Regulation in accordance with Article 8(8) and (9) of Regulation (EC) No 715/2009. In particular, ENTSOG shall ensure the collection, quality check, collation and evaluation of all relevant information from transmission system operators. ENTSOG shall submit to the Agency that information in accordance with the following deadlines:
 - (a) 31 March 2018 as regards the requirements under Chapter VIII;
 - (b) 31 March 2020 as regards all other provisions of this Regulation.
2. Transmission system operators shall submit to ENTSOG all information required by ENTSOG to comply with its obligations pursuant to paragraph 1, in accordance with the following deadlines:
 - (a) 31 December 2017 as regards the requirements under Chapter VIII;
 - (b) 31 December 2019 as regards all other provisions of this Regulation.
3. The confidentiality of commercially sensitive information shall be preserved by ENTSOG and the Agency.
4. Within three years as from the entry into force of this Regulation, the Agency shall publish a report on the application of reference price methodologies in Member States.

Article 41

Power to grant derogations

1. National regulatory authorities may, at the request of an entity which operates an interconnector that has benefited from an exemption from Article 41(6), (8) and (10) of Directive 2009/73/EC in accordance with Article 36 of that Directive or a similar exemption, jointly grant such entity a derogation from the application of one or more Articles of this Regulation in accordance with paragraphs 2 to 6 of this Article where the application of those Articles to such entity would have one or several of the following negative consequences. It would:

- (c) not facilitate efficient gas trade and competition;
 - (d) not provide incentives for investment for new capacity or to maintain existing levels of capacity;
 - (e) unreasonably distort cross-border trade;
 - (f) distort competition with other infrastructure operators that offer services of a similar nature to those of the interconnector;
 - (g) not be implementable when taking into account the specific nature of interconnectors.
2. The entity requesting a derogation under paragraph 1 shall include in its request a detailed reasoning, with all supporting documents, including, where appropriate, a cost-benefit analysis, demonstrating that one or more of the conditions in paragraph 1(a) to (e) are complied with.
 3. The national regulatory authorities concerned shall jointly assess the request for a derogation and deal with it in close cooperation. Where the relevant national regulatory authorities grant a derogation, they shall specify its duration in their decisions.
 4. The national regulatory authorities shall notify their decisions granting such derogations to the Agency and the Commission.
 5. The national regulatory authorities may revoke a derogation if the circumstances or underlying reasons, or both, no longer apply or upon a reasoned recommendation of the Agency or the Commission to revoke a derogation due to a lack of justification.

Article 42

Entry into force

1. This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.
2. This Regulation shall apply as from entry into force.
3. However Chapters V, VI and VIII shall apply as from 1 October 2017. Chapters II, III and IV shall apply as from 31 May 2019.

Done at Brussels,

For the Commission

The President

[...]

[Choose between the two options, depending on the person who signs.]

On behalf of the President

[...]

[Position]